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## Other Transaction Authority Agreements: Practical Guidance for Government Contractors

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Other Transaction Authority (OTA) agreements have become one of the most important — and most misunderstood — vehicles for doing business with the federal government. Once limited to niche research programs, OTAs are now widely used

across the Department of Defense and civilian agencies to accelerate acquisition of emerging technologies, prototypes, and innovative capabilities.

For contractors, OTAs can present major opportunities: faster awards, less competition friction, more flexible terms, and access to cutting-edge programs that may never be competed under the Federal Acquisition Regulation (FAR). But OTAs also come with unique risks. Many companies assume an OTA is simply a “simpler government contract.” In reality, OTAs are fundamentally different legal instruments, and the absence of standard FAR protections can surprise even experienced federal contractors.

This article provides practical guidance on what OTAs are, how they differ from traditional government contracts, and how contractors should approach negotiating and performing under OTA agreements. It also explains why early involvement of experienced government contracts counsel is often essential to maximizing the upside of OTAs while minimizing risk.

## **What Is an OTA Agreement?**

An OTA agreement is not a traditional procurement contract. It is an agreement entered into under an agency’s statutory authority to carry out certain transactions outside the FAR. Agencies use OTAs primarily for research and development, prototype projects, and in certain circumstances, follow-on production. OTAs are frequently used to reduce procurement lead time and attract companies that do not normally do business with the federal government — particularly commercial technology firms that view FAR-based contracting as slow, burdensome, or incompatible with commercial business models. The Department of Defense is the most prominent OTA user, but other agencies have OTA authority as well, depending on statutory grants.

## **Why Agencies Like OTAs**

OTAs are popular with the government because they allow agencies to move faster than FAR procurements and avoid many of the structural and regulatory requirements associated with traditional contracting. Agencies also use OTAs to reduce protest risk, permit more flexible cost-sharing structures, tailor intellectual

property and data rights provisions, and streamline compliance obligations that can discourage commercial companies from participating in federal programs. From the government's perspective, OTAs are often the tool of choice when speed and innovation are prioritized over standard procurement formalities.

## **How OTAs Differ from Traditional Government Contracts**

- **OTAs Are Not Governed by the FAR**

The most important difference is also the simplest: The FAR generally does not apply to OTA agreements. Contractors therefore should not assume they will receive standard FAR protections relating to changes, equitable adjustments, termination for convenience, or disputes under the Contract Disputes Act (CDA). Instead, the OTA's terms govern the agreement. This distinction is critical because many contractors are accustomed to relying on the FAR as a backstop when negotiations leave ambiguity. Under an OTA, the contractor's rights are only as strong as what is negotiated into the agreement.

- **Dispute Resolution Is Often Negotiated (and May Be Unfavorable)**

Traditional government contracts are typically subject to the CDA, which provides a familiar disputes process through the Boards of Contract Appeals or the Court of Federal Claims. OTAs, however, are generally not CDA instruments. As a result, disputes are often governed by a negotiated dispute resolution clause, which may require internal agency resolution procedures, informal escalation, arbitration, or litigation in federal district court depending on how the agreement is drafted. This can be a major shift for experienced government contractors. Without a well-structured dispute clause, the contractor may find itself with fewer procedural protections and less predictable remedies.

- **OTAs Can Offer Greater Flexibility — but Less Predictability**

OTA agreements are typically customized, and their terms can vary significantly from program to program. Unlike FAR-based contracts, which tend to follow standardized structures, OTAs may contain unique deliverables, milestone frameworks, reporting obligations, and performance metrics. This flexibility can be advantageous, but it also means contractors must pay close attention to the specific language of the agreement and avoid assuming that familiar

government contracting principles will automatically apply. In practice, the “flexibility” of OTAs often benefits whichever party negotiated the clearer terms.

- **IP and Data Rights Are Often the Most Negotiated Issue**

Intellectual property and data rights are frequently the most important and most heavily negotiated provisions in an OTA. Under FAR and DFARS contracts, contractors have an established framework for technical data and computer software rights. OTAs do not necessarily follow that structure, and agencies often seek broader rights than contractors expect, particularly when the government believes it is funding development of new technology.

Contractors should pay close attention to how the agreement defines deliverables, how it addresses background intellectual property, whether the government may disclose technical data outside the agency, and what rights attach to technology developed under the project. For commercial companies, a poorly negotiated data rights clause can have long-term consequences well beyond the immediate OTA effort.

- **Cost Accounting and Audit Requirements May Be Reduced — but Not Eliminated**

One attraction of OTAs is that they often avoid the most burdensome compliance requirements associated with cost-reimbursement contracting, including certain Cost Accounting Standards obligations. However, contractors should not assume OTAs are audit-free. Many OTA agreements include cost reporting requirements, documentation obligations, and access-to-records provisions that can function similarly to audit rights, particularly where the government is paying based on incurred costs or reimbursing certain categories of expenses. Contractors should clarify early what cost documentation will be required and whether the agreement incorporates any cost allowability principles or restrictions.

- **OTAs Are Often Awarded Through Consortia**

Many OTAs are issued through consortia arrangements where contractors join an industry consortium managed by a third-party entity. In these cases, the government often issues opportunities through white papers, solution briefs, or

limited submissions rather than traditional FAR proposals. This can speed up award decisions, but it also introduces consortium-specific requirements such as membership fees, consortium participation agreements, and unique intellectual property terms. Contractors should review consortium membership agreements carefully, as these documents can impose obligations that apply regardless of whether a particular project is ultimately awarded.

- **Bid Protest Options Are More Limited**

Because OTAs are not procurement contracts, bid protest options are often more limited than under FAR-based competitions. While agency-level protest mechanisms may be available in certain circumstances, and GAO may in limited cases review whether an agency improperly used an OTA in place of a FAR-based procurement, with the Court of Federal Claims likewise exercising jurisdiction over select OTA-related challenges, contractors should not assume they will have access to the same protest remedies available in a traditional procurement. In addition, the fast pace of OTA competitions often means that contractors must raise concerns quickly or risk losing any practical opportunity for review. As a result, contractors should treat the OTA selection process as a high-stakes business development event where strategic positioning matters as much as legal leverage.

## **Key Issues Contractors Should Address Before Signing an OTA**

- **Clearly Define Deliverables and Acceptance Criteria**

OTA agreements often use milestone-based deliverables, and the acceptance process can be one of the most common sources of disputes. Contractors should ensure the agreement clearly defines what must be delivered, how acceptance will be evaluated, and what documentation must accompany each milestone. If the government retains subjective discretion to reject deliverables without clear criteria, the contractor's payment and schedule may be exposed to significant risk. Where possible, contractors should push for objective acceptance standards and firm timelines for government review and feedback.

- **Confirm the Payment Structure (and Protect Cash Flow)**

Payment terms in OTAs vary widely. Many agreements are milestone-based,

which can create cash flow challenges if the government delays acceptance. Contractors should ensure that payment triggers are clearly defined and tied to measurable deliverables. Contractors should also consider whether partial payments, interim deliverables, or phased milestones can reduce the risk of funding gaps during performance. Because OTAs often move quickly, contractors sometimes overlook payment mechanics until after award, at which point leverage is reduced. Payment structure should be treated as a core negotiation issue, not an administrative detail.

- **Understand Termination Rights**

Traditional FAR contracts typically include termination for convenience clauses that allow contractors to recover allowable costs and reasonable settlement expenses if the government ends performance early. OTA agreements may include termination provisions, but those provisions can vary significantly. Some OTAs allow termination with limited reimbursement, while others require a negotiated settlement.

Contractors should confirm what costs are recoverable upon termination, whether profit is recoverable, how partial deliverables will be treated, and what process governs termination settlement. Contractors investing heavily up front should ensure they are not exposed to catastrophic losses if the government terminates the effort midstream.

- **Address Background and Developed IP Explicitly**

Contractors should not assume the OTA will protect pre-existing technology. If the contractor is bringing proprietary software, processes, or tools into the project, the agreement should clearly identify that background intellectual property and limit the government's rights accordingly. Contractors should also negotiate how newly developed intellectual property will be treated and whether the government will receive a license to use, modify, or disclose that technology. In many OTA projects, intellectual property is the true value of the transaction. Contractors should treat IP provisions as central business terms, not boilerplate.

- **Clarify Subcontracting Rules and Flowdowns**

Because OTAs are not governed by standard FAR flowdowns, subcontracting rules are typically negotiated and may be inconsistent with what contractors are accustomed to in traditional prime-sub relationships. Contractors should confirm whether the government requires consent for subcontracting, whether subcontractors will be subject to specific reporting or data rights provisions, and how subcontractor deliverables will be reviewed and accepted. Prime contractors should ensure subcontract agreements are aligned with the OTA's deliverable structure, acceptance criteria, and intellectual property terms.

## **Understand the Follow-On Production Pathway**

One of the most attractive aspects of OTAs is the possibility of follow-on production awards after successful completion of a prototype effort. However, follow-on production is not automatic, and the OTA must be structured properly to preserve that pathway. Contractors should confirm whether the OTA contemplates prototype only, prototype with an express follow-on production option, or potential sole-source production under statutory authority. If follow-on production is a business objective, contractors should ensure the agreement language supports it and complies with applicable statutory requirements.

## **The Importance of Early and Close Coordination with Government Contracts Counsel**

OTA agreements often move quickly, and contractors are frequently pressured to accept terms on an accelerated timeline. That speed is one reason OTAs are attractive, but it is also why they can create legal exposure. Contractors that treat an OTA like a "lighter FAR contract" sometimes sign agreements with unclear deliverables, aggressive data rights provisions, or termination terms that shift substantial risk to the contractor.

Early coordination with experienced government contracts counsel can help contractors identify and mitigate those risks before the agreement is executed, when leverage is highest. Counsel can also help contractors understand whether the agency is using the correct OTA authority, whether the agreement is structured to

preserve follow-on production opportunities, and whether dispute resolution and termination provisions are reasonable. These issues are often difficult or impossible to correct once performance begins.

Legal counsel is also critical in helping contractors avoid “FAR creep” during performance and ensuring that the contractor documents scope changes and government direction in a way that preserves entitlement to additional compensation or schedule relief. In many cases, the most significant OTA disputes arise not because the contractor failed technically, but because the agreement lacked clear contractual mechanisms to address evolving requirements.

For contractors pursuing OTAs as part of a long-term government growth strategy, counsel can also help ensure that the company’s intellectual property and commercialization objectives are protected. Because OTAs frequently involve cutting-edge technology, the long-term value of the work may be tied less to the initial funding and more to the contractor’s ability to retain ownership and control of its technology for future commercial use.

## **Practical Guidance for Performing Under an OTA**

- **Treat OTA Performance Like a Commercial Contract — but with Government Stakeholders**

Although OTAs may be outside the FAR, they are still government agreements with government stakeholders. Contractors should treat OTA performance as a disciplined contract management effort, with clear internal responsibility for deliverables, milestone tracking, reporting obligations, and customer engagement. Contractors should assign a program manager who understands both the flexibility and the scrutiny that OTAs can involve. Many OTA performance problems arise not from technical failure, but from misaligned expectations between the contractor and government technical personnel.

- **Document Government Direction and Changes**

Because OTAs may not include a traditional Changes Clause, contractors must protect themselves by documenting any government direction that alters scope, schedule, or technical requirements. Contractors should confirm scope changes in writing and ensure the agreement is formally modified where appropriate.

Contractors that rely on informal discussions risk absorbing additional work without compensation or scheduled relief. As with traditional government contracting, documentation is often the difference between a manageable issue and a major dispute.

- **Watch for “FAR Creep”**

Agencies sometimes attempt to impose FAR-style compliance requirements informally during OTA performance. For example, contractors may be asked to provide certified cost data, comply with audit requests not contemplated by the agreement, or adopt reporting obligations that exceed the negotiated terms. When this occurs, contractors should respectfully request the contractual basis for the requirement and determine whether the government is seeking a formal modification. Contractors should avoid accepting additional obligations through informal performance practices that are later treated as mandatory.

- **Protect Data Rights Through Proper Marking and Handling**

Even if the OTA contains favorable data rights provisions, contractors can lose protection if they fail to properly mark deliverables or treat proprietary information casually during performance. Contractors should ensure technical personnel understand the marking requirements, follow them consistently, and maintain internal controls over what information is delivered to the government. In many cases, data rights disputes arise not from contract language, but from failure to follow marking and delivery procedures.

- **Stay Focused on Milestone Completion and Acceptance**

Because OTA payments are often tied to milestones, contractors should treat milestone acceptance as a core management priority. Contractors should track deliverable requirements carefully, submit deliverables in the format required by the agreement, and obtain written confirmation of acceptance. Delays in acceptance can become the most significant performance and cash-flow risk under an OTA. A disciplined milestone process can prevent disputes and preserve the contractor’s leverage throughout performance.

## **When OTAs Are a Great Fit — and When They Are Not**

OTAs are often an excellent fit for prototype-driven or innovative technology efforts where speed matters and the government is willing to collaborate. They can be particularly valuable for companies seeking to enter the federal market without immediately taking on the full burden of FAR-based compliance.

However, OTAs can be risky when deliverables are vague, when the contractor is investing heavily up front, when payment is tied to subjective acceptance, or when the government seeks broad intellectual property rights to technology that the contractor intends to commercialize. In those cases, the contractor may find that the OTA's flexibility benefits the government more than the contractor.

### **Conclusion: OTAs Offer Opportunity, But Contractors Must Negotiate Their Protections**

OTA agreements can provide contractors with faster access to government funding and cutting-edge programs, particularly in research and prototype environments. But OTAs are not simply streamlined government contracts. They are highly negotiable instruments that can shift risk to the contractor if not carefully structured.

Contractors considering OTAs should focus on the fundamentals: clearly defined deliverables, fair payment mechanics, workable termination rights, meaningful dispute resolution procedures, and strong intellectual property protections. Companies that succeed in the OTA space tend to treat the agreement as a strategic business transaction, not a formality.

With careful negotiation, disciplined performance management, and early coordination with experienced government contracts counsel, OTAs can be an effective pathway to long-term government work, including potential follow-on production opportunities that may not be available through traditional FAR procurements.

If you have any questions about OTAs or otherwise require assistance, please do not hesitate to contact [Aron Beezley](#) or [Gabby Sprio](#).



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