

OSD OTA WORKSHOP

Past and prologue: DOD
“Other Transactions” 1989 -
2016

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1776, 1918, and today?

“Freedom is very precious...so precious it must be rationed.” Vladimir I. Lenin

“It’s a revolution. Somebody’s bound to be offended.” John Adams

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Why Other Transactions (OTs)? (or, why not business as usual?)

Where did DOD OTs come from?

What are OTs?

Where might OTs be going?

Why OTs instead of business as usual?

What's wrong with business as usual?

Defense systems cost too much and take too long.

The “defense ghetto” caused by the current contracting process isolates the defense industry from the vast majority of U.S. high tech companies.

DOD’s own studies show it pays nearly a 20% premium for DOD specific rules that have no commercial counter-part and have never been tested for any added value. Many estimates of the cost-premium are higher.

One size does not typically fit all.

Where DOD OTs came from.

- Early Federal contracting – no laws, inherent authority.
- Non-traditional approaches – grants, research joint ventures, etc.
- National Aeronautics and Space Act (1958).
- DARPA science and technology OTs (1989).
- DOD-wide and prototype OTs (1994).
- Amendments over the years.

What are OTs?

The typical negative definition – OTs are not *standard* procurement contracts, grants or cooperative agreements.

They are not CRADAs.

Depending on the specific OT authority they may be used as (1) acquisition instruments, (2) assistance instruments, or (3) something entirely different.

Standard procurement and assistance rules do not apply nor do standard IP provisions.

OTs may be fully funded, partially funded (cost shared), or unfunded. Funds may flow in either direction.

OTs are contracts entered into under what is essentially a “freedom of contract” regime.

Most of DOD ignores key policies

FAR 35.002 -- General.

The primary purpose of contracted R&D programs is to advance scientific and technical knowledge and apply that knowledge to the extent necessary to achieve agency and national goals. ***Unlike contracts for supplies and services, most R&D contracts*** are directed toward objectives for which the work or methods cannot be precisely described in advance.

FAR 35.003 -- Policy.

(a) *Use of contracts.* **Contracts shall be used *only* when the principal purpose is the *acquisition of supplies or services*** for the direct benefit or use of the Federal Government. Grants or cooperative agreements should be used when the principal purpose of the transaction is to stimulate or support research and development for another public purpose.

10 U.S. Code 2371

(a) Additional Forms of Transactions Authorized.—

The Secretary of Defense and the Secretary of each military department may enter into transactions (other than contracts, cooperative agreements, and grants) under the authority of this subsection in carrying out basic, applied, and advanced research projects. ***The authority under this subsection is in addition to authority provided in section 2358 of this title to use contracts, cooperative agreements, and grants in carrying out such projects.***

Where might OTs be going?

Niche authority or general alternative to business as usual?

Will the FAR mentality restrict OTs from ever reaching their full potential?

Will DOD's negative leadership on OTs continue?

The real test – (1) adopting a dual-use S&T strategy and (2) viewing OTs as a full up alternative to FAR contracting for systems acquisition.