

Introduction to CRADAs, Grants, Cooperative Agreements and Other Transactions

Although Cooperative Research and Development Agreements (CRADAs), Grants, Cooperative Agreements and Other Transactions have been available for use for some time now, if you don't use them often you may feel a little ill at ease when a customer asks you a question concerning them. To help avoid these moments, set forth below are brief descriptions of the circumstances in which each of these types of vehicles might be appropriate. This note is not intended to be exhaustive or highly refined. It will, however, allow you to give a quick summary to your customer subject to expansion and refinement later.

CRADA

A "cooperative research and development agreement" is an arrangement authorized by 15 USC §3710a. It does not include procurement contracts, grants, cooperative agreements (these have a similar name but are different vehicles) or other transactions. It is an agreement between one or more Federal laboratories and one or more non-Federal parties under which the Government provides personnel, services, facilities, equipment or other resources with or without reimbursement (but NOT funds to non-Federal parties) and the non-Federal party provides funds, personnel, services, facilities, equipment or other resources toward the conduct of specified research or development efforts consistent with the mission of the laboratory. NOTE: A CRADA must be entered into by a Federal Laboratory.

GRANT

A "grant" under 31 USC §6304 is a legal instrument between the United States and a recipient (which could be a state or local government) and may be properly used when the principal purpose of the relationship is to transfer a thing of value to the recipient to carry out a public purpose (as differentiated from acquiring something for the direct benefit of the United States Government); AND substantial involvement IS NOT expected between the United States agency and the recipient in carrying out the activity contemplated by the agreement.

COOPERATIVE AGREEMENT

A "cooperative agreement" under 31 USC §6305 may be used in the same circumstances as a grant EXCEPT that substantial involvement IS expected between the US agency and the recipient.

Note that neither a grant nor a cooperative agreement is a procurement contract under 31 USC §6303 and hence the FAR and DFARS are not applicable.

While the terms cooperative agreement, contract and grant are found (and quasi-defined) in Title 31 United States Code (31 USC), those terms are again used in 10 USC §2358 which, although it doesn't specifically modify the "definitions" of 31 USC, allows for the use of these arrangements for certain research and development projects for military needs. This statute then expands on the permitted uses of grants and cooperative agreements set out in 31 USC.

OTHER TRANSACTIONS

The notion of "other transactions" comes about as a result of 10 USC §2371 which provides authority in addition to that set out in 10 USC §2358. §2371 provides that the military may enter into transactions OTHER THAN (hence the "other transaction" moniker) contracts, cooperative agreements and grants to carry out the research and development projects set out in §2358. This authority was expanded by section 845 (hence an "845 transaction") of the Authorization Act for 1994 to allow the use of the "other transaction" authority to buy prototypes (in addition to R&D authorized by §2371).

An "other transaction" is a contract, other than a procurement contract, cooperative agreement or grant, whereby the Government purchases R&D or prototypes. It is outside the FAR and DFARS and certain procurement statutes and has associated with it certain reporting and other requirements (including a 1/3 cost sharing mandate for traditional defense contractors making a prototype pursuant to "845" authority).

The point of contact for this subject in the CECOM Legal Office is Mr. Michael Zelenka, (732) 532-4112; DSN 992-4112.

KATHRYN T. H. SZYMANSKI
Chief Counsel