

The following is a summary of training received on the use of "Other Transactions". The course was called Cooperative Agreements and Other Transactions and is sponsored by National Contract Management Association (NCMA).

1. Instead of contracting based on "regulation", we should consider contracting based on "agreement". This is most important if we want to contract with commercial firms which don't deal with the Government very often. Many defense firms are satisfied with our usual "modus operandi" because those firms are set up to handle our regulations conveniently. However, current emphasis is on dealing with commercial firms because (1) civilian technology is more advanced than military technology; (2) innovative civilian products are introduced rapidly; (3) civilian firms with big R&D budgets don't do business with DoD; and (4) there is a shrinking defense and industrial base. Bottom line; if appropriate, we must contract with these civilian firms with different provisions and conditions than those in our standard FAR/DFARS.

2. OT's are authorized under 10 U.S.C. 2371 for carrying out basic, applied, and advanced research projects. OT's apply as follows:

- A. OT's for Research
- B. OT's for Prototypes
- C. OT's for "Other"

3. OT's for Research:

A. Things to consider:

(1) This type of OT is for performing basic, applied, and advanced research. DAR-PA suggests that we may define research broadly to include some development.

(2) DoD guidance has not yet been issued, but general guidance is expected soon.

(3) Use an OT when a standard contract, grant or cooperative agreement (CA) is not feasible or appropriate.

(4) To the maximum extent practicable, (a) do not use an OT for research which duplicates research conducted under existing programs, and (b) funds provided by the Government should not exceed the total amount provided by other parties to the OT. Think of Government funding as an investment rather than the purchase of goods and services.

(5). Consider:

(a). Flexibility is permitted with OT's.

(b). Our multiple partners to an OT can perform in a partnership mode rather than as primes and subs.

(c). Minimal Government rights to intellectual property may be appropriate.

(d). Milestones or other methods of payment may be used instead of cost-reimbursement.

(e). For accounting and audits ,no DCAA is required. Use commercial standards.

(f). Virtually no regulations apply. There is freedom of contract.

Since we have virtually no regulations for a safety net, we must know what we want and require from the beginning. This means a team approach including contracts, . program, technical, and legal.

4. OT's for Prototypes:

A. 10 U.S.C. 2371 was enhanced by Section 845 (for DARPA) of the National Defense Authorization Act of 1994, and further by Section 804 (for DoD) so that DARPA and DoD may use OT's for Prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by DoD. This authority applies through 30 Sep 1999 and is to be very broadly interpreted. DARPA broadly defines "weapons", "weapon systems", „prototype", and "prototype projects".

(1). An OT for prototypes is permissible even if a procurement contract is feasible/appropriate.

(2). "Prototype" hasn't been defined by Congress. About the only thing certain about the definition is that a prototype or prototype project is not production. However, what is not production? An OT can be used for a pre-production prototype. A prototype can be more than one.

(3). DARPA defines prototype projects as an end product that reasonably evaluates the feasibility or operational military utility of a concept or system. Additional follow-on development may be required under an OT.

(4). The terms "directly relevant to weapons or weapon systems proposed to be acquired or developed" are broadly interpreted by DARPA. A weapons system can be offensive or defensive. It can include training, simulation, and/or support equipment.

(5). What does a Section 845/804 OT do for us?

(a). Relief from FAR and supplement regulations, i.e., cost accounting and reporting;

(b). Flexibility to use the best practices;

(c). Conducted outside of procurement laws and regulations;

(d). Competition only to the maximum practicable extent; and

(e). The following do not apply - Competition in Contracting Act; Truth in Negotiations Act; Contract Disputes Act; Procurement Protest System; and the Procurement Integrity Act. The Berry Amendment may not apply if it is a procurement regulation requirement.

5. OT's for Other:

These are instruments, other than a procurement contract, grant, CA, OT for research, or OT for prototypes, used to enter into relationships such as bailments, lease arrangements, lease-to-own agreements, etc.

We must get the job done by whatever means is best. If we must use an OT for research, prototype, or other effort, we can't rely on acquisition regulations to require our partner(s) to do things. We must decide what we require and then do our best negotiating to satisfy those needs.