



'OTHER TRANSACTION' AGREEMENTS (OTAs)

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Acquisition and Financial Assistance Mechanisms used by Federal Government

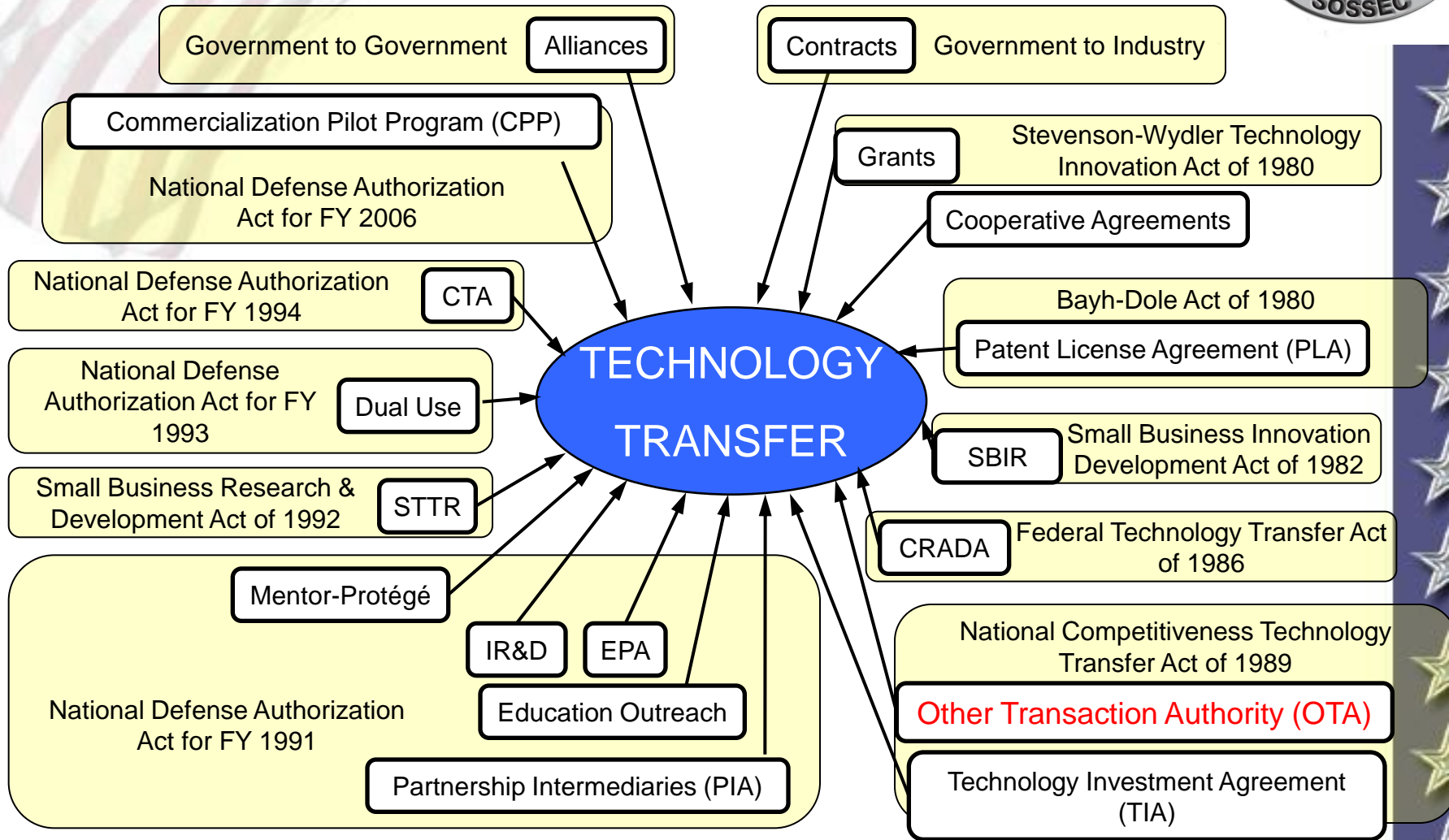


Federal Agencies use Variety of Mechanisms
to help meet Missions:

- Contracts
- Grants
- Cooperative Agreements
- Other Transaction Agreements



Technology Transfer Authorizations





The Contracting Tool Box

Acquisition

Non-Acquisition

Procurement Contracts		Non-FAR Contracts	Grants	Cooperative Agreements		OTs For Research	OTs for Other
10 U.S.C. 2304 31 U.S.C. 6303 6 U.S.C. 187(b)(3) 6 U.S.C. 188(b)(1)(C) ↓ Federal Acquisition Regulations		*Non-appropriated funds contracts *Other Transactions for Prototypes 10 U.S.C. 2371 note 6 U.S.C. 391 *NASA Space Act	10 U.S.C. 2358 31 U.S.C. 6304	10 U.S.C. 2358 31 U.S.C. 6305 6 U.S.C. 187 6 U.S.C. 188	10 U.S.C. 2358 6 U.S.C. 187 6 U.S.C. 188	10 U.S.C. 2371 6 U.S.C. 391	10 U.S.C. 2371 6 U.S.C. 391
PART 15 Cost/Price Based	PART 12 Commercial Items Price Based		6 U.S.C. 187 6 U.S.C. 188 OMB Circ. DODGAR	Traditional OMB Circ. DODGAR Lore	Flexible Recoupment Authority	Multi-Party Commercial Firm Consortia Recoupment Authority	Bailments Lease Arrangement Loan-to-Own

CRADA - A legal agreement between a federal laboratory and industry used for the transfer of commercially useful technologies from federal laboratories to the private sector and to make accessible unique technical capabilities and facilities.



Contracts

- Most Often Used for Procurement of Goods and Services for *Direct* Benefit of Fed Gov
- FAR-based contracts subject to CAS (Cost Accounting Standards) and cost principles and procedures





Financial Assistance Mechanisms



- Grants
- Cooperative Agreements
- Cooperative R&D Agreements





'OTHER TRANSACTION' AGREEMENTS



Other Transactions Defined



- There is **no** statutory or regulatory definition of "other transaction"
- Special vehicle used by authorized federal agencies for obtaining or advancing:
Research and Development (R&D) or Prototypes
- ***“Other Transactions are legal arrangements that support Federal Government Research and Development and Prototyping without using standard procurement FAR-based contracts, grants or cooperative agreements”***



Other Transaction Authority



- Congress Established OT Authority for Certain Agencies
- Agencies can Develop *Agreements* that *differ* from *Contracts, Grants, Cooperative Agreements*
- Not required to follow Standard Format and contain certain Ts&Cs and Comply with specific Laws and Regulations
- Agreements allowed to be flexible and tailored to meet the specific situation





Why Use OTAs?



Method of reaching “non-traditional” defense contractors that

cannot or do not

want to do business with Federal Government





What led to the creation of Other Transactions?

BASIC OTA HISTORY -101





Laika



Laika: first animal in orbit, aboard *Sputnik 2*, November 3, 1957

(Sad note: Unfortunately she died when the oxygen supply ran out)

**Ike Inks Space Law-NASA Born July 1958
Other Transaction Legislation Enacted**



Ike Inks Space Law-NASA Born Other Transaction Legislation Enacted



- **In Wake of Russians putting SPUTNIK 2 and Laika into Orbit**
 - The plot thickened and genuine alarm set in
 - The Space Age was dawning badly for the United States
 - The Pressure for U.S. Response Grew
- **July 1958: President Eisenhower signs the**
 - ***National Aeronautics and Space Act* creating**
 - **National Aeronautics and Space Administration (NASA)**
- **Congress created Other Transaction Authority:**
 - Desire to close space exploration technology gap between U.S. and Russia
 - **Need for NASA to get Commercial Companies**
 - **With New Technologies involved Quickly**
 - **—unencumbered by Federal Procurement Laws and Regs**





OTA History



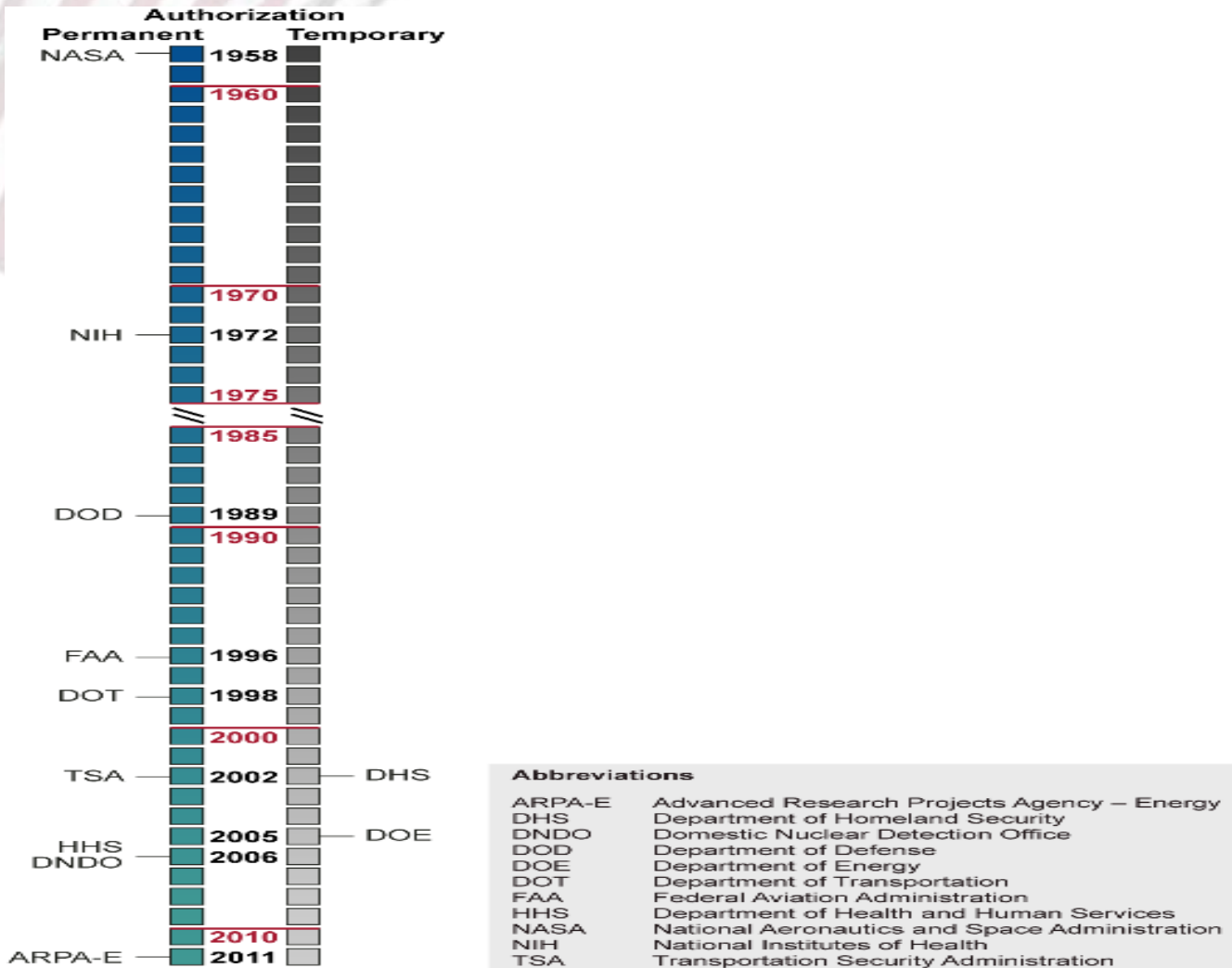
- **Congress gave NASA Other Transaction Authority in 1958**
 - National Aeronautics and Space Act of 1958
- Since 1958 Seven other agencies have been given OT authority:*
- Department of Defense (DoD)
 - Federal Aviation Administration (FAA)
 - Department of Transportation (DOT)
 - Department of Homeland Security (DHS)
 - Transportation Security Administration
 - Department of Health and Human Services
 - Department of Energy

Other fed agencies may use OT authority under certain circumstances

- Requires Office of Management and Budget (OMB) Authorization



OTA Authority Timeline



Abbreviations

ARPA-E	Advanced Research Projects Agency – Energy
DHS	Department of Homeland Security
DNDO	Domestic Nuclear Detection Office
DOD	Department of Defense
DOE	Department of Energy
DOT	Department of Transportation
FAA	Federal Aviation Administration
HHS	Department of Health and Human Services
NASA	National Aeronautics and Space Administration
NIH	National Institutes of Health
TSA	Transportation Security Administration



Why Other Transactions?



Federal Government needed another method to further the U.S. mission of:

- Creating and promoting new technologies
- Especially from ***“non-traditional”*** sources



Non-Traditional Defense Contractor Defined per Law



A contractor that **has not been awarded as a Prime:**

- Any contract that is subject to full coverage under the cost account standards (CAS) prescribed pursuant to section 26 of the Office of Federal Procurement Policy ACT (41 U.S.C. 422) and the regulations implementing such section



OTAs are Non-FAR Based Agreements



- Do Not Follow any Standard Format
- Don't include Terms and Conditions Required in Traditional Mechanisms such as FAR-Based Contracts and Grants
- Allows Agencies to Develop Customized Agreements
- Provides Flexibility to Eliminate/Tailor Ts&Cs
- Addresses Concerns Non-Traditional Contractors View as Obstacles to doing Business with Fed Government



OTs can Reduce Impediments to Commercial Firms and non-traditional defense contractors



- **Impediments such as:**
 - Cost-based pricing system
 - Compliance with Laws and Regulations that increase overhead
 - Specialized accounting and audit systems
 - Oversight Excesses
 - Intellectual property regime
 - Minimal government rights may be appropriate in OT
 - Contracting based on “regulation” rather than “agreement”
- **Gives both Government and Industry:**
 - Relief from FAR, DFARS, and supplemental regulations
 - Flexibility to use “best” practices
 - Conduct business outside of procurement laws and regulations
 - Competition only to the **maximum extent practicable**



OTs for Research and Prototypes



- *What does the authority do for you?*
 - Relief from FAR, DFARS, and supplemental regulations
 - Flexibility to use “best” practices
 - Conducted outside of procurement laws and regulations
 - Competition only to the **maximum extent practicable**



“Red Tape” and Barriers Dramatically Reduced



- Regulations and Statutes Not Applicable to OTs:
 - Competition in Contracting Act (CICA)
 - Truth in Negotiation Act (TINA)
 - Contract Disputes Act
 - Procurement Protest System
 - P.L. 85-804 and indemnification
 - Cost plus a percentage of cost prohibition
 - Procurement Integrity Act



Reducing even more “Red Tape” and Barriers to Entry



- Regulations and Statutes Not Applicable to OTs:
 - Cost Accounting Standards
 - Bayh-Dole Act
 - Drug-Free Workplace Act
 - Anti-Kickback Act
 - Walsh-Healey Act
 - Buy American Act (in part)
 - Kinds of Contracts
 - Examinations of Records of Contractor



Some Interesting Aspects of OTAs



- No Changes clause
- No Disputes/claims
- No Termination for Default or Convenience
- No mandatory accounting system
 - (Don't have to be CAS compliant)
- No Audit Requirements
- Advance Payments allowed
- No requirement to flow down FAR clauses/provisions to subcontractors. Applicable OTA Articles may apply.



Some Laws Still Apply



- Criminal laws (false claims/statements)
- Federal fiscal laws
- Laws of general applicability
 - (e.g. Title VI, Civil Rights Act)
- General laws for doing business in the US
 - (e.g. environmental laws, import/export control)
- No supporting regime of commercial law



Two Types of OTAs



1. *Research and Development*

2. *Prototypes*

❖ OTAs **not** suited for A&AS, Engineering Services, Training alone, Maintenance, LRIP



Research and Development



- Spur Development of Advanced Technologies that may have Commercial Application
- Usually Awarded on Cost-Sharing Basis





Prototypes

- Directly relevant to Enhancing Mission Effectiveness of [Military] Personnel and Supporting Platforms, Systems, Components or Materials Proposed to be Acquired or Developed By DoD and Civilian Agencies
- Improvements of Platforms, Systems, Components or Materials in Use by the Armed Services



Research v. Prototypes



– **Research**

- To the maximum extent practicable, **no** transaction for research **duplicates** research conducted under existing programs
- Cost -Sharing Arrangement Required (33%)

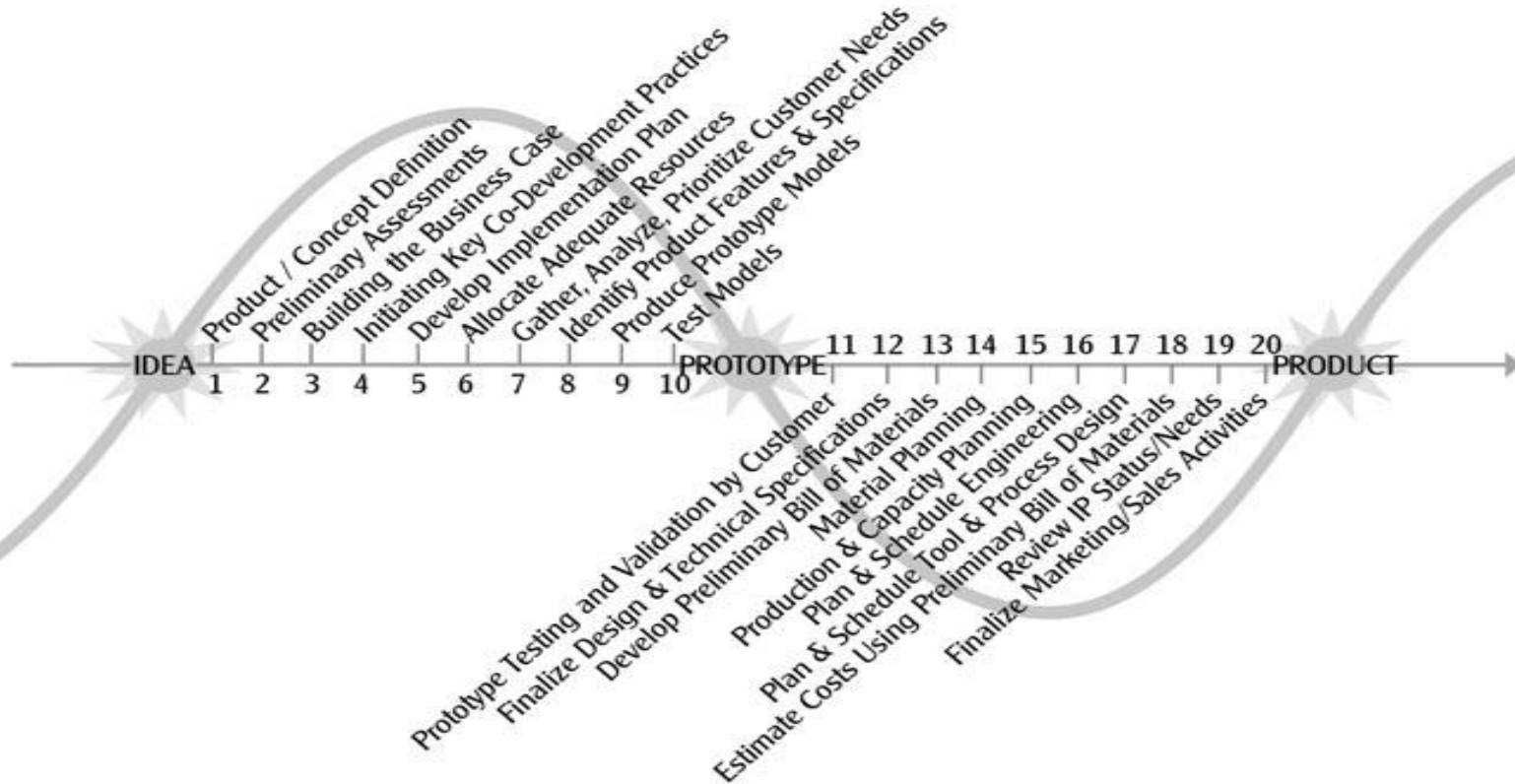
– **Prototypes**

- End product that reasonably evaluates feasibility or operational military utility of a concept or system
- Advanced concept technology demonstrations
- Risk reduction prototyping
- Technology demonstrations
- Development of “pre-production” prototype also falls within the interpretation
- may be more than one unit
- may be physical or virtual

(DoD Prototypes must be directly relevant to weapons or weapon system)



Where does the OTA Project fit?



RESEARCH → DEVELOPMENT → PRODUCTION

Required Non-Traditional or Small Business Participation in each OTA



- When the Other Transaction for Prototype Development entered into the contractor must :
 1. **Cost Share** 1/3 of the total cost of the project, *or*
 2. Have at least one **nontraditional defense contractor** “significantly” participating in/contributing to the project, *or*
 3. Obtain Senior procurement executive determination that exceptional circumstances exist that don't require conditions 1 or 2



Transition to Production



- New FY 16 NDAA Law allows for Transition from a Successful Prototype Development OTA Project to Non-Competitive Follow-On Production FAR Based Contract



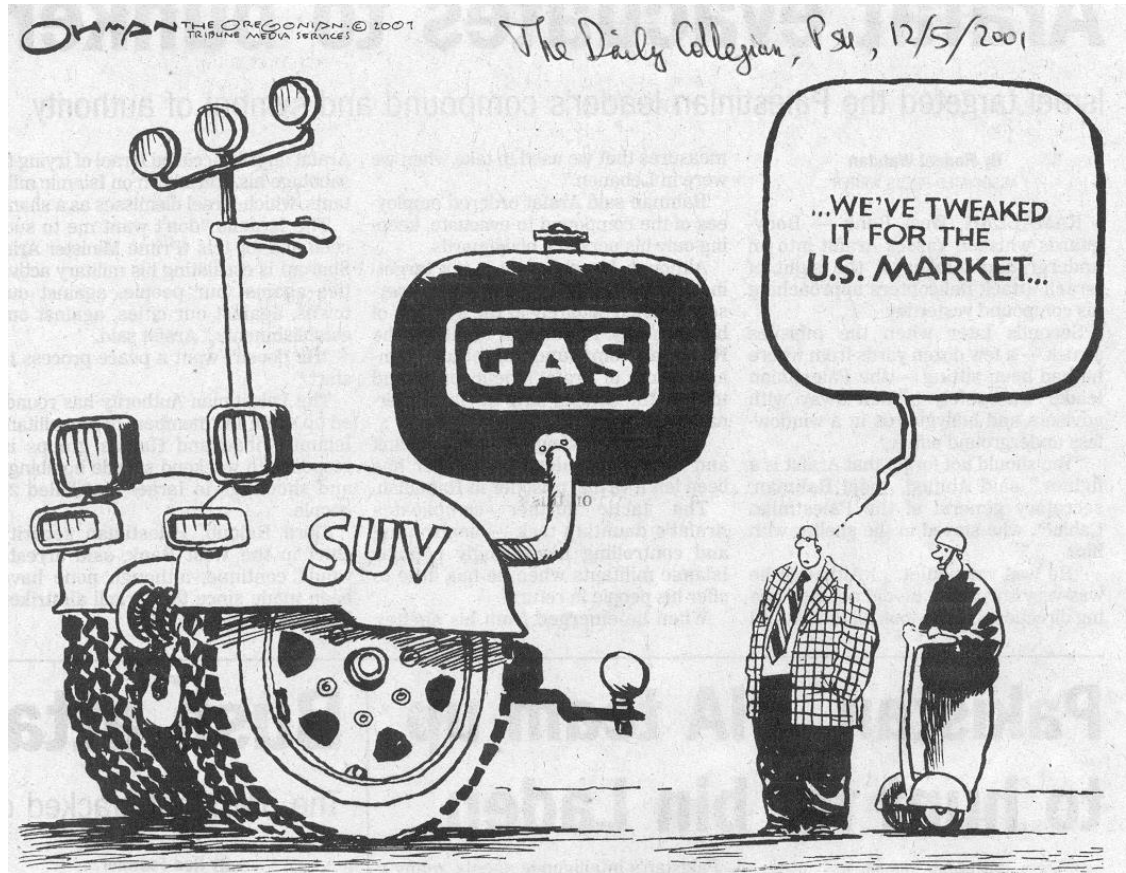
Why Use OTAs?



- Attracts technology firms that normally avoid DoD business
- Leverages research dollars through cost sharing
 - Allows Federal Government to leverage for defense purposes the private sector's investments in R&D of commercial processes and products
- Concentrates effort upon technical results to maximize tailoring and minimize “contractual” concerns
- **Invokes best business practices, reducing Government intrusion and red tape**
- Projects focus on technical results vs. bureaucratic process concerns
- Promotes relationship of trust/spirit of cooperation between Gvt and Industry
 - **Government and Contractor encouraged to work together from requirements definition through delivery of end product!** “cradle to grave”
- Allows Government flexibility in meeting needs/requirements
- Not a Formal Source Selection process
 - Flexibility can be exercised in method of competition and contract terms
 - Government can craft evaluation process similar to BAAs
- Cuts cost of Research projects---Government gets more for their money
- Integrates commercial and non-traditional contractors products and ideas **quickly, easily and at an affordable/reasonable price—**
- ***history proves projects to be a great value to the Government customer!***
- ***.....and it FEELS GOOD!***



Example of an OTA Prototype Project



Taking a Non-traditional Defense Contractor's (Segway, Inc.'s) Commercial product (Segway x2 SE) and developing a Prototype to meet the Federal Government agency's mission.



EXAMPLES OF OTHER TRANSACTION AGREEMENT Projects

- Advanced Prototype for an Improved Nitro-Aromatic Detection Capability
- Railgun Prototype Precision Tracking System/Projectile and Fire Control
- Rapid Airfield Landing Pad Prototype
- Development and Integration of PBIED Detection Prototype System
- Self-Tracking and Reconnaissance of Explosives (STARE) Radar Prototype
- Clear Coating Prototype Process to protect Small Arms Weapons
- Prototype Launcher System and Core Assembly to support Railgun
- Prototype Tools for Enhanced Counter Terrorism Operations
- Cyber Security Analysis Prototype Tool
- Laser-based Standoff Detection of Explosive Residues
- Night and Laser Based Defensive EO/IR Sensor Prototype
- Tunnel Protection and Detection Passive Magnetic Field Sensor Prototype
- Advance Cargo ISR small mobile sensor device for improve Battle Damage Assessment
- Electricity Generating MOLLE Backpack Prototype to improve M4 carbine picatinny rail
- Flexible Interoperability Translation System (FITS) Prototype
- WMD Battle-Space Awareness Architecture Prototype
- USMC Close Air Support Technology Prototype
- Predictive Structural Failure Analysis Prototype Tool
- Prototype Technology and Methods to remotely defeat mine threats existing in the lanes trafficked by deployment vessels for planned beach landings



Use of Other Transaction Agreements



- Until Recently, Limited Use in Fed Gov
- Mostly for R&D Activities
- Also Used for Prototyping
- Growing in Popularity in Fed Government (especially DoD)



Some OTA Activities Used by Federal Agencies



- DOE/ARPA-E: Solar/Geothermal Energy Research
- HHS and NIH: Medical Issues Research aimed at Diseases, Biomedical Advances, Pharmaceuticals
- DOT: Research to Enhance Oil/Pipeline Safety
- FAA: Research Safe Unmanned Aerial Systems Operations in National Airspace
- DoD: Prototypes to Improve Military Technology
- DHS: Prototype to Improve Energy Security
- NASA/TSA/FAA: used for *other than* R&D or Prototype Activities



OTAs with Consortium



- **Homeland Defense/Homeland Security***
- **Open System Architecture Initiative***
 - **(with the SOSSEC Consortium)*
- Energy, Environment, Demilitarization Technology
- National Chemical and Biological Defense
- Rapid Ordnance Technology
- Nano Technology
- National Advanced Mobility and Robotics
- Spectrum
- Medical Device Technologies
- National Warheads and Energetics



Other Transaction Agreement Use by Agency, Fiscal Years 2010 through 2014



<u>Agency</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>
Advanced Research Projects Agency – Energy (ARPA-E)	3	3	3	3	0
Department of Defense (DOD)	69	76	88	77	79
Department of Energy (DOE)	2	3	3	3	3
Department of Health and Human Services (HHS)	0	0	0	1	1
Department of Homeland Security (DHS)	19	14	8	4	3
Department of Transportation (DOT)	75	54	30	26	21
Domestic Nuclear Detection Office (DNDO)	0	0	0	0	0
Federal Aviation Administration (FAA)	44	48	54	60	65
National Aeronautics and Space Administration (NASA)	2,217	2,611	2,891	3,080	3,223
National Institutes of Health (NIH)	6	6	6	5	5
Transportation Security Administration (TSA)	408	435	564	579	637



Final Thought



OT flexibility, **properly used** (not abused) is important to further the U.S. Government's mission of:

- creating and promoting new technologies
- from “***non-traditional***” sources

