



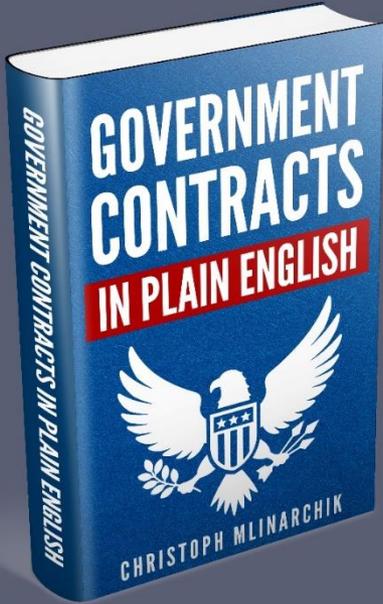
2020

Missile Defense Agency
Office of Small Business Programs
Virtual Conference

Other Transactions

Christoph LLC

<https://www.amazon.com/dp/173419815X/>



Government contracting can be complex and difficult, but this introductory guide makes it simple and easy for you.

AVAILABLE NOW ON AMAZON!

\$19.99 paperback
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Instructor background + course philosophy



Disclaimer

- I am **not** your attorney
- I am **not** the Government's attorney
- **No** attorney-client relationship exists
- This is **not** legal advice
- This presentation does **not** represent the views of the Government or the Department of Defense

Other Transactions

- We all know government acquisitions are slow. New fighter planes and battleships can take ten to fifteen years to develop and field. By then, the technology is no longer state-of-the-art.
- We all know government contracts are cumbersome. Regulations upon regulations upon regulations! Special accounting rules. Downright predatory intellectual property provisions.

Other Transactions

What if I told you there's a special type of **government contract** that is:

- (a) exempt from the Federal Acquisition Regulation (FAR);
- (b) exempt from unique government cost accounting standards;
- (c) exempt from grasping government intellectual property clauses;
- (d) (mostly) exempt from protests at the Government Accountability Office (GAO); and
- (e) (sometimes) negotiated and awarded much faster than traditional contracts?

Other Transactions

- Other Transactions: defined in the negative
- Not a procurement contract
- Not a grant
- Not a cooperative agreement
- So what is it?
- “contract” but not a “procurement contract”?



Other Transactions

- Not a procurement contract...so what is it?
- Contract = enforceable agreement
- Offer, acceptance, consideration (elements)
- Yes, Other Transactions are “contracts”
- No question about it
- But NOT a procurement contract



Other Transactions

- Special type of agreement (contract) with industry or academia
- Broad range of research and development
- Maximum flexibility – not tethered to the FAR
- Ideal for cutting-edge R&D

Other Transactions

- NOT subject to the FAR/DFARS, or to:
- Competition in Contracting Act (CICA)
- Bayh-Dole Act
- Contract Disputes Act
- Cost Account Standards (CAS)
- Procurement Integrity Act

Other Transactions

- NOT subject to:
- Walsh-Healey Act
- Truth in Negotiations Act
- Drug-Free Workplace Act
- Buy American Act
- Anti-Kickback Act

Other Transactions

- What laws **DO APPLY** to OTs?
- Criminal laws (False Claims Act)
- General applicability laws (Civil Rights Act)
- Laws that apply to any business (regulatory laws like environmental laws or EPA regulations, import/export control)

Other Transactions

- Three types of Other Transactions at DoD:
- 10 USC 2371 Other Transactions (for R&D)
- 10 USC 2371b Other Transactions for Prototypes
- 10 USC 2371b(f) Other Transactions for Production

Other Transactions

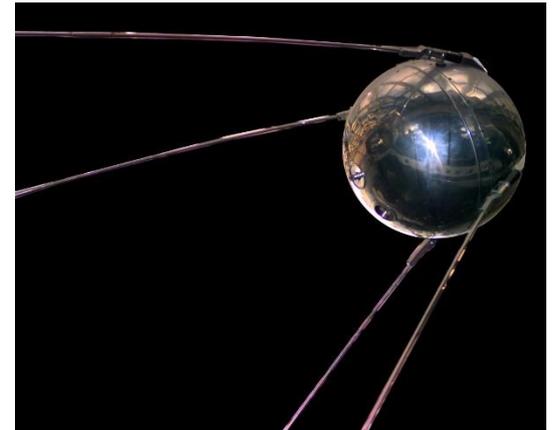
- 10 USC 2371b Other Transactions for Prototypes
- Prototype directly relevant to enhancing effectiveness or improvement of military personnel, platforms, systems, components, materials (very broad!)
- Requirements: **at least one “non-traditional defense contractor” participating to a significant extent OR all participants are non-traditional or small businesses OR at least 1/3 of funding is non-federal (or SPE waives)**

Other Transactions

- **GREAT NEWS** for small businesses!
- **“Non-traditional defense contractor”** means: entity that is not and has not performed on a DoD contract or subcontract subject to Cost Accounting Standards within one year...10 USC 2302(9)
- Small businesses are **exempt** from CAS
- Therefore, **almost** every small business qualifies as a “non-traditional defense contractor”
- Why not every small business? Because you can be “small” for one NAICS code but “other than small” for another NAICS code

Other Transactions

- History of Other Transaction Authority: Part I
 - Sputnik launched by Soviet Union 1957
 - 23” diameter polished sphere with antennae
 - NASA and the Space Act of 1958
 - Space Race begins!
 - Cold War follows...



Other Transactions

- History of Other Transaction Authority: Part II
 - DARPA granted OT Authority
 - Outgrowth of the Space Act
 - Spreads to other DoD and civilian agencies

Other Transactions

- History of Other Transaction Authority: Part III
 - 2015: just under \$1 billion
 - 2019: \$7.5 billion in Other Transactions
 - Rise of the “consortium” model
 - Threats from global competitors like China, Russia
 - NDAA 2018: DoD “preference” for OTs in S&T

Other Transactions

- 1950s: United States is THE investor for S&T
- 2020: Apple can purchase several of the largest defense contractors *with CASH ON HAND!*
- Uncle Sam is no longer the monopsonist
- Silicon Valley, technology industry, global venture capital
- How can Uncle Sam stay relevant by attracting the best companies with the best technology?

Other Transactions

- **Purpose** of OTs
- Attract non-traditional contractors who would not otherwise work for or with the govt
- Create agreements (contracts) that are not otherwise possible
- My opinion...most important goal:
- **GET THE BEST RESEARCH AND DEVELOPMENT!**



Other Transactions

- **Purpose** of OTs
- OTs are designed to avoid many of the hurdles that scare away private industry: burdensome regulations, complicated accounting rules, and extractive intellectual property terms. OTs invite **creative partnerships and collaboration** that is not otherwise possible with traditional Government contracting.

Other Transactions

- **Purpose** of OTs
- What are these creative arrangements? Cost share. Consortium. Creating new industries. Combined contributions from govt and industry. Whatever you think of next!

Other Transactions

- What is a “**consortium**” model?
- Think “lead systems integrator”
- Analogy: primes and subs (but not the same!)
- Hire a “manager” of several leading firms in a particular industry
- Outsource certain parts of the contracting (OT) process to the “manager”
- Many ways to structure, not one single way

Other Transactions

- **OTs in the news**
- OT spending in 2015: \$1B
- OT spending in 2019: \$7.5B

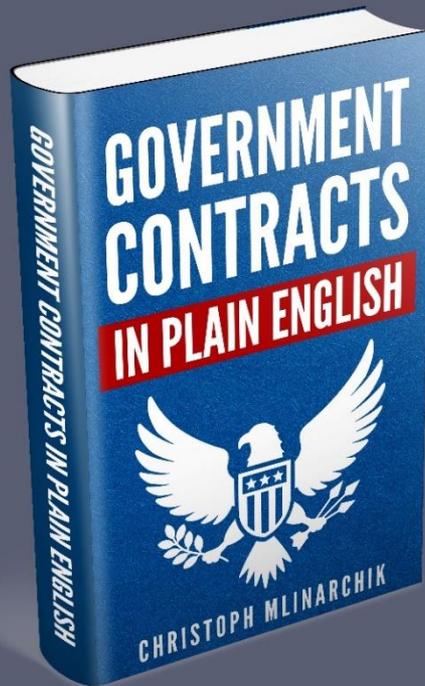
Other Transactions

- Don't forget!
- Other Transactions offer greater **freedom of contract** than traditional government contracts
- OTs require careful planning, creativity, and critical thinking because there are no **required** templates or checklists

Other Transactions

- Further reading and resources
- DARPA's Acquisition Innovation website
- <https://acquisitioninnovation.darpa.mil/>

Questions



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