Instructor background + course philosophy

https://www.amazon.com/dp/173419815X/
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
• 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.
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: 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
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
• 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
• 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
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
• 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
Questions

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

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