01. Grants, Cooperative Agreements and Other Transactions
Non-FAR Based Agreements

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AWARENESS SESSION

• Technology Transfer Agreements
  – CRADA (Cooperative R & D Agreement)
  – TIA (Technology Investment Agreement)
  – CTA (Commercial Test Agreement)
  – EPA (Education Partnership Agreement)

• Other Transaction Agreements
• Grants
Technology Transfer (T2) Agreements
Technology Transfer Authorizations

- Small Business Research & Development Act of 1992

**Government to Government Alliances**
- Commercialization Pilot Program (CPP)
- Small Business Research & Development Act of 1992

**Contracts**
- Grants
- Cooperative Agreements
- Bayh-Dole Act of 1980
- Patent License Agreement (PLA)
- Small Business Innovation Development Act of 1982
- Stevenson-Wydler Technology Innovation Act of 1980
- SBIR
- CRADA
- Federal Technology Transfer Act of 1986
- National Competitiveness Technology Transfer Act of 1989
- Other Transaction Authority (OTA)
- Technology Investment Agreement (TIA)

**Government to Industry**
- Patent License Agreement (PLA)
- Small Business Innovation Development Act of 1982
- Stevenson-Wydler Technology Innovation Act of 1980

**Technology Transfer**
- CTA
- Dual Use
- STTR
- Mentor-Protégé
- IR&D
- EPA
- Education Outreach
- Partnership Intermediaries (PIA)
Why Use T2?

• Enable pre-systems acquisition activities without external expenditure of funds to address issues such as:
  – Technology investment
  – Program risk reduction
  – Technology gaps
  – Distributed laboratory work
  – Advanced research with academia

• Leverage existing internal investments with industry IRAD

• Provides an avenue for working with industry, via internally sponsored efforts, given the current fiscal constraints

Note: The alternatives are funded contract awards for technology investments (industry and academia)
Primary Mechanisms

- CRADA (Cooperative R & D Agreement)
- TIA (Technology Investment Agreement)
- CTA (Commercial Test Agreement)
- EPA (Education Partnership Agreement)
- Benefits of Technology Transfer
- HAFB LCMC T2 strategy
Cooperative Research and Development Agreement (CRADA)

- A legal agreement between a federal laboratory/technical activity and one or more non-federal parties such as private industry and academia
- Offers both parties the opportunity to leverage each other’s resources when conducting mutually beneficial research and development (R&D)
- Parties share the risks and benefits of collaborative R&D
- Intended to advance science and technology that not only meets Air Force mission requirements, but also has viability in other potential commercial applications
Special Purpose CRADAs

- Shorter version of CRADA for a specific purpose
  - Non Disclosure Agreement (NDA)
    - Allow discussions regarding CRADA possibilities without compromising intellectual property
    - One year – no extension
  - Material Transfer Agreement (MTA)
    - Collaborator provides material for experimental testing and analysis
    - AF provides results back to Collaborator
    - No further collaboration takes place
  - Software Use Agreement (SUA)
    - Provide for loan of government developed software for commercial evaluation
What a CRADA enables

• The CRADA enables sharing of commercial and defense technology for mutual benefit

• A CRADA can provide:
  – Access to commercial and non-government tech base
  – Leverage of limited R&D dollars
  – Demonstration of COTS solutions
  – Economies of scale
  – Enhancement of DoD technology base
  – Development of dual-use technology
  – Leverage laboratory and M&S capabilities and investments
  – Access to DoD demonstration and exercises
Methodology

• Parties may provide and share personnel, services, facilities, equipment, or other resources
  – Non-federal party may provide funds to the federal activity
  – Since the collaborating party does not receive any federal funds, normal government procurement requirements do not apply
  – Can be executed in a short period of time; easily renewed or modified as appropriate

• Government may grant the collaborating party patent licenses for any product of the agreement
  – nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention
  – Any data or information developed under the CRADA may be treated as proprietary for a maximum of five years
  – Exempt from FOIA request
Key T2 limits or prohibitions

- No *direct* federal funding allowable to CRADA partner
- Not an alternative to the formal acquisition process
Technology Investment Agreements (TIAs)
DoD 3210.6, Part 37
• What type of instruments are technology investment agreements
  – TIAs are assistance instruments used to stimulate or support research.
  – A TIA may be either a kind of cooperative agreement or a type of assistance transaction other than a grant.
Purpose of TIA

- The ultimate goal for using TIAs, in defense research programs, is to foster the best technologies for future defense needs.

- TIAs address the goal by fostering civil-military integration

- TIAs therefore are designed to:
  - Reduce barriers to commercial firms’ participation in defense research, to give the Department of Defense (DoD) access to the broadest possible technology and industrial base.
  - Promote new relationships among performers in both the defense and commercial sectors of that technology and industrial base.
  - Stimulate performers to develop, use, and disseminate improved practices.
Appropriate use of TIAs?

- Conclude that the principal purpose of the project is stimulation or support of research (i.e., assistance), rather than acquiring goods or services for the benefit of the Government (i.e., acquisition)

- Commitment to Cost Sharing
  - You must seek cost sharing. The purpose of cost share is to ensure that the recipient incurs real risk that gives it a vested interest in the project’s success
  - To the maximum extent practicable, the non-Federal parties carrying out a research project under a TIA are to provide at least half of the costs of the project.
  - Obtaining this cost sharing, to the maximum extent practicable, is a statutory condition for any TIA under the authority of 10 U.S.C. 2371

- Can a TIA include a Fee or Profit
  - No
TIA Competition

• Must TIA be Competed
  – Yes, to the maximum extent possible

• Can TIAs be sole source
  – Yes, if a D&F is justifiable

• Can TIAs be between multiple parties
  – Yes, for both consortium and for profit companies
Since TIAs are assistance instruments rather than acquisition instruments

- What generally is needed is an irrevocable, world-wide license for the Government to use, modify, reproduce, release, or disclose for Governmental purposes the data that are generated under TIAs (including any data, such as computer software, in which a recipient may obtain a copyright).

- A Governmental purpose is any activity in which the United States Government participates, but a license for Governmental purposes does not include the right to use, or have or permit others to use, modify, reproduce, release, or disclose data for commercial purposes.
Commercial Test Agreements (CTAs)
COMMERCIAL TEST AGREEMENT

• Used to make available government equipment or materials to any person or entity for use in independent R & D programs. The lab may also offer services for testing of materials, equipment, models, computer software, or other items.
  – Must be used on a non-interference basis
  – Testing may not constitute undue competition
  – Equipment/materials can only be used for R&D
  – Fees may not exceed the amount to recoup direct and indirect costs
  – May not include expansion of capabilities and capacities of the lab or facility providing service, even if other party agrees to finance the expansion
• Benefits
  – Broadens access to unique research and test report capabilities and facilities
  – Test results are confidential and may not be disclosed outside the Federal Government

• Other Information
  – Fees under CTA limited to full costs (direct and indirect), fees under a CRADA may produce net revenue
  – Fees under a CTA MUST be received prior to execution of work
Education Partnership Agreements (EPAs)
Education Partnership Agreement

• Formal agreement between the defense laboratory and an educational institution

• All levels are eligible
  – Primary (elementary)
  – Secondary (high school)
  – Colleges & universities
  – Also non-profit institutions dedicated to improving science, math and engineering education

• Assistance may be offered for
  – Loaning laboratory equipment
  – Donating surplus equipment
  – Providing laboratory personnel to teach science courses
  – Involve students and faculty in laboratory research
  – Provide academic and career assistance to students
• Benefits to the laboratory
  – Develop a future pool of scientists & engineers
  – Increase awareness of defense technologies
  – Increase potential for commercialization of military technology
• Benefits to the educational institution
  – Receive equipment outside the budget
  – Opportunities for students and faculty to work on defense research projects
  – Improve student & faculty interest in math, science, and technology
EPA

• Must have specific obligations for both sides
  – Can’t be an agreement to agree
  – Can always amend to include other things later on
• Issue for Universities, but non-negotiable:
  – US Citizens only
  – Any foreign faculty or students must be approved by Directorate
Benefits of T2

• Technology Transfer support USAF strategy to:
  – Accelerate technology:
    – Transfer and transition
    – Risk reduction efforts
    – Program technology gaps
    – Application to meet warfighter needs
  – Provide state-of-the-art capabilities
  – Reduce acquisition cycle time
  – Commercialization

• Can be applied during any phase of a system life cycle
• Not subject to:
  – Federal Acquisition Regulation (FAR)
  – Competition In Contracting Act (CICA)
Tech Transfer strategy

• Accelerate Technology evolution from Concept… to Development… to Experimentation… to Capabilities

• Conduct early technology risk reduction
• Leverage industry tech investments
• Shape and guide Industry IR&D
• Demonstrate, validate and characterize critical elements of a project via collaboration
BACK UP
Legislation/Guidance

• 10 USC 2514 and 2515
• 10 USC 2194
• 15 USC 3701-3715, “Technology Innovation”
  – Technology transfer is a mission of the Federal Government
  – Senate Report 107-151
• Executive Order 12591
  “Facilitating Access to Science and Technology”
• Executive Order 12999
  “Educational Technology: Ensuring Opportunity for All Children in the Next Century”
• DoD Directive 5535.3, dated 5/21/99
• DoD Instruction 5535.8, dated 5/14/99
Why “do” Tech Transfer?

• Federal Policy in 15 USC 3710:
  – Technology transfer . . . Is a **responsibility** of each lab S&E professional.
  – Each lab director **shall ensure** that efforts to transfer technology are considered positively in laboratory job descriptions, employee promotion policies, and evaluation of the job performance of S&Es in the laboratory.
  – Establishment of Research and Technology Applications Offices (ORTAs)
    • **Each Federal laboratory shall establish an ORTA**

• 10 USC 2514. Encouragement of technology transfer
  “(a) The Secretary of Defense shall encourage . . . the transfer of technology between laboratories and research centers of the DoD and other Federal agencies, State and local governments, colleges and universities, and private persons in cases that are likely to result in accomplishing the objectives set forth in section 2501(a) of this title.
  “(b) The Secretary shall examine and implement methods . . . that are consistent with national security objectives and will enable Department of Defense personnel to promote technology transfer.”
10 USC 2515

- **10 USC 2515** – Office of Technology Transition responsibilities
  - Monitor all DoD R&D activities to identify technology transfer advancements
  - Serve as a clearinghouse, coordinate, & actively facilitate Technology Transfer
  - Provide assistance to private sector firms
  - Coordinate with other Federal Departments on Technology Transfer
  - Report to Congress **biennially**
Technology Transfer Policy

15 USC 3701-3715
Ensure Full Use of the Results of the Nation’s Federal Investment in R&D

10 USC 2515
Office of Technology Transition

DoD Directive 5535.3
- Domestic Technology Transfer Activities are Integral Elements of DoD’s National Security Mission
- Must have a high-priority role in all DoD Acquisition Programs

Technology Transfer Mechanisms
- Cooperative Research and Development Agreements (CRADAs)
- Patent License Agreements (PLAs)
- Educational Partnership Agreements (EPAs)
- etc.
Office of Technology Transition Programs/Authorities

- Office of Technology Transition – 10 USC 2515
  - Defense Production Act, Title III – 50 USC 2061
  - Manufacturing Technology – 10 USC 2521
  - Technology Transition Initiative – 10 USC 2359a
  - Technology Transfer – 15 USC 3701-3715

Programs operating under USC Titles 10, 15, 50 and an MoU
OTHER TRANSACTION AGREEMENTS (OTAs)

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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 had:

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

- Any other contract in excess of $500,000 to carry out prototype projects or to perform basic, applied, or advanced research projects for a Federal agency, that is subject to Federal Acquisition Regulation.
Required Non-Traditional Participation in each OTA

- Added by P.L. 106-398, Section 803
- When the Other Transaction is entered into, the contractor team must have:
  - 1/3 cost share of the total cost of the program, or
  - At least one nontraditional defense contractor is participating to a significant extent, or
  - Senior procurement executive determines exceptional circumstances

- Traditional Contractors Take Note You are still in the Game
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”
OTA History

- Congress gave National Aeronautics and Space Administration (NASA) Other Transaction Authority in 1958
  - National Aeronautics and Space Act of 1958

- Seven other specific 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 federal agencies may use OT authority under certain circumstances
  - Director of the Office of Management and Budget (OMB) Authorization
What led to the creation of Other Transactions?
Laika, the first animal in orbit, aboard Sputnik 2, November 3, 1957. Unfortunately she died when the oxygen supply ran out.
# The Contracting Tool Box

## Acquisition

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### Non-Acquisition

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### Federal Acquisition Regulations

- **PART 15**
  - Cost/Price Based
- **PART 12**
  - Commercial Items
  - Price Based

### OMB Circ.

- DODGAR

### OMB Circ. DODGAR

- Traditional
- Flexible
- Multi-Party Commercial Firm Consortia
- Bailments
- Lease
- Arrangement
- Loan-to-Own

### DODGAR

- Recoupment Authority

### 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.
Two Types of OTAs

1. **R&D** – spur development of advanced technologies that may have commercial application (usually cost-sharing)

2. **Prototypes** – directly relevant to weapon systems (including C3ISR) may involve adaptation, integration, testing of new or commercial items to a military weapon system(s)

- OTAs **not** suited for A&AS, LRIP or production
Example of an OTA Prototype Project

Taking a Non-traditional Defense Contractor’s (Segway, Inc.) Commercial product (Segway) and developing a Prototype to meet the Federal Government agency’s mission.
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?
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
“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 clauses/provisions to subcontractors
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
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 cost

- FEELS GOOD!
Why Use OTAs?

- Method of reaching “non-traditional” contractors that cannot or do not want to do business with the Federal Government
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
OTAs with Consortium

- Energy, Environment, Demilitarization Technology
- Small Arms with the National Small Arms Technology Consortium
- Robotics
- Rapid Ordnance Technology
- Nano Technology
- Rotocraft
- Homeland Defense/Homeland Security with the SOSSEC Consortium
EXAMPLES OF OTHER TRANSACTION AGREEMENTS (OTAs)
Final Thought

• OT flexibility, properly used, is important to further
  – the U.S. Governments mission of:
    • creating and promoting new technologies
    • especially from “non-traditional” sources
FEDERAL GRANTS

How To Get Started
FEDERAL GRANTS

• Form of Federal Assistance where the principal purpose of award is transfer of money to accomplish a public purpose

• there is no substantial involvement anticipated between the governmental agency and the recipient during the period of performance.

• Organizations typically identified within the Agency as having Grant Authority—such as AFOSR which controls the AF 6.1 Basic Research account
GRANTS

• Federal Grants
  – Project conceived by investigator
  – Performer defines details and retains scientific freedom
  – Agency support in the form of Assistance
  – Agency maintains cognizance
  – Funds are provided through unilateral funding mechanism

• Federal Contracts
  – Project conceived by agency
  – Agency exercises direction or control
  – Agency procures services
  – Agency closely monitors
  – Funds are provided through an agreement signed by both parties
GRANT
Statutes/Regulations/Policy

• grant or cooperative agreement award documents identify general terms and conditions, such as applicable:
  – Office of Management and Budget Circulars,
  – agency regulations implementing government-wide requirements

• OMB requirements on OMB's home page
• Other Government agencies’ regulations on their websites
• or search Code of Federal Regulations (CFR)
• Recently OMB established a new Title 2 in the CFR as part of government-wide streamlining activities. The plan for Title 2 is to enable you to find all OMB Circulars and guidance to the agencies and the agency regulations implementing them in that single Title.

• This will be accomplished over the next several years as the streamlining progresses.
Connection to Federal Government Grants
Streamlining Activities
Grants.gov

- Grants.gov part of the government-wide streamlining activities

- Website created to provide *single website* for all federal grant opportunities

- Called for in President's Management Agenda and is part of P.L. 106-107
  - to streamline and simplify the way the federal government does grants.
  - simplify the grants management process
  - provide central online system to search for/apply for grants
    - across the federal government

REMEMBER THIS WEBSITE!

grants.gov
Grant and Cooperative Agreement
FINDING OPPORTUNITIES

- grants.gov “FIND” provides:
  - “one-stop shopping”
  - Can review synopses of all available opportunities
  - Lists hundreds of discretionary grant programs
  - Search by agency, category of activity to be funded, Catalog of Federal Domestic Assistance number, and other parameters
  - Can sign up for email notification of newly posted opportunities based on parameters it provides.