

## Overview of Other Transactions

The Other Transaction (OT) is not a contract and is not an agreement (i.e., Grants or Cooperative Agreements). There are three types of OTs within the DoD: research OTs [10 U.S.C. 4021](#), prototype OTs [10 U.S.C. 4022](#), and Procurement for Experimental Purposes [10 U.S.C. 4023](#):

**Research OT:** Non-Acquisition Instrument. A legally binding instrument other than a procurement contract, grant, or cooperative agreement for performing basic, applied, or advanced research and development. Commonly used to engage nonfederal entities in collaborative efforts leading to development of dual use tech. To max extent practicable, 50/50 funds share (cash or in-kind) required. Often come with increased scrutiny.

**Prototype OT:** Acquisition Instrument. A legally binding instrument other than a procurement contract, grant, or cooperative agreement used for prototype projects that are directly relevant to enhancing the mission effectiveness. . . or improving platforms, systems, components, or materials proposed to be acquired or developed by the Department of Defense, or to improvement of platforms, systems, components, or materials in use by the armed forces. Paragraph (f) of the authority contains a special allowance for continuation into production without additional competition. Each OT must include prototype success criteria.

**Procurement for Experimental Purposes:** Not a new type of award instrument. May be used to procure ordnance, signal, chemical activity, transportation, energy, medical, space-flight, telecommunications, and aeronautical supplies, including parts and accessories, and designs thereof. May include FAR contract, Research OT, Prototype OT, grants, cooperative agreements, bailments, lease/lease-to-own agreements, and other not-yet defined arrangements. Users should follow the policy rules applicable to the instrument they choose to award.

“If a strategy, practice, or procedure is in the best interest of the Government and is not prohibited by law, regulation, or Executive Order, the Government team should assume it is permitted.” [DoD Other Transactions Guide, July 2023](#). OTs allow for streamlined processes, advanced risk mgmt. and collaboration, less administrative burden, faster prototyping, and quicker awards.

**NASA was the first agency to receive OT authority**, in the [National Aeronautics and Space Act of 1958](#). The Department of Defense (DoD) received authority to award Research OTs on November 29, 1989, with the enactment of [Public Law 101-189](#), and subsequently DARPA received prototype authority in 1994. [Public Law 103-160](#).

[Public Law 115-91](#) provides a **preference for OTs**, stating: “In the execution of science and technology and prototyping programs, the Secretary of Defense shall establish a preference. . . for using transactions other than contracts, cooperative agreements, and grants. . .”

One of the primary benefits of OTs are that **OTs are not subject to many of the requirements applicable to contracts** awarded under authority of the Federal Acquisition Regulations. The following statutes and regulations that apply to FAR contracts do not apply to OTs

[Competition in Contracting Act \(CICA\)](#)  
[Truthful Cost or Pricing Data \(formerly TINA\)](#)  
[Cost Accounting Standards](#)  
[Contract Disputes Act](#)  
[Procurement Protest Process](#)

[Cost plus a percentage of cost prohibition](#)  
[Buy American Act \(in part\)](#)  
[Bayh-Dole Act \(patents\)](#)  
Regulations: [Termination for Convenience](#),  
[Termination for Default, Changes](#), Flowdowns

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Criminal laws, laws of general applicability (e.g., Civil Rights Act), laws that apply to anyone doing business in the U.S. (e.g., environmental laws, import/export control, etc.) still apply to OTs. **The Procurement Integrity Act applies to OTs.**

**The definition of a prototype in DoD authority is broad.** The fiscal year 2023 NDAA defined a prototype project as: (a) proof of concept, model or process, including a business process; (b) reverse engineering to address obsolescence, (c) a pilot or novel application of commercial technologies for defense purposes; (d) agile development activity, or (e) creation, design, development, or demonstration of technical or operational utility. [10 USC 4022\(e\)\(5\)](#).

**DoD prototype authority use is only appropriate if** one or more of the following is true: (a) at least one nontraditional contractor or nonprofit is participating to a significant extent, (b) all significant participants in the transaction are small businesses, (c) > 1/3 of the total cost is paid by sources other than USG, (d) the senior procurement executive determines use of authority is justified. [10 USC 4022\(d\)](#).

OTs are not bound by traditional USG payment arrangements. **Milestone payments are often used** to provide financing. Based on key observable events in the critical path to accomplish program objectives. Value is typically based on good faith estimate of the level of effort necessary to reach the milestone. Fixed price and expenditure-based agreement structures can be used. Other unique structures (e.g., Fixed Flexible Payment Milestones, Expenditure Based Withholds, etc.) may be used. **Advance payments may be used** on [10 U.S.C. 4021](#) and [10 U.S.C. 4022](#) OTs.

OTs allow for intellectual property (IP) terms and conditions that are customized to the situation. Best practice is to include IP requirements in the solicitation and require the Performer to provide specific language for an OT article that meets the requirement.

[MITRE defines](#) an **OT consortium** as “a relationship between a government sponsor and a collection of traditional and non-traditional vendors, non-profit organizations, and academia aligned to a technology domain area (i.e., cyber, space, undersea, propulsion) that are managed by a single entity, and focused on innovative solutions to government technology challenges that meet the intended scope and purpose of other transactions.” MITRE also maintains a complete list of OT Consortia in use in the DoD, [here](#). In 2022 the [GAO recommended changes](#) to how DoD uses OT consortia, and in 2023 the DoD revised its [Other Transactions Guide](#) to add an appendix discussing use of consortia in prototype OTs.

Two risks to OTs stand out, (a) workforce development/competency, and (b) misuse of authority. Richard L. Dunn, in his [Guide to Other Transactions Authority](#), notes on workforce that “students are so steeped in the procurement system they cannot ‘hear’ what I am saying . . . [e]verything is filtered through prior learning.” **To be successful the people executing the work need to be encouraged to take risk, that risk must be appropriately managed, and all parties must be vigilant to not take the easy route of over-incorporating the FAR and its clauses and provisions into OTs.** Another risk to OTs is that the authority will be misused leading to additional controls and bureaucracy. **If practitioners use OTs for the wrong purpose, or fail to adequately document their business decisions, risk averse policy makers risk may curtail the authorities.**

## Overview of Other Transactions: References

The following is a list of helpful references to learn more about OTs

### **Statutes:**

See next page for current authorizing statutes

[Public Law 101-189, November 29, 1989](#). *The law that brought Research OTs to the DoD.*

[Public Law 103-160, November 30, 1993](#). *The law that brought Prototype OTs to the DoD.*

[Public Law 115-91, December 12, 2017](#). *Fiscal year 2018 Appropriations Act; prioritized Other Transactions for science and technology and prototyping programs.*

### **Regulation:**

[DFARS PGI 212.70](#). Pilot Program for Transition to Follow-On Contracting After Use of Other Transaction Authority.

[Public Law 101-189, November 29, 1989](#)[GAO Report 16-209, Use of 'Other Transaction' Agreements Limited and Mostly for Research and Development Activities, January 2016](#).

### **Guidance:**

[DoD Other Transactions Guide, July 2023](#).

[DARPA OT Comprehensive Training, undated](#). Slide presentation from DARPA's two-day comprehensive course on Other Transactions. Covers origins, strategy, payment, intellectual property, and property. The best training currently available.

[Strategic Institute for Innovation in Government Contracting, Guide to Other Transactions](#). Authoritative resource developed by Mr. Richard L. Dunn, DARPA's first General Counsel. Mr. Dunn was responsible for bringing OTs from NASA to the DoD.

[The Origin of DoD OT Authority](#). Richard L. Dunn. May 2018.

[Acquisition in the Digital Age, Other Transactions and Other Transaction Consortia](#), MITRE, accessed June 20, 2025.

[Acquisition in the Digital Age, Existing OT Consortia](#), MITRE, accessed June 20, 2025.

## Overview of Other Transactions: Table of Authorities

Agency	Statute	<i>Research, Development, and Demonstration</i>	<i>Prototypes</i>
Department of Defense (DoD)	<a href="#">10 U.S.C. 4021</a>	✓	
DoD, <i>prototypes</i>	<a href="#">10 U.S.C. 4022</a>		✓
Department of Energy (DoE)	<a href="#">42 U.S.C. 7256</a>	✓	
Advanced Research Projects Agency-Energy (ARPA-E)	<a href="#">42 U.S.C. 16538</a>	✓	
Department of Health and Human Services (HHS)	<a href="#">42 U.S.C. 247d-7e</a>	✓	
National Institutes of Health (NIH)	<a href="#">42 U.S.C. 285b-3</a>	✓	
Department of Homeland Security (DHS)	<a href="#">6 U.S.C. 391</a>	✓	✓
Domestic Nuclear Detection Office (DNDO)	<a href="#">6 U.S.C. 596</a>	✓	✓
Transportation Safety Administration (TSA)	<a href="#">49 U.S.C. 114</a>	✓	
Department of Transportation (DoT)	<a href="#">49 U.S.C. 5312</a>	✓	
Federal Aviation Administration (FAA)	<a href="#">49 U.S.C. 106</a>	✓	
National Aeronautics and Space Administration (NASA)	<a href="#">51 U.S.C. 20113</a>	✓	✓
Advanced Research Projects Agency-Health (ARPA-H)	<a href="#">42 U.S.C. 287a</a>	✓	

\* From [GAO Report 16-209](#), *Use of 'Other Transaction' Agreements Limited and Mostly for Research and Development Activities*, January 2016 and [Congressional Research Service Report R45521](#), *Department of Defense Use of Other Transaction Authority: Background, Analysis, and Issues for Congress*, updated February 22, 2019.