

Overview of Other Transactions

The Other Transaction (OT) is not a procurement contract, grant, or cooperative agreement. There are three types of OTs within the Department of War (DoW): facility construction or repair project OTs [10 U.S.C. 2808a](#), research OTs [10 U.S.C. 4021](#), prototype OTs [10 U.S.C. 4022](#).

Facility Construction or Repair Project OT: Acquisition Instrument. For carrying out repair and construction projects for facilities, including the planning, design, engineering, prototyping, piloting, and execution of such repair and construction projects. May use military construction; operation and maintenance; or research, development, test, and evaluation appropriations.

Research OT: Non-Acquisition Instrument. 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. For prototype projects that are directly relevant to enhancing the mission effectiveness of personnel. . . or improving platforms, systems, components, or materials proposed to be acquired or developed by the Department of [War], or to improvement of platforms, systems, components, or materials in use by the armed forces. Each OT must include prototype success criteria. Subsection (f) of the authority contains a special allowance for continuation into production without additional competition. Section 817 of the FY2025 NDAA ([Public Law 118-159](#)) defined "follow-on production contracts or transactions" and clarified that a follow-on production award may be made as one or more separate contracts, OTs, or a combination thereof.

NASA was the first agency to receive OT authority, in the [National Aeronautics and Space Act of 1958](#). The DoW, through ARPA (now DARPA), received temporary authority to award Research OTs on November 29, 1989, with the enactment of [Public Law 101-189](#) (FY1990/1991 NDAA); that authority was made permanent and extended to the military departments on December 5, 1991, by [Public Law 102-190](#) (FY1992/1993 NDAA). ARPA subsequently received prototype authority as a three-year pilot on November 30, 1993, under Section 845 of [Public Law 103-160](#) (FY1994 NDAA). Use of the pilot authority was expanded to the military services and defense agencies on September 23, 1996, by [Public Law 104-201](#) (FY1997 NDAA), and after repeated extensions was repealed and recodified as permanent authority at 10 U.S.C. 2371b on November 25, 2015, by Section 815 of [Public Law 114-92](#) (FY2016 NDAA). It was renumbered to [10 U.S.C. 4022](#) by the FY2021 NDAA ([Public Law 116-283](#)). Facility Construction or Repair Project OTs are the newest type of OTs, becoming law December 18, 2025. [Public Law 119-60](#) (2026 NDAA).

The definition of a prototype in DoW authority is broad. The 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\(e\)\(5\)](#).

DoW prototype authority use is only appropriate if one or more of the conditions in subsection (d) of [10 USC 4022](#) is true.

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Approval authority scales with value: transactions over \$100 million but not more than \$500 million require the head of the contracting activity; those over \$500 million require the senior procurement executive, or the agency director for DARPA, DIU, and MDA. [10 U.S.C. 4022\(a\)\(2\)](#).

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

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.**

OTs allow for streamlined processes, advanced risk management and collaboration, less administrative burden, faster prototyping, and quicker awards. The [DoW \[Prototype\] OT Guide, July 2023](#), makes this clear, stating: “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.” [Public Law 115-91](#) (2018 NDAA) 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 [OTs].”

OTs are not bound by traditional USG payment arrangements. **Milestone payments are often used** to provide financing. Value is typically based on good faith estimate of the level of effort necessary to reach pre-defined project milestones. **Advance payments may be used.**

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

[MITRE defines](#) an **OT consortium** as a group of traditional and nontraditional vendors, nonprofits, and academia aligned to a technology domain (e.g., cyber, space, undersea, propulsion), managed by a single entity under a relationship with a government sponsor. MITRE also maintains a list of DoW consortia. [GAO recommended changes](#) to DoW consortium practices in 2022, and the 2023 revision of the [\[Prototype\] OT Guide](#) added an appendix on 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: Table of Authorities

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

Statutes:

Agency	Statute	Research, Development, and Demonstration	Prototypes
Department of War (DoW)	10 U.S.C. 4021	✓	
DoW, <i>prototypes</i>	10 U.S.C. 4022		✓
Department of Energy (DoE)	42 U.S.C. 7256	✓	
Advanced Research Projects Agency-Energy (ARPA-E)	42 U.S.C. 16538	✓	
Department of Health and Human Services (HHS)	42 U.S.C. 247d-7e	✓	
National Institutes of Health (NIH)	42 U.S.C. 285b-3	✓	
Department of Homeland Security (DHS)	6 U.S.C. 391	✓	✓
Domestic Nuclear Detection Office (DNDO)	6 U.S.C. 596	✓	✓
Transportation Security Administration (TSA)	49 U.S.C. 114	✓	
Department of Transportation (DoT)	49 U.S.C. 5312	✓	
Federal Aviation Administration (FAA)	49 U.S.C. 106	✓	
National Aeronautics and Space Administration (NASA)	51 U.S.C. 20113	✓	✓
Advanced Research Projects Agency-Health (ARPA-H)	42 U.S.C. 290c	✓	

* 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.

Regulation:

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

Guidance:

[DoW \[Prototype\] Other Transactions Guide, July 2023](#).

[Guide to Research Other Transactions, OUSD\(R&E\), February 2026](#).

[USD\(A&S\) Memorandum, Authority for Use of Other Transactions for Prototype Projects Under Title 10, United States Code, Section 4022](#). August 27, 2025. *Updates prototype OT approval authorities and dollar thresholds; supersedes the November 20, 2018 memorandum.*

[Congressional Research Service, Defense Primer: Other Transactions \(IF12856\)](#). *Current CRS overview of OTs, including use of consortia.*

[GAO Report 16-209, Use of 'Other Transaction' Agreements Limited and Mostly for Research and Development Activities, January 2016](#).

[DARPA OT Comprehensive Training, June 2026](#). *Slide presentation from DARPA's comprehensive course on OTs. Best training 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 DoW.*

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

[Acquisition in the Digital Age, Other Transactions and Other Transaction Consortia](#), MITRE, accessed August 9, 2026.

[Acquisition in the Digital Age, Existing OT Consortia](#), MITRE, accessed August 9, 2026.