Funding R&D Using Other Transactions for Prototypes

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September 29, 2003

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What is an Other Transaction?

- Public Law 107-296, Section 831 gave DHS the same innovative contracting authority that DoD has
- Defined as any transaction other than a procurement contract, grant or cooperative agreement
- Two kinds
  - Other Transactions for Research – used for basic, applied and advanced research and development projects
  - Other Transactions for Prototypes – development and acquisition of prototype projects
- We will be awarding Other Transactions for Prototypes for this program

Other Transaction for Prototypes

- DHS's authority based on DoD's existing authority which originated in Section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160)
- The Secretary of DHS may use Other Transactions (OTs) for prototype projects that are directly relevant to weapons or weapons systems proposed to be acquired or developed
- Broadly interpreted to include training, simulation, support equipment
- "Weapon system" can be offensive or defensive

What's a Prototype?

- End product that reasonably evaluates feasibility or operational utility of a concept or system
- Risk reduction prototyping
- Technology demonstrations
- Development of "pre-production" prototype also falls within the interpretation
- A prototype may be more than one
- A prototype may be physical or virtual

Qualification Requirements

- When the OT is entered into, the team must have:
  - At least one nontraditional defense contractor participating to a significant extent,

    or

  - 1/3 cost share of the total cost of the program,

    or

  - Senior procurement executive determines exceptional circumstances justify the use of a transaction that provides for innovative business arrangements or structures that would not be feasible or appropriate under a procurement contract

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What's a non-traditional Government contractor?

- An entity that has not, for a period of one year, entered into or performed:
  - Any contract subject to full CAS coverage or
  - Any other FAR-based contract in excess of $500K
    - To carry out prototype projects or
    - To perform basic, applied or advanced research for a Federal agency

Who will be considered a traditional contractor?

- Any of the large government contractors (generally fully CAS covered)
- Universities and non-profits who have FAR contracts over $500K for research
- Subcontractors to a FAR research or prototype contract over $500K
- SBIR Phase II recipients

Who won't be considered traditional?

- Contractors who've never had a government research contract over $500K
- Small subcontracts under $500K
- Entities who have only received grants, cooperative agreements, or Other Transactions for Research or Prototypes
- Divisions of traditional contractors when the division has not accepted FAR contracts or subcontracts

What's a significant contribution?

- Interpreting "significant contribution"
  - The contribution causes a material reduction in the cost or schedule or increases the performance of the prototype
  - The non-traditional performer is responsible for a key component, technology, or process without which the prototype cannot be successfully developed
- Mere percentage of dollars received is not the only measure of significant contribution
- Could be evidence of life cycle cost reduction – using commercially available components or material in an innovative way

Other Transactions for Prototypes

- What does the authority do for you?
  - Relief from FAR, DFARS, and supplemental agency regulations
  - Flexibility to use “best” practices
  - Conducted outside most procurement laws and regulations
  - Competition only to the maximum extent practicable
  - DHS must report to Congress once a year

Other Transactions for Prototypes

- What doesn't apply to OT for Prototypes?
  - Competition in Contracting Act (CICA)
  - Truth in Negotiation Act (TINA)
  - Contract Disputes Act
  - Procurement Protest System
  - Procurement Integrity Act
  - Buy American Act (in part)

Other Transactions for Prototypes

- Some laws still do 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
- What are the limitations of the authority?
  - Generally must transition into a standard FAR contract for production quantities

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Why use an OT for Prototypes?

- Allows for flexibility in requirements and goals
- Allows for flexibility in teaming arrangements
- Allows for flexibility in cost accounting, cost sharing and payment methods
- Allows for flexibility in intellectual property negotiations
- Allows award of a long term agreement where terms and conditions are negotiated and added by phase
- Allows for a culture shift in both industry and government

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