

Other Transaction Authority Overview

NDIA DAU Webinar

February 8, 2024
12:30 – 2 pm Eastern

DAU

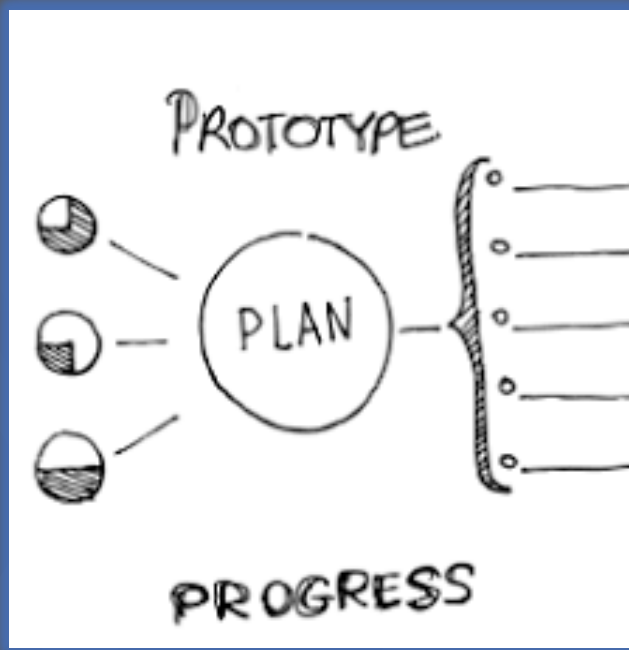
Agenda

- What can you buy with a prototype OT under 10 U.S.C. 4022(a)?
- Why use prototype/production OTs?
- What are consortium as opposed to standalone awards?
- Successfully leveraging follow-on production capability under 10 U.S.C. 4022(f)



What can you buy with a prototype OT under 10 U.S.C. 4022(a)?

prototype projects “that are directly relevant to enhancing the mission effectiveness of personnel of the Department of Defense 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.”



10 U.S.C. 4022(a) Authorization

Congress has continuously expanded the authorization for Prototype OTs:
*Congress amended the Section 845 authority in the Section 812 of the FY15 NDAA. The original authority was limited to apply to “weapons or weapon systems proposed to be acquired or developed by the DoD.”

* Congress most recently amended the authority in the FY23 NDAA to strike “military personnel and supporting” and insert “personnel of the Department of Defense”

Statutory Authority: Prototype Projects

The term “prototype project” includes a project that addresses--

(A) 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;

(E) the creation, design, development, or demonstration of operational utility; or

(F) any combination of subparagraphs (A) through (E).

“The list of prototype project types is not meant to be restrictive...” FY23 NDAA Joint Explanatory Statement

Ancillary work efforts that are necessary for completion of the prototype project, such as test site training or limited logistics support, may be included in prototype projects.

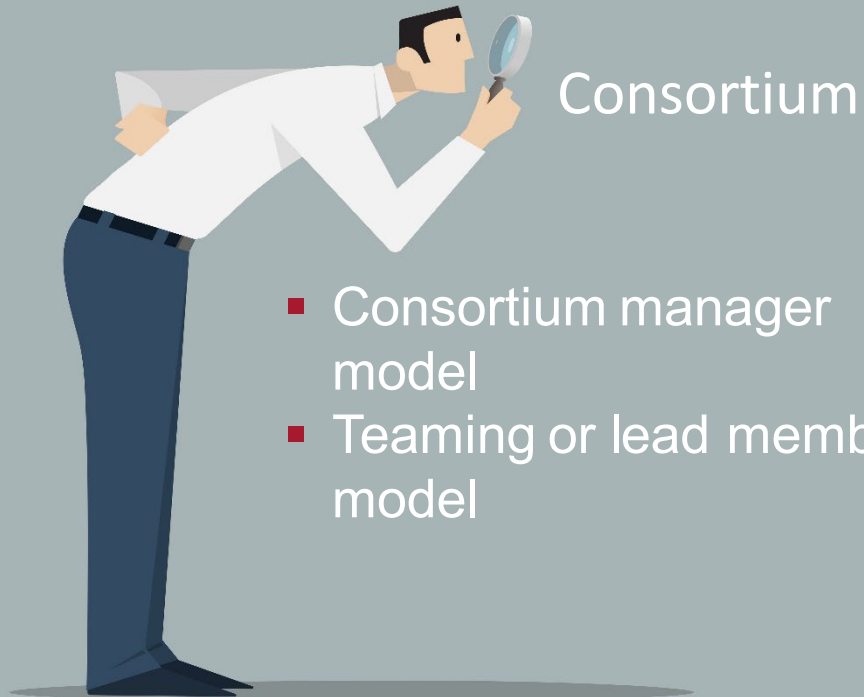
10 U.S.C. 4022



Why use prototype/production OTs?

- Engage non-traditional defense contractors
 - Flexible instrument that enables Government to work with companies reluctant to take standard Government terms and conditions (e.g., cost accounting standards, DFARS technical data clauses)
- Leverage existing commercial research and development/technology
- Work closely with industry (collaboration) to develop a solution to a problem
 - Understanding what is “under the hood”
- Ability for Government to encourage private companies to work together to solve a Government problem
- Adaptable solicitation and selection process
 - Is it faster?
- Can be adapted to support a program’s needs over time instead of an entire effort to buy one widget

What are standalone as opposed to consortium awards?



Questions to Ponder

- How much control do you want or need over process?
- Is there an existing consortium with the key performers in your industry?
- How much support does the performer need/the consortium provide?
- Can one performer solve your problem or do you need a group of different specialties?
- Does your organization possess the expertise and resources to plan, award and manage OTs?
- How much does it cost for your company to join or receive an award through the consortium?

Helpful Tools and Guidance:

DOD OT Guide Appendix F (July 2023)

Successfully leveraging the follow-on production capability under 10 U.S.C. 4022(f)

Sample Process

Process Variations

Follow-on Production



Sample Process

- Agency posts Request for Solution or Request for White Papers. Focus is on describing the problem.

Step 1

- Agency reviews solutions or white papers:
 - Agency may elect to down-select solutions and invite vendors to demonstrate solutions or ask questions of them.
 - Agency evaluates down-selected set of solutions.

Step 2

- Agency collaborates with vendor to create Statement of Work (“SOW”).

Step 3

- Counsel involved in intellectual property negotiations (data rights, licensing, etc.). Note: counsel should be involved before the RFS/RWP is issued.

Step 4

- Agency awards OT. (If applicable, consortium may award to participant/member).

Step 5

- If the OT award is a prototype, a follow-on production award may be directly awarded to the vendor.

Step 6

This is an example – the process should be tailored to the individual needs. Note that the individual awarding the OT needs to have an Agreements Officer warrant (not a KO).

Sample Process Variations

- White papers
- Oral presentations
- Panel pitches
- Shark Tank-like presentations
- Hackathons

The selected solicitation approach should be tailored to the complexity and potential value of the problem set, as well as to industry norms.

Not subject to FAR-based Source Selection Guide

- Not necessarily one due date
- No SOW or PWS in solicitation
- Bring in or bring back contractors that initially weren't interesting
- Collaborate with performers
- Encourage performers to combine solutions



Follow-on Production under 10 U.S.C. 4022(f)

- Agency may award a follow-on production agreement or contract if:
 - Successful prototype
 - Competition to the maximum extent practicable used in award of the prototype
 - ~~Notice of potential for follow-on production in prototype solicitation (removed in FY23 NDAA)~~
- A different agency may make a production award than the agency that awarded the prototype
 - More than one agency may make a follow-on production award for the same prototype
 - The follow-on production award needs to go to a participant in the prototype but not the same company that was awarded the prototype award (even if that was an NDC)
- “Agreement or contract” in the statute means follow-on production award may be an OT agreement or a FAR-based contract
 - If use a FAR-based contract, the Competition in Contracting Act does not apply
 - No J&A is required to make a follow-on production award regardless of the type of follow-on production award

Questions?



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