

## 1. PURPOSE


The purpose of this document is to provide the SPAWAR claimancy policy and procedures for transactions other than procurement contracts, cooperative agreements and grants for prototype projects, known as Other Transactions (OTs) for prototype projects.

Related guidance can be found in the [Defense Procurement Acquisition Policy \(DPAP\) Other Transactions Guide for Prototype Projects of January 2017](#) (DPAP OT Guide) and CMPG section [Contract Types – Other Transactions](#).

## 2. POLICY

### 2.1 Other Transaction Definition and Policy

10 U.S. Code (USC) 2371 authorizes DoD to award transactions other than procurement contracts, grants or cooperative agreements. There are two types of commonly used OTs within DoD.

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1. OTs for Prototype Projects. *Section 2371b, as amended by Section 864 of the National Defense Authorization Act for Fiscal Year 2018, authorizes DoD to carry out prototype projects using a legal instrument other than a procurement contract, grant, or cooperative agreement under the authority of section 2371. Because awards for prototype projects are intended to provide DoD a direct benefit, these OTs are acquisition instruments.*
  2. OTs for Other Than Prototype Projects. Section 2371 authorizes DoD to carry out basic, applied, or advanced research projects using a legal instrument other than a procurement contract, grant, or cooperative agreement. These awards are not acquisition instruments; i.e., they are assistance instruments which carry out a public purpose of support or stimulation of research. A Technology Investment Agreement (TIA) is an example of an instrument that may be awarded under 10 USC 2371; however, a TIA may also be awarded under 10 USC 2358. The DoD Grant and Agreement Regulatory System (DoDGARS) establishes policy for the use of TIAs; see 32 CFR Part 37.

The DPAP OT Guide and this SCPPM document apply only to OTs for Prototype Projects. Any further reference to OT within this document means OT for Prototype Projects unless otherwise stated.

It is SPAWAR policy to promote the use of OTs where doing so would benefit the Government by promoting access to non-traditional contractors. These contractors are typically working to create commercial and/or rapidly advancing technologies that are useful in the field. Without the OT arrangement, these non-traditional contractors would not be able to provide products or services to the DoD without substantially changing their business practices. It should be noted that the OT is a flexible business tool that allows the DoD to enter into agreements that potentially offer great benefit to product end-users. However, the Agreements Officer must take great care in the process of planning and executing these agreements to ensure that good business sense is applied and appropriate safeguards are put in place to protect the government's interests. This includes receiving assurances that the cost to the Government is reasonable, the schedule and other requirements are enforceable, and the payment arrangements promote performance within required schedule parameters.

It is important to note that OT agreements are not to be used solely for the purpose

of decreasing the time between requirement development and contract award. Although these agreements do not adhere to the FAR, they require a great deal of careful planning and business judgment to properly protect the interests of the government. It is important to ensure that, in planning to use an OT, sufficient time is allocated for the thoughtful construction and negotiation of the agreement.

## 2.2 What is an OT Prototype Project?

10 U.S. Code Section 2371b authorizes the DoD to carry out transactions specifically for prototype projects via instruments other than a procurement contract, grant, or cooperative agreement. The procedures specifically governing prototype OTs are also covered in detail within the [DPAP Other Transactions Guide for Prototype Projects of January 2017](#).

Section 2371b applies only to prototype projects that are “directly relevant to enhancing the mission effectiveness of military personnel and the supporting 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...”

- AND have at least one non-traditional defense contractor (NTDC) participating to a significant extent;
- OR all significant participants in the transaction other than the Federal Government are small businesses or NTDCs (NDAA 2016);
- OR at least 1/3 of the total cost is paid from parties to the transaction with non-federal funds NOT incurred prior to OT award;
- OR Agency’s senior procurement executive justifies exceptional circumstances for an innovative business arrangement, or to expand the defense supply base in a manner that would not be practical or feasible under a contract.

The [DPAP Other Transactions Guide for Prototype Projects of January 2017 \(DPAP OT Guide\)](#) describes prototype projects as a preliminary pilot, test, evaluation, demonstration, or agile development activity used to evaluate the technical or manufacturing feasibility or military utility of a particular technology, process, concept, end item, effect, or other discrete feature. Examples of prototypes include a proof of concept, a pilot, or a new method of applying existing commercial technologies in a defense context.

Technologies involving combinations of different kinds of prototype methods are also considered to be prototypes.

## 2.3 Who is Authorized to Establish OT Arrangements?

It is essential to ensure that the OT is used as a strategic tool only by able practitioners with a senior level of experience in negotiating complex business arrangements. Agreements Officers must be specially appointed and have authority to enter into, administer and terminate OTs. In all cases, the Agreements Officer must be an individual with sufficient individual skill, expertise and business acumen to negotiate specific terms and conditions that will reflect the risk to be undertaken by all parties entering into the agreement. This requires a high level of ability to reason, explain and document how the agreement will protect the Government while still promoting a desired outcome. For further information on the authority to act as an Agreements Officer, see the [Contracting Officer Appointment](#) SCPPM.

Agreements Officers for prototype projects must be warranted DoD Contracting Officers with a level of responsibility, business acumen, and judgment that enables them to operate in this relatively unstructured environment. Agreements Officers may bind the Government only to the extent of the authority delegated to them as Contracting Officers.

#### **2.4 Nontraditional Defense Contractors**

The definition of “Nontraditional Defense Contractors” is provided within 10 U.S.C. §2302(9) to mean a business that is not currently performing and has not performed, for at least the one-year period preceding the solicitation of sources by DoD for the procurement or transaction, any contract or subcontract for DoD that is subject to full coverage under the cost accounting standards described in 41 U.S.C. § 1502 and its implementing regulations.

### **3. RESPONSIBILITIES**

#### **3.1 Program Office**

The Program Office planning to proceed with an OT arrangement is responsible for developing and obtaining approval for its acquisition approach, working with the Agreements Officer to conduct appropriate Market Research, developing briefing material in support of the planned OT action, and determining whether competitive procedures may be applied at any time in the lifecycle of the planned procurement.

#### **3.2 Agreements Officer**

The Agreements Officer has the overall responsibility for ensuring that proper Determinations and Findings (D&Fs) and other documents are submitted for approval, proper terms and conditions are chosen for the OT agreement, agreements are executed, and reports are submitted. Only an Agreements Officer may sign a final OT agreement. The Agreements Officer at SPAWAR will be a PCO operating within the thresholds of their warrant and specifically appointed on their warrant with OT authorities.

### **4. PROCEDURE**

The DPAP OT Guide should be read in its entirety by any SPAWAR and SSC 2.0 personnel contemplating the use of an OT. This SCPPM document does not generally restate guidance from the DPAP OT Guide. The procedures identified below should be considered as SPAWAR supplementary guidance to the DPAP OT Guide.

#### **4.1 Market Research**

Market Research is essential to the development of the acquisition strategy for OT agreements, and must be performed early in the planning phase. It is essential to publicize the requirement in venues which are known within the commercial marketplace if nontraditional contractors are sought. This involves performing research to determine which venues and techniques are typically used to identify opportunities within the specific commercial marketplace that is relevant for the planned procurement. For examples of Market Research approaches which can be used for OT arrangements, see [Market Research SCPPM](#). Some potential means of finding commercial sources could include specific catalogs, product directories, trade journals, seminars, professional organizations, contractor briefings, meetings and conversations with companies, in-house experts, on-line resources, social media, and vendor surveys.

#### **4.2 Application of Competitive Procedures for Prototypes**

10 U.S. Code Section 2371b requires competitive procedures to be used to the "maximum extent practicable," but the Competition in Contracting Act (CICA) is not applicable to OTs. The DPAP OT Guide describes the solicitation methods which are encouraged for promoting competition in the OT process.

Per 10 U.S. Code Section 2371b (f)(1), a transaction entered into under 10 U.S. Code Section 2371b for a prototype project may provide for the award of a follow-on production contract or transaction to the participants in the transaction. Although these types of transactions should be competitively awarded to the maximum practicable extent, there are no specific competitive procedures proscribed by law for these agreements. 10 U.S. Code Section 2371b (f)(2) permits the follow-on production contract to be awarded **without** competitive procedures if the following two conditions are met:

- A. Competitive procedures were used for the selection of parties for participation in the transaction; and
- B. The participants in the transaction successfully completed the prototype project provided for in the transaction.

### 4.3 Documentation Requirements

The following four documents are required to be prepared, at a minimum, for all OTs:

- OT Acquisition Approach – approved prior to solicitation
- OT Determination & Findings – approved prior to solicitation
- OT Agreement Analysis – approved prior to award
- OT Agreement – approved prior to award

Review by 3.0 Legal Counsel is required for all four documents prior to approval by the appropriate authority.

**PEO C4I Specific Requirements:** It is PEO C4I's policy that, in order to ensure that we are thinking through the issues and implications of OTAs and following the statutes that drive OTAs, a planning meeting be held with the appropriate PEO C4I front office personnel and representatives from SPAWAR 2.0 and 3.0, similar (but less scope) to a PPSM. Even if SPAWAR 2.0 is not the OT agreement authority, PEO C4I's inclusion of SPAWAR 2.0 in these planning meetings is intended to help as a guide and to garner lessons learned for future OTs. A template for this planning meeting is available from the PEO C4I front office.

#### 4.3.1 OT Acquisition Approach

A formal, written acquisition strategy is not required for prototype OTs under section 2371b. The complexity and dollar value of the prototype project will determine the amount of documentation necessary to describe the project's acquisition approach and the need for updates as significant changes occur. However, any procurement that meets the dollar criteria or risk management considerations in DoDI 5000.02 is required to follow DoD policy for defense acquisition programs, unless a waiver is obtained from the appropriate designated official.

The Acquisition Approach (AA) for the OT must be documented in writing and should address the following considerations at a minimum:

1. Consistency with Authority;
2. Rationale for Selecting OT;
3. Technical Description of the Program;
4. Management Description of the Program;

5. Risk Assessment;
6. Selection Process/Competitive Strategy;
7. Nature of the Agreement;
8. Terms and Conditions;
9. Follow-On Activities, if any.

Additional details on the contents of the AA including expectations for specific content are included in the DPAP OT Guide. The AA must be approved by the Agreements Officer prior to issuance of the OT solicitation.

#### 4.3.2 OT Determination & Findings

SPAWAR requires that a Determination & Findings (D&F) must be drafted and signed by the appropriate approver in support of any planned OT agreement, prior to issuance of the OT solicitation. Review and approval levels are specified below in the Approvals section of this document. The D&F for any OT agreement must address the following:

1. Identify that at least **one** of the following conditions has been met per 10 U.S. Code Section 2371b(d):
  - A. There is at least one nontraditional defense contractor participating to a significant extent in the prototype project.
  - B. All significant participants in the transaction other than the Federal Government are small businesses or nontraditional defense contractors.
  - C. At least one third of the total cost of the prototype project is to be paid out of funds provided by parties to the transaction other than the Federal Government.
  - D. The senior procurement executive for the agency determines in writing that 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 contract, or would provide an opportunity to expand the defense supply base in a manner that would not be practical or feasible under a contract.
2. For OTs valued up to **\$500 million**: Identify how the use of the authority of this section is essential to promoting the success of the prototype project.
3. For OTs valued in excess of **\$500 million**: Identify how the use of the authority of this section is essential to meet critical national security objectives.



Further policies and procedures for the development of a D&F are found in the [Determinations and Findings SCPPM](#).

#### 4.3.3 OT Agreement Analysis

The OT Agreement Analysis must be documented in writing, and approved by the Agreements Officer prior to award. The Agreement Analysis is a companion document to the OT Acquisition Approach; together, these two documents explain the complete acquisition history of the requirement. Each OT, because of its flexible nature, will have unique elements that require the application of sound business

judgment to ensure the Navy's rights and interests are protected. The purpose of the Agreement Analysis is to document considerations made by the Agreements Officer and demonstrate compliance with the DPAP OT Guide.

The Agreement Analysis should address the below considerations at a minimum.

#### **4.3.3.1 Acquisition Background**

Include an update of events subsequent to approval of the OT Acquisition Approach. Discuss any changes to plans and strategies documented in the Acquisition Approach.

#### **4.3.3.2 Selection Process**

Explain the results of the employed solicitation method. For competitive selections, explain the results of proposal evaluations and the rationale for selection of the proposed awardee. The explanation should demonstrate that the process was fair, transparent and ethical.

#### **4.3.3.3 Agreement Compliances**

The following compliances and considerations should be documented. Relevant references to the DPAP OT Guide are included for further information.

- Consistency with Authority. Each agreement file must include documentation that affirms the circumstances permitting use of section 2371b authority and explains either that all significant participants other than the Federal Government will be small businesses or nontraditional defense contracts or: the significant contributions expected of the nontraditional defense contractors; the cost-share that will be required; or the exceptional circumstances approved by the Senior Procurement Executive. (See DPAP OT Guide C2.1.4.1)
- Legal Entity. Agreements Officers should ensure that an OT agreement for a prototype project is entered into with an entity or entities that can execute the agreement and legally bind the entity or entities. That entity may be a single company, joint venture, partnership, consortium (through its members or authorized agent), or a prime contractor with subcontract relationships, among others. (See DPAP OT Guide C2.6)
- Agreement Funding. Explain the appropriation types by fiscal year, and amounts that are intended to be utilized. (See DPAP OT Guide C2.8)
- Price Reasonableness. The Agreements Officer must determine that the amount of the OT (including options) is fair and reasonable. Explain the methodology used to make the determination. The Agreements Officer may need data to establish price reasonableness, including commercial pricing data, market data, parametric data, or cost information. However, the Agreements Officer should exhaust other means to establish price reasonableness before resorting to requesting cost information. DCAA and DCMA may assist in performing analysis. (See DPAP OT Guide C2.11)
- Accounting System. The Agreements Officer should not enter into an OT agreement that provides for payment based on amounts generated from the awardee's financial or cost records if the awardee does not have an accounting system capable of identifying the amounts/costs to individual agreements/contracts. (See DPAP OT Guide C2.13)

- **Cost Sharing.** If cost-sharing is used, then the non-Federal amounts counted as provided, or to be provided, by the business units of an awardee or subawardee participating in the performance of the OT agreement may not include costs that were incurred before the date on which the OT agreement becomes effective. Costs that were incurred for a prototype project by the business units of an awardee or subawardee after the beginning of negotiations, but prior to the date the OT agreement becomes effective, may be counted as non-Federal amounts if and to the extent that the Agreements Officer determines in writing that (1) the awardee or subawardee incurred the costs in anticipation of entering into the OT agreement; and (2) it was appropriate for the awardee or subawardee to incur the costs before the OT agreement became effective in order to ensure the successful implementation of the OT agreement. (See DPAP OT Guide C2.16)
- **Payments.** Profit or fee is permitted for awardees and should be negotiated based on the particulars of each individual situation. There is no one means of providing payments for OTs. Agreements Officers should explain how the selected payment arrangements promote on-time performance. (See DPAP OT Guide C2.17)
- **Property.** Explain whether the Government will take title to property or furnishes Government property. The Government is not required to, and generally should not, take title to property acquired or produced by a private party signatory to an OT except property the agreement identifies as deliverable property. In deciding whether to take title to property under an OT agreement, the Government should consider whether known or future efforts may be fostered by Government ownership of the property. (See DPAP OT Guide C2.18)

#### **4.3.4 OT Agreement**

Section 2371b OT authority for prototype projects provides flexibility to negotiate terms and conditions appropriate for the acquisition, without regard to the statutes or regulations typically governing a procurement contract. It is essential that OT agreements incorporate good business sense and appropriate safeguards to protect the Government's interest. This includes assurances that the cost to the Government is reasonable, the schedule and other requirements are enforceable, and the payment arrangements promote on-time performance. It is the Agreements Officer's responsibility to ensure that the terms and conditions negotiated are appropriate for the particular prototype project and should consider expected follow-on needs.

The nature of the OT agreement for a prototype project and applicable terms and conditions should be negotiated based on the technical, cost, and schedule risk of the prototype project, as well as the contributions, if any, to be made by the awardee or non-Federal participants to the agreement. Some commercial entities have indicated reluctance to do business with the Government, citing concerns in areas such as cost accounting standards, intellectual property rights, and auditing. Agreements Officers should consider whether the prototype project's performance requirements can be adequately defined and a definitive, fixed amount can be reasonably established for the agreement or if an expenditure-based OT arrangement is more appropriate and feasible.

##### **4.3.4.1 Selection of Clauses or Contract Terms & Conditions**

It is mandatory that all agreements for prototype products which provide for payments in a total amount in excess of \$5,000,000 include a clause that provides for the Comptroller General to examine the records of any party to the agreement or any entity that participates in the performance of the agreement.

In selecting the appropriate clauses for an OT arrangement, Agreements Officers should take care to consider the following general guidelines:

- The nature of the agreement and the clauses included should be structured to accomplish the unique aims of each individual agreement;
- All terms and conditions of OTs are negotiable, therefore use of commercial contract terms is leveraged over FAR-based clauses;
- Consider the use of commercial practices and oversight methods;
- Avoid imposing overly-restrictive government terms unless they serve some benefit in the planned transaction;
- Clearly identify data rights associated with each prototype action.

The [Guide to Required and Recommended Terms & Conditions for Other Transactions](#) lists a set of items which can serve as terms and conditions for the OT agreement where applicable.

Remember, nontraditional companies may be hesitant to work with the government due to the perception that the government applies overly-restrictive clauses. It is important to ensure that the selection of terms and conditions takes this into consideration, and that the selection of clauses adequately protects the government without being unduly burdensome to the business or businesses entering into the agreement.

Following are some key topics and guidance for consideration in developing OT terms and conditions. Additional topics and guidance are included in the DPAP OT Guide.

#### **4.3.4.1.1 Intellectual Property**

It is strongly advised to consider obtaining assistance from Legal Counsel with a specialty in Intellectual Property prior to entering an OT agreement with the potential to involve Intellectual Property issues. Certain typical intellectual property requirements do not apply in the context of OTs, providing some flexibility for the Agreements Officer to negotiate terms and conditions distinct from standard types of procurements. However, in negotiating these terms and conditions, the Agreements Officer must consider other laws that affect the Government's use and handling of intellectual property. The DPAP OT Guide contains a detailed discussion of the intellectual property considerations for prototype OTs which should be carefully reviewed by the Agreements Officer prior to negotiating language covering intellectual property concerns. In general, as an initial position, the Agreements Officer should seek to obtain intellectual property rights consistent with the Bayh-Dole Act (35 U.S.C. §201-204) for patents and 10 U.S.C. §2320-21 for technical data and computer software. Negotiation of rights of a different scope is permitted when necessary to accomplish program objectives and foster Government interests, and to balance the interests of the awardee.

The Agreements Officer should ensure that the disputes clause included in the OT agreement can accommodate specialized disputes arising under the intellectual property clauses. Examples of such disputes are included in the DPAP OT Guide. Further, the Agreements Officer should consider how the intellectual property clauses applicable to the awardee flow down to others (e.g., nontraditional

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contractor subawardees, commercial suppliers to an awardee or subawardee), including whether to allow others to submit any applicable intellectual property licenses directly to the Government.

#### **4.3.4.1.2 Rights in Inventions and Patents**

It is highly recommended that the Agreements Officer negotiate a patents rights clause as necessary to accomplish program objectives and foster the Government's interest. In doing so, the Agreements Officer should carefully address the allocation of rights in inventions made under the agreement, the Government's rights in the awardee's preexisting patents that may cover technologies developed or delivered, and the parties' respective liability for the infringement of a third party's patent which could be caused by the agreement or by use of the technology being purchased. This thought process should involve consideration of whether patent rights are truly necessary for the technology being purchased, or whether other forms of intellectual property protection could substitute for patent protection. Items for consideration in developing the language covering patents are outlined in detail within the DPAP OT Guide and include:

- Definitions;
- Allocation of Rights;
- March-in Rights;
- Disclosure/Tracking Procedures;
- Option for Trade Secret Protection;
- Third Party Inventions, which may include clauses that address:
  - Authorization and Consent;
  - Indemnity; and
  - Notice and Assistance.

#### **4.3.4.1.3 Rights in Technical Data and Computer Software**

The necessary level of rights in technical data and computer software should be determined on a case-by-case basis and should consider the current as well as future needs of both parties to the agreement, the technology at issue, and any planned commercialization strategies. The agreement should address the following topics, discussed in detail within the DPAP OT Guide

- Definitions;
- Allocation of Rights;
- Delivery Requirements including such areas as:
  - Government-Funded Development;
  - Additional Options for Delivery;
  - Identification of Restrictions and Restrictive Legends;
  - Negotiate rights in commercial computer software and commercial technical data; and
  - Special Circumstances.

#### **4.3.4.1.4 Payments**

There is no one means of providing payments for OTs. The Agreements Officer should negotiate the payment structure based on the particulars of each individual situation. In general, the OT agreement allows for greater flexibility in structuring payments than a traditional contract, taking into consideration the program's technical/cost/schedule risk where applicable (i.e., in the case of Cost-Type arrangements). For example, milestone payments are typical for Prototype OTs.

The Agreements Officer should strongly consider using payable milestones to both meet the cash flow needs of the awardee and manage performance. Advance payments are another possible tool to incentivize the vendor to meet

cost/schedule/performance goals, keeping in mind the need to address interest earned, including whether to establish an interest-bearing account, in the written agreement. Note also that profit or fee is permitted for awardees of OTs for prototype projects.

#### **4.3.4.1.5 Security**

Certain items of documentation provided to the government in a process having the potential for award of an OT are exempt from disclosure requirements of 5 U.S.C. §552 (FOIA) for a period of five years from the date the Department receives the information (see 10 U.S.C. §2371(i)). The Agreements Officer should include a notice in solicitations that requires potential offerors to mark business plans and technical information that are to be protected for five years from FOIA disclosure with a legend identifying the documents as being submitted on a confidential basis.

#### **4.3.4.1.6 Government Property**

It is not recommended for the government to take title to property acquired or produced by a private party signatory to an OT except for the property which the agreement identifies as deliverable property. If the government takes title to property or furnishes government property, then the property is subject to statutes pertaining to the treatment and disposition of government property and a property clause must be included in the agreement. See the [Guide to Required and Recommended Terms & Conditions for Other Transactions](#) for references to be used in establishing the terms and conditions in this area.

#### **4.3.4.1.7 Awardee Reporting**

The awardee is responsible for managing and monitoring each prototype project and all participants. The Agreements Officer should ensure that the solicitation and resulting agreement properly identifies the frequency and type of performance reports necessary to support effective management. This may be accomplished through regular deliverables or other means. The reporting should address cost, schedule and technical progress. It should include a comparison between the work accomplished and actual cost to the work planned and the estimated cost. Variances should be explained. A fixed price agreement will likely require a lower degree of reporting detail and frequency than a cost reimbursable agreement.

#### **4.3.4.1.7 Changes**

The OT for prototype agreement should address how changes will be handled. The Agreements Officer should consider whether the Government should have the right to make a unilateral change to the agreement, or whether all changes should be bilateral. See the [Guide to Required and Recommended Terms & Conditions for Other Transactions](#) for references to be used in establishing the terms and conditions in this area.

#### **4.3.4.1.8 Disputes**

OTs for prototype projects are not subject to the Contract Disputes Act. Nonetheless, an OT dispute potentially can be the subject of a claim in the Court of Federal Claims. It is important for the Agreements Officer to ensure each OT addresses the basis and procedures for resolving disputes, keeping in mind the preference for using Alternate Disputes Resolution (ADR) where possible. See the [Guide to Required and Recommended Terms & Conditions for Other Transactions](#) for references to be used in establishing the terms and conditions in this area, and consult with an ADR specialist when needed.

#### **4.3.4.1.9 Termination**

Agreements Officers should consider termination clauses (both for convenience or for cause) in light of the circumstances of the particular OT prototype project. Consideration should be given to the basis for termination, the process for termination and settlement, and the remedies. A unilateral Government termination right may be appropriate depending upon the circumstances. Termination clauses should identify the conditions that would permit terminations and include the procedures for deciding termination settlements. See the [Guide to Required and Recommended Terms & Conditions for Other Transactions](#) for references to be used in establishing the terms and conditions in this area.

#### 4.3.4.2 Government Reporting

Agreements Officers are **required** to record OTs entered into under section 2371b authority in the Federal Procurement Data System-Next Generation located at <https://www.fpds.gov>. Other Transactions for prototype projects must identify the 9th position of the award number as a "9". The other positions of the award number and modifications will be assigned the same as procurement contracts. This requirement replaces all prior reporting methods for OT transactions.

#### 4.3.4.3 Close-Out

Agreement close-out should occur in accordance with agency procedures, considering special areas such as audit requirements, cost sharing, payments, property, patents, and OT awardee reports.

### 4.4 Procedures for Use of CSO Approaches for the Acquisition of Innovative Technologies and Prototypes

The Commercial Solutions Openings (CSO) concept for acquisition of innovative, commercial technologies that accelerate attainment of asymmetric defense capabilities can be used to receive and evaluate solution proposals against the criteria in the announcement and would result in the award of an OT. This process is similar to that of Broad Agency Announcements (BAA), which is used by the science and technology community to acquire basic and applied research. CSOs use merit based selection approaches to address a particular problem the Department needs to solve. Currently, under CSOs, DoD organizations with OTA authority can acquire prototypes based on innovative technologies that are maturing into commercial applications. CSOs were authorized in the FY2016 NDAA as part of the on-going efforts to improve our acquisition process and increase access to new technology. CSOs are just one of many tools we have to rapidly meet our needs.

Guidance on developing the CSO announcement may be found in the following document: "DIUx Commercial Solutions Opening How to Guide" November 30, 2016.

## 5. APPROVALS

### 5.1 Approval Authority Requirements for Prototypes

10 U.S. Code Section 2371b only sets forth specific approval requirements for prototype actions valued over **\$100,000,000** that are directly relevant to enhancing the mission effectiveness of military personnel and the supporting platforms, systems, components, or materials proposed to be acquired or developed by the Department of Defense. This authority also extends to improvement of platforms, systems, components, or materials in use by the armed forces. 10 U.S. Code Section 2371b does not set forth specific approval requirements for prototype actions valued **at or below \$100,000,000**. Within the SPAWAR claimancy, the approval authority for prototype actions valued **at or below \$100,000,000** is SPAWAR 2.0/2.0A for



Headquarters actions. This approval authority has been delegated to the Chiefs of the Contracting Offices (CCO) at SPAWAR Systems Center (SSC) Atlantic and Pacific. This approval authority cannot be re-delegated lower than the CCO level. The OT Agreement, once approved, may be awarded by any sufficiently warranted Agreements Officer.

## 5.2 OT D&F Authorizations

Other Transaction Value (Including options)	Review Level	Approval Level
$x > \$500M$	2.0/2.0A	USD(AT&L)
$\$100M < x \leq \$500M$	2.0/2.0A	Navy Senior procurement Executive (ASN(RDA))
HQ: $x \leq \$100M$	Agreements Officer	2.0/2.0A
SSC: $x \leq \$100M$	Branch Head SSC LANT Code 2.2	CCO at SSC Atlantic and Pacific



## 6 .TOOLBOX

### 6.1 Federal

- A. [10 U.S.C. 2371 and 10 U.S.C. 2371b](#)
- B. [DPAP Other Transactions Guide for Prototype Projects of January 2017](#)
- C. [Section 815 of the National Defense Authorization Act \(NDAA\) FY16](#)

### 6.2 SPAWAR

- A. [Guide to Required and Recommended Terms & Conditions for Other Transactions](#)
- B. [CMPG Contract Types – Other Transactions](#)

- C. [CMPG 1.2.3 Develop D&F](#)
- D. [Determinations and Findings SCPPM](#).
- G. [Defense Advanced Research Projects Agency \(DARPA\) Comprehensive OT Training](#)
- H. [SAMPLE Section 2371b - Expenditure based approach - Updated 3.2016](#)
- I. [SAMPLE TIA - Expenditure Consortium - Updated 3.29.2016](#)

## 7. CHANGE HISTORY

Updated material is highlighted by *purple text* and an Alert/New  icon.

Date	Description of Changes
February 2018_Rev1	Updated threshold amounts throughout the document, and included a reference to Section 864 of the National Defense Authorization Act for FY 2018 in para 2.1.
February 2018	Updated the entire document to focus more heavily on Prototype OTs.
June 2017	Updated the entire document with emphasis on the Policy section to capture the requirements of 10 U.S.C. 2371b and related SPAWAR policy, in light of Section 815 of the National Defense Authorization Act (NDAA) of FY16 and the issuance of the Defense Procurement Acquisition Policy (DPAP) Other Transactions Guide for Prototype Projects of January 2017.
December 2016	Added paragraph 5.0 to include the CSO procedures and a new link in the toolbox for the How To Guide.
May 2016	Updated to v2. Added NDAA Section 815 to replace 845. DFARS 204.70 removed and now FAR 4.16. PIIN now PIID. List schema standardized. Links updated. Toolbox standardized
February 2015	Updated the SPAWAR codes