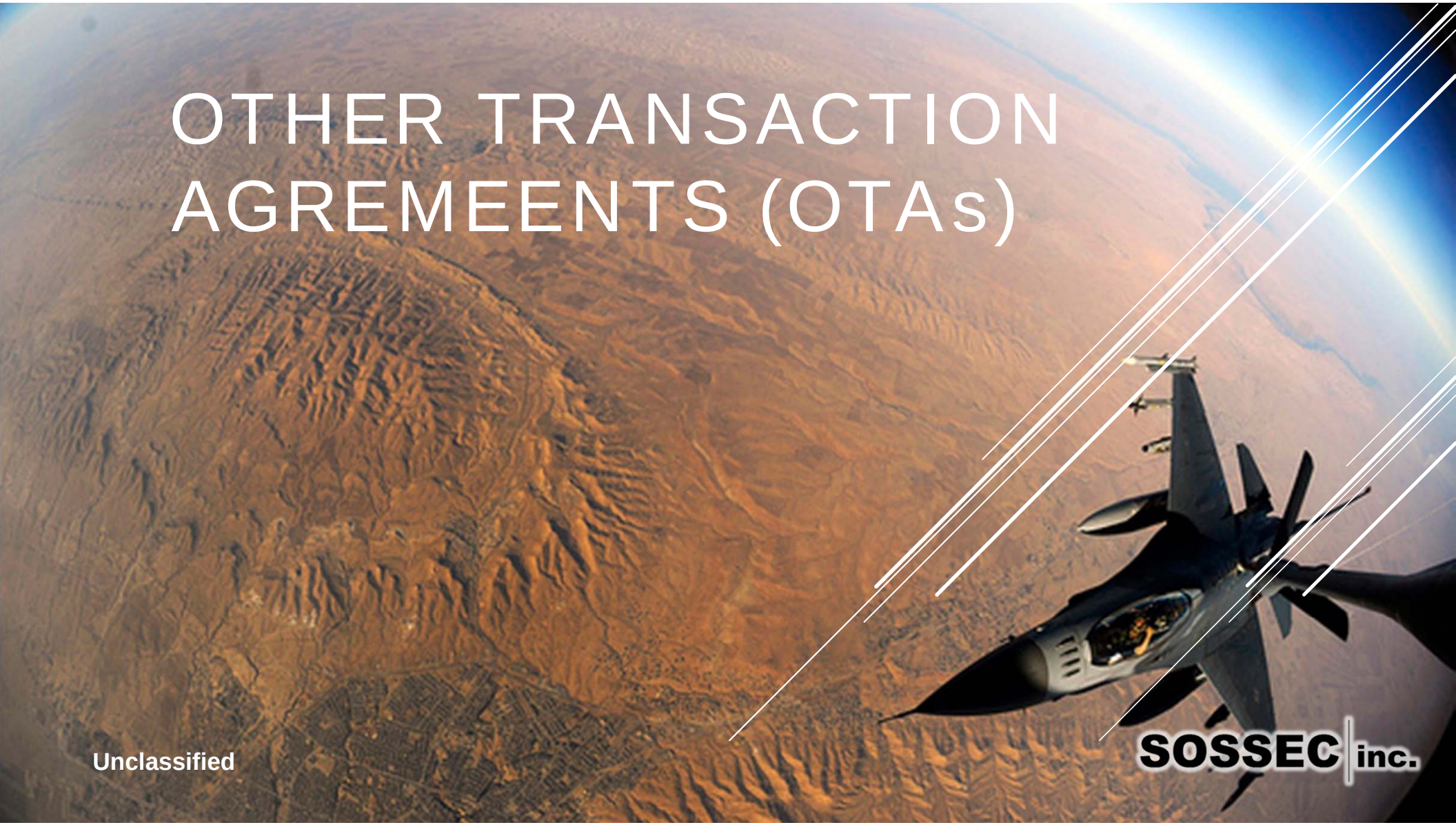
OTHER TRANSACTION AGREMEENTS (OTAs)



Unclassified

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15-MINUTE AGENDA

- OT Definition
- OT Authority
- Are OTAs needed?
- Who has OT Authority?
- What can OTs achieve?
- What's a non-traditional?
- What's different and why use them?
- Two types of OTAs
- Consortium business model
- Single Award OTA
- Transition to production
- Thoughts for Government entering Consortium space
- Final thoughts

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OTHER TRANSACTIONS DEFINED

- No statutory or regulatory definition of "other transaction”
- Special vehicle used by authorized federal agencies for obtaining or advancing Research and Development (R&D) or Prototyping
- “Other Transactions are legal arrangements that support Federal Government research and development and prototyping without using standard procurement far-based contracts, grants or cooperative agreements”

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OTHER TRANSACTION AUTHORITY

- Congress established OT Authority for certain agencies
- Agencies allowed to develop agreements that differ from contracts, grants, cooperative agreements
- Not required to follow standard format and contain certain terms and conditions or comply with specific laws and regulations
- Agreements allowed to be flexible and are tailored to meet the specific situation

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WHY THE NEED FOR OTAs?

- **Method of reaching "non-traditional" defense contractors that cannot or do not want to do business with Federal Government, but who possess leading-edge capabilities and/or technologies in which the Government has an interest**

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IKE INKS SPACE LAW-NASA BORN, OT LEGISLATION ENACTED

- **July 1958: President Eisenhower signs:**
  - **National Aeronautics and Space Act creating**
  - **National Aeronautics and Space Administration (NASA)**
- **Congress created Other Transaction Authority:**
  - **Desire to close space exploration technology gap between U.S. and Russia**
  - **Need for NASA to get commercial companies**
  - **With new technologies involved quickly – unencumbered by Federal procurement laws and regulations**

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DOD MAY BE AT THE SAME CROSSROADS THE SPACE EXPLORATION PROGRAM WAS IN 1958!

- **Need to maintain US technological superiority and military readiness**
- **Find smart, quick commercial/NDI solutions to:**
  - **Advancing DoD weapon systems and**
  - **Ensuring cybersecurity of our information technology systems, weapon systems and networks**
  - **Address issues early within acquisition and thoughtfully integrate with systems engineering, test and evaluation and other acquisition processes throughout DoD systems' lifecycles**
  - **Need to keep up with all that is available in the marketplace quickly, smartly and easily without any encumbrances**

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WHO HAS OT AUTHORITY?

- Congress gave NASA Other Transaction Authority in 1958
  - National Aeronautics and Space Act of 1958
  - Since 1958 seven other agencies have been given OT authority:
    - Departments of Defense, Transportation, Homeland Security, Health and Human Services, Energy, Federal Aviation Administration, and the Transportation Security Administration
- Other Federal agencies may use OT authority under certain circumstances
  - Requires Office of Management and Budget (OMB) Authorization

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SOME OTA ACTIVITIES USED BY FEDERAL AGENCIES

- DOE/ARPA-E: solar/geothermal energy research
- HHS and NIH: medical issues research aimed at diseases, biomedical advances, pharmaceuticals DOT: research to enhance oil/pipeline safety
- FAA: research safe unmanned aerial systems operations in national airspace
- DoD: prototypes to improve military technology
- DHS: prototype to improve energy security
- NASA/TSA/FAA: used for other than R&D or prototype activities

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“NON-TRADITIONAL” DEFENSE CONTRACTOR DEFINED PER LAW

- **A contractor that has not been awarded any contract that is subject to full coverage under the cost account standards (CAS) prescribed pursuant to section 26 of the Office of Federal Procurement Policy ACT (41 U.S.C. 422) and the regulations implementing such section.**

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OTAs ARE NON-FAR BASED AGREEMENTS

- Do not follow any standard format
- Don’t include terms and conditions required in traditional mechanisms such as far-based contracts and grants
- Allows agencies to develop customized agreements
- Provides flexibility to eliminate/tailor terms and conditions
- Addresses concerns non-traditional contractors view as obstacles to doing business with fed government

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WHY USE OTHER TRANSACTIONS?

- **Federal Government needed another method to further U.S. mission of:**
  - **Creating and promoting new technologies, especially from “non-traditional” sources**
  - **OTAs created as a Method of reaching “non-traditional” defense contractors that cannot or do not want to do business with Federal Government**

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OTAs CAN REDUCE IMPEDIMENTS TO COMMERCIAL FIRMS AND NON-TRADITIONAL DEFENSE CONTRACTORS

- **Impediments such as:**
  - **Cost-based pricing system**
  - **Compliance with Laws and Regulations that increase overhead**
  - **Specialized accounting and audit systems**
- **Oversight Excesses**
- **Intellectual property regime**
- **Minimal government rights may be appropriate in OT**
- **Contracting based on "regulation" rather than "agreement"**

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OTAs CAN REDUCE IMPEDIMENTS TO COMMERCIAL FIRMS AND NON-TRADITIONAL DEFENSE CONTRACTORS

- **Gives both Government and Industry:**
  - **Relief from FAR, DFARS, and supplemental regulations**
  - **Flexibility to use “best” practices**
  - **Conduct business outside of procurement laws and regulations**
  - **Competition only to the maximum extent practicable**

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"RED TAPE" AND BARRIERS DRAMATICALLY REDUCED

- **Regulations and Statutes Not Applicable to OTs:**
  - **Competition in Contracting Act (CICA)**
  - **Truth in Negotiation Act (TINA)**
  - **Contract Disputes Act**
  - **Procurement Protest System**
- **P.L. 85-804 and indemnification**
- **Cost plus a percentage of cost prohibition**
- **Procurement Integrity Act**

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REDUCING EVEN MORE "RED TAPE" AND BARRIERS TO ENTRY

- **Regulations and Statutes Not Applicable to OTs:**
  - **Cost Accounting Standards**
  - **Bayh-Dole Act**
  - **Drug-Free Workplace Act**
  - **Anti-Kickback Act**
  - **Walsh-Healey Act**
- **Buy American Act (in part)**
- **Kinds of Contracts**
- **Examinations of Records of Contractor**

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SOME INTERESTING ASPECTS OF OTAS

- No Changes clause
- No Disputes/claims
- No Termination for Default or Convenience
- No mandatory accounting system or CAS compliance
- No Audit Requirements
- Advance Payments allowed
- No requirement to flow down FAR clauses/ provisions to subcontractors Applicable OTA Articles may apply.

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SOME LAWS STILL APPLY

- Criminal laws (false claims/statements)
- Federal fiscal laws
- Laws of general applicability
  - Title VI, Civil Rights Act
- General laws for doing business in the US
  - Environmental laws, import/export control

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TWO TYPES OF OTAS

- Research and Development
- Prototypes
- OTAs not suited for A&AS, engineering services, training alone, maintenance, LRIP

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RESEARCH AND DEVELOPMENT

- Spur development of advanced technologies that may have commercial application
- Usually awarded on cost-sharing basis

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PROTOTYPES

- **Directly relevant to enhancing mission effectiveness of personnel and supporting platforms, systems, components or materials proposed to be acquired or developed by federal government agencies**

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OTs FOR RESEARCH AND PROTOTYPES

- **What does the authority do for you?**
  - **Relief from FAR, DFARS, and supplemental regulations**
  - **Flexibility to use “best” practices**
  - **Conducted outside of procurement laws and regulations**
  - **Competition only to the maximum extent practicable**

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RESEARCH V. PROTOTYPES

- **Research**
  - **To the maximum extent practicable, no transaction for research duplicates research conducted under existing programs**
  - **Cost -Sharing arrangement required (33%)**

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RESEARCH VS. PROTOTYPES

- **Prototypes**
  - **End product that reasonably evaluates feasibility or operational utility of a concept or system**
  - **Advanced concept technology demonstrations**
  - **Risk reduction prototyping**
  - **Technology demonstrations**
  - **Development of “pre-production” prototype also falls within interpretation**
  - **Prototype deliverable may be more than one unit**
  - **May be physical or virtual**

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REQUIRED NON-TRADITIONAL OR SMALL BUSINESS PARTICIPATION IN EACH OTA

- **When the Other Transaction for Prototype Development entered into the contractor must:**
  1. **Cost Share 1/3 of the total cost of the project, or**
  2. **Have at least one nontraditional defense contractor "significantly" participating in/contributing to the project, or**
  3. **Obtain a senior procurement executive determination that exceptional circumstances exist that do not require conditions 1 or 2 above**

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OTA-CONSORTIUM BUSINESS MODEL

- An "enterprise partnership" between the Government and a consortium of technology developers/providers organized along focused product-oriented portfolios and enabled by an OTA
  - The "Government" partner can be a single sponsor (program executive officer) or multiple sponsors coordinated through a lead agency
  - The "Consortium" partner's members can include for-profit, not-for-profit and/or non-profit companies, universities and other academic research organizations with competence in the specific technical domain of interest
- The parties are connected through a binding contractual instrument called an "Other Transaction" that operates outside the normal Federal Acquisition Regulations (FAR)

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CONSORTIUM MODEL

- The Consortium business model is designed to facilitate mutually beneficial collaborative research and development activities between the Government and industry/academia
- Two distinct agreement models exist, depending on maturity of R&D efforts being contemplated and needs of Government sponsor:
  - OT for Research(basic, applied, advanced R&D tasks) or
  - OT for Prototypes

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CONSORTIUM FEATURES/BENEFITS

Features	Benefits
Open Membership	Provides access to a broad range of potential solution providers (large and small businesses, academia and non-traditional contractors) by establishing and maintaining low barriers to entry.
Streamlined Acquisition	Reduces the acquisition administrative lead times for development and fielding of prototype/pilot scale solutions without cumbersome restrictions imposed by FAR-based contracting.
Collaborative Strategic Planning	Permits Government and Consortium member collaboration in the development of technology roadmaps and strategic investment plans against which subsequent investments can be made.
Targeted Research Investment	Enables industry to align their Independent Research and Development resources with Government technology needs.
Non-Traditional Entity Participation	Encourages participation by non-traditional sources who bring innovative technologies and solutions to both Government and Consortium members, but who do not have DCAA-approved cost-accounting systems.
Resource Leveraging	Allows industry to apply cost sharing against a specific contracted effort and leverage Government and Consortium member resources.
Single-Point Contracting	Reduces proposal preparation, contract award, and Congressional reporting burdens on both the Government and the Consortium.
Teaming Opportunity	Fosters innovation in proposals by incentivizing traditional contractors to partner with small and non-traditional contractors

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OTAs WITH CONSORTIUM

- USAF Propulsion Directorate Consortium Initiative*
- USAF C4ISR Open System Architecture Initiative*
- US Army Homeland Defense/Homeland Security*

* with the SOSSEC Consortium

- Energy, Environment, Demilitarization Technology
- National Chemical and Biological Defense
- Rapid Ordnance Technology
- Nano Technology
- Vertical Lift Technology

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OTAs WITH CONSORTIUM

- National Advanced Mobility and Robotics
- Electromagnetic Wireless Spectrum Technologies
- Medical Device Technologies
- National Warheads and Energetics
- Defense Automotive Technologies
- National Security and Intelligence Solutions
- Warfighter Sustainment and Optimization
- Space Systems Technologies

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SOSSEC CONSORTIUM LEAD VALUE PROPOSITION

- Assist Government customer with Acquisition Planning
- Assist with drafting requirement documents Solicit proposals and assist in proposal analysis
- Assist in preparing fully compliant proposals
- Ensure customer paying a “fair and reasonable” price
- Support selection of “Best Value” proposal/offeror
- Manage contractor performance through delivery
- Participate in key Program Reviews and Prototype Tests

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SOSSEC CONSORTIUM LEAD VALUE PROPOSITION

- Quality Control and Problem Solving
- Ensure and support in delivery of acceptable deliverables, on-time
- Manage financial issues (invoicing, subcontractor payments, etc.)
- Non-traditional contractors and small businesses prioritized
- Acts as an “Honest Broker”
  - No monetary/financial interest in any consortium member or their product(s)
  - Not a third party supplier of commercial products
  - Cannot compete with consortium members)

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VALUE PROVIDED BY CONSORTIUM MANAGERS

- General benefits
  - Proven processes
  - Acquisition knowledge and experience
  - Mentorships
  - Single point of contracting
- Each consortium management firm presents its own best values

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SOSSEC CONSORTIUM LEAD VALUE PROPOSITION

- SOSSEC Inc. works in both the Government customers' and the consortium members' best interest
- Single point of contact or customer and consortium member project-level award recipient from start to finish
- Focuses on best solutions for the customer
- Manage projects from requirement identification through product delivery
- Solicit White Paper innovative/unique approaches upon Governement request
- Perform market research/analysis
- Provides OTA education to both Government customers and members
- Ensures potential projects are within scope of the OTA

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SOSSEC/AFRL ROLES DURING PROJECT AWARD PROCESS

- **DoD Program Office**
  - **Develops SOO which identifies DoD system to be upgraded/improved or prototype to be developed**
  - **Identifies key weapon/DoD system interfaces/APIs that can be tapped into by third party developers to provide new capability**
  - **Determines one of three strategies:**

1. **Request Detailed Project Proposals -> Project Award(s)**
2. **Request White Papers (RWP) / Down-select Request Detailed Project Proposal(RPPs) -> Award(s) OR**
   Request PlugTest (takes place of a RWP) / Down-select based on test results
3. **Request Detailed Project Proposals (RPPs) -> Award**

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SOSSEC/AFRL ROLES DURING PROJECT AWARD PROCESS

- **AFRL/RI OTA PM:**
  - **Verifies mission thread/prototype requirement is within scope of the C4ISR OTA**
  - **Supports RWP or PlugTest and RPP activities through project award**
  - **Acts as Intermediary for DoD Program Offices from acquisition planning thru project completion**
  - **The Government has direct insight into the consortium industry partner/project level performer team**

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SOSSEC/AFRL ROLES DURING PROJECT AWARD PROCESS

- **SOSSEC/Consortium Project Level Performers**
  - **SOSSEC acts as intermediary to SOSSEC Consortium performers for administrative functions.**
  - **SOSSEC provides consortium performers program and contract management advice and assistance from pre-planning activities, project announcement through project completion.**
  - **Performer develops/delivers prototype to DoD Program Office IAW proposal and project plan/project level agreement**
  - **Delivers TRL: Up to 9**

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TRANSITIONING FROM OTA PROTOTYPE DEVELOPMENT PROJECT TO PRODUCTION CONTRACT

- **FY 16 NDAA law allows for transition from a successful prototype development OTA project to non-competitive follow-on production FAR based contract**

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WHY USE OTAS?

- Attracts technology firms that normally avoid DoD business
- Leverages research dollars through cost sharing
  - Allows Federal Government to leverage for defense purposes the private sector's investments in R&D of commercial processes and products
- Concentrates effort upon technical results to maximize tailoring and minimize "contractual" concerns
- Invokes best business practices, reducing Government intrusion and red tape
- Projects focus on technical results vs. bureaucratic process concerns
- Promotes relationship of trust/spirit of cooperation between Gvt and Industry
  - Government and Contractor encouraged to work together from requirements definition through delivery of end product! "cradle to grave"

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WHY USE OTAS?

- Allows Government flexibility in meeting needs/requirements
- Not a Formal Source Selection process
  - Flexibility can be exercised in method of competition and contract terms
  - Government can craft evaluation process similar to BAAs
- Cuts cost of Research projects — Government gets more for their money
- Integrates commercial and non-traditional contractors products and ideas quickly, easily and at an affordable/reasonable price — history proves projects to be a great value to the Government customer!
- …and it FEELS GOOD!

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EXAMPLES OF OTHER TRANSACTION AGREEMENT PROJECTS

- **Railgun Prototype Precision Tracking System/Projectile and Fire Control**
- **Development and Integration of PBIED Detection Prototype System**
- **Self-Tracking and Reconnaissance of Explosives (STARE) Radar Prototype**
- **Prototype Tools for Enhanced Counter Terrorism Operations**
- **Cyber Security Analysis Prototype Tool**
- **Laser-based Standoff Detection of Explosive Residues**

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EXAMPLES OF OTHER TRANSACTION AGREEMENT PROJECTS

- Night and Laser Based Defensive EO/IR Sensor Prototype
- Tunnel Protection and Detection Passive Magnetic Field Sensor Prototype
- Advance Cargo ISR small mobile sensor device for improve Battle Damage Assessment
- Resilient Embedded GPS/INS (Resilient EGI)
- WMD Battle-Space Awareness Architecture Prototype
- USMC Close Air Support Technology Prototype
- Electronic Flight Bag – Device Cyber Security

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USE OF OTHER TRANSACTION AGREEMENTS

- Until recently, limited use in federal government
- Mostly for R&D activities
- Also used for prototyping
- Growing in popularity in federal government (especially DoD)
- OTAs with consortia are for clearly defined/focused technological areas/domains
- Government wide OTAs for specific, “narrow” technological areas with clearly defined technology objectives

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THOUGHTS FOR GOVERNMENT ORGANIZATIONS CONTEMPLATING ENTRANCE IN THE OTA CONSORTIUM MARKET PLACE

- OTAs are not conducive to T&M contractual arrangements
- Should be no Pre-negotiated rates where you can order off a schedule
- Awarded for End Product – final deliverables are the prototypes not labor hours
  - Projects Awarded on FFP basis with Milestone Deliverables
  - Consortium manager performs detailed cost/price analysis in Government-like PNM format as input to the Agreement Officer (PCO)
- Many Non-Traditionals' accounting systems not approved for Cost type contracts
- Non-traditional contractors don't have to be CAS compliant (GAAP compliance only)
- Can't develop a FSS with multiple consortiums in the same technical area

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THOUGHTS FOR GOVERNMENT ORGANIZATIONS CONTEMPLATING ENTRANCE IN THE OTA CONSORTIUM MARKET PLACE

- **Goal is to foster one consortium for specific technology domain that attracts best of breed in the OTA's and consortium's focused area**
- **OTA projects are awarded to consortium members via a competitive process through the consortium OTA management lead**
- **Government can advertise each RWP or RPP in FedBizOpps-for informational purposes: builds stronger consortium and fosters competition**
- **Notify interested companies outside consortium that want to participate that they can do so by joining the consortium**
- **Consortium membership must be open and should be easy to join**

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FINAL THOUGHTS

- OT flexibility, properly used (not abused) is important to further the U.S. Government's mission of creating and promoting new technologies from "non-traditional" Sources
- Can provide the means for robust, agile, "value added", affordable acquistion process to meet Government's high tech needs if consortium-based OTAs are properly strategized/executed
- OTAs, for DoD are best for Prototype Development requirements
- Adds to DoD Program Managers' Tool Kits – an easy, agile, rapid, low cost method

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FINAL THOUGHTS

- OTAs are only as effective as the process established
  - Within Government and industry control – lead time can be 30 or 160 days!
- KISS – avoid urge to mirror FAR/DFARS and all DoD directives
- Note: SOSSEC awarding projects on AF C4ISR OSAI OTA in 60 days or less

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