

Other Transaction (OT) Benefits

Doing Business With ARPA-H Industry Day
Breakout Session

November 13, 2024

Approved for Public Release: Distribution Unlimited



Why You're Here

- Understand ARPA-H intentions to use OTs for R&D efforts
- Learn more about Other Transactions (OTs), including their:
 - Benefits
 - Purposes
 - Key differences from traditional government contracts



Science & Technology (S&T) Community

Past

- Innovation fueled by the Gov't
- Commercial sector wanted to work with the government
- The government was the primary driver of technology innovation by making substantial research and development (R&D) investments



Present

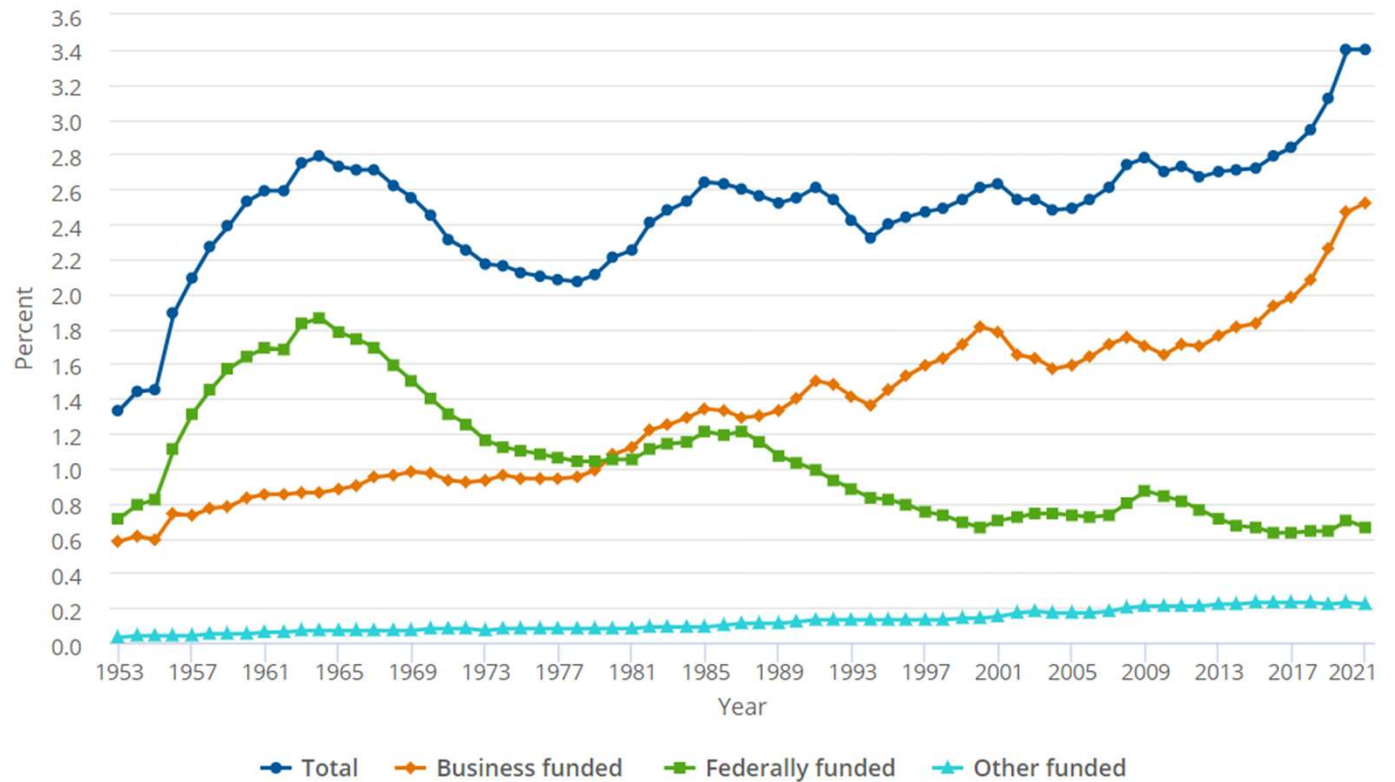
- Innovation fueled by the commercial sector
- Cutting edge commercial firms with large R&D investments are reluctant to work with the government
- Focus and pace of S&T innovation in leading technology areas have shifted from government to the commercial sector (industry spends nearly 10x more on R&D than the government)

R&D Findings

Ratio of U.S. R&D to gross domestic product, by source funds for R&D

1953-2021

Source: National Science Foundation (NCSES)



Impediments to Commercial Sector Participation

- Traditional procurement process is too slow, bureaucratic, and doesn't effectively incorporate commercial best practices
- Traditional procurement contracts (FAR-based contracts) are based on "regulation" rather than "negotiation"
- Government's cost-based pricing system is cumbersome
 - Specialized accounting and audit systems
 - Actual and perceived oversight excesses
- Small businesses and start-ups may be able to secure funding much more quickly and more easily from venture capitalists
- Government's approach to intellectual property (IP) and technical data rights can be overreaching

OTs - What They Are and What They Are Not

What They Are:

- Flexible/innovative/streamlined contract vehicles with characteristics similar to those within the commercial industry
- Require personnel with business acumen and negotiation skills (and OT training or experience)
- Require performance measurement and management (cost, schedule, and technical progress)
- Vehicles by which the Government Accountability Office (GAO) has limited jurisdiction to review decisions and protests



What They Are Not:

- Appropriate for all offices, divisions, and projects
- Procurement contracts (FAR-based), grants, or cooperative agreements
- Subject to all acquisition laws and regulations
- New vehicles available to the government
- One-size-fits-all vehicles with standard checklists
- Vehicles used strictly to avoid following the FAR
- Guarantee teams to complete awards faster than traditional contracts

OTs - Purposes and Potential Benefits

- Provide the flexibility to adopt and incorporate business practices similar to those within commercial industry
- Provide the government access to state-of-the-art technology solutions
- Foster new relationships and practices with solutions providers, especially those that may not be interested in entering into FAR-based contracts with the government
- Broaden the Public Health Industrial Base (PHIB), Defense Industrial Base (DIB), or other
- Encourage flexible, quicker, and cost-effective projects design and execution when compared to other vehicles
- Leverage commercial industry investments in science/technology and R&D
- Collaborate in innovative and flexible arrangements



OTs - What Laws and Regulations Apply?

Laws & Regulations that Apply to OTs	
False Claims Act - 31 U.S.C. § 3729	Antideficiency Act (ADA) - 31 U.S.C. § 1341/1342/1517
False Statements - 18 U.S.C. § 1001	Restrictions on Obtaining and Disclosing Certain Information (formerly Procurement Integrity Act) - 41 U.S.C. § 2101, et seq.
Civil Rights Act - 42 U.S.C. § 1981	Federal Property and Administrative Services Act - 40 U.S.C. Subtitle I
Clean Air Act - 42 U.S.C. § 7401	Debarment and Suspension - 2 CFR 376
Clean Water Act - 33 U.S.C. § 1251	Research Misconduct - 42 CFR 93
Endangered Species Act - 16 U.S.C. § 1531	Human Subjects Protections - 45 CFR 46
National Environmental Policy Act - 42 U.S.C. § 4321, et seq.	Humane Care and Use of Laboratory Animals - Public Health Service Policy

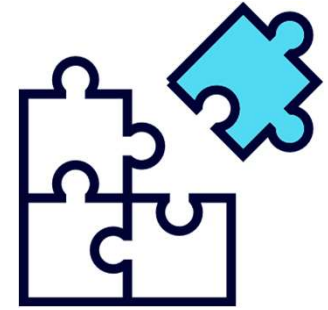


OTs - What Laws and Regulations Do Not Apply?

Laws & Regulations that Do Not Apply to OTs	
Competition in Contracting Act (CICA) - 41 U.S.C. § 3301	Buy American Act (in part) - 41 U.S.C. § 83
Truthful Cost and Pricing Data Act (formerly Truth in Negotiations Act) - 41 U.S.C. § 3501, et seq.	Antikickback Act of 1986 - 41 U.S.C. § 51-58
Cost Accounting Standards - 41 U.S.C. § 1502	Service Contract Act - 41 U.S.C. § 351 et seq.
Contract Disputes Act - 41 U.S.C. § 7102	Procurement Protest Process - 48 CFR 33.1
Procurement Protest System - 31 U.S.C. § 3551, et seq.	Federal Acquisition Regulation (FAR)
Bayh-Dole Act - 35 U.S.C. § 202-204	HHS Acquisition Regulation (HHSAR)

Session Takeaways

- Innovation is fueled by the commercial sector (vice the government)
- The commercial sector has spent more funding for R&D efforts than the government over the last two decades
- OTs are unique contracting vehicles that are not contracts, grants, or cooperative agreements and not subject to all acquisition laws and regulations
- OTs provide the flexibility to adopt and incorporate business practices similar to those within commercial industry
- OTs enable the government to collaborate with entities and leverage commercial industry investments in science/technology/R&D





Q&A



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