



UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary of Commerce
for Oceans and Atmosphere
Washington, D.C. 20230

APR 18 2023

MEMORANDUM FOR: NOAA Bureau Procurement Official, Agreements Officers, Program Officials, Office of the Chief Financial Officer

FROM: Richard W. Spinrad, Ph.D.
Under Secretary of Commerce for Oceans
and Atmosphere and NOAA Administrator
Head of Contracting Activity

SUBJECT: Other Transaction Agreements under the Weather Research and Forecasting Innovation Act of 2017, as amended by the National Oceanic and Atmospheric Administration Commissioned Officer Corps Amendments Act of 2020

AUTHORITY: This memorandum provides the NOAA policy and procedures for the use of other transaction authority to execute Other Transaction Agreements (OTA) under Section 301 of the Weather Research and Forecasting Innovation Act of 2017 (15 U.S.C. 8531), here-to-forward referred to as “the Act,” as amended by Section 503 of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Amendments Act of 2020 (Pub. L. No. 116-259, tit V, § 503, 134 Stat. 1153 (2020)). This memorandum is implemented pursuant to: (1) Section 301(c) and (d) of the Act, (2) the delegation of OTA authority from the Department of Commerce (DOC) Senior Procurement Executive (SPE) to the NOAA Head of Contracting Activity (HCA)¹ (or subsequent extension(s) of this authority), and (3) the Secretary's oversight and delegation authority prescribed by the Reorganization Plan No. 5 of 1950.²

According to Section 301(c) of the Act:

“The Under Secretary of NOAA shall analyze, test, and plan the procurement of future data sources and satellite architectures, including respective ground system elements, identified in the NOAA’s Satellite Observing System Architecture Study that: (A) lower the cost of observations used to meet NOAA’s mission requirements; (B) disaggregate current satellite systems, where appropriate; (C) include new, value-

¹ “Delegation of Other Transaction Authority under the Weather Research and Forecasting Innovation Act” - Memorandum from Olivia J. Bradley, SPE and Director for Acquisition Management to Dr. Richard W. Spinrad, HCA, NOAA, dated August 31, 2022.

² The Reorganization Plan No. 5 of 1950 states: The Secretary of Commerce may from time to time make such provisions as they shall deem appropriate authorizing the performance by any other officer, or by any agency or employee, of DOC of any function of the Secretary, including any function transferred to the Secretary by the provisions of this reorganization plan.

THE ADMINISTRATOR



adding technological advancements; and (D)(i) improve weather forecasting and predictions; and (ii) the understanding, management, and exploration of the ocean.”

All actions executed using the OTA authority shall follow the framework identified herein.

POLICY AND PROCEDURES:

- a. Uses and Limitations.** Under Section 301(d) of the Act, "In order to enhance the effectiveness of data, satellite, and other observing systems used by NOAA to meet its missions, the Under Secretary may enter into and perform such transaction agreements on such terms as the Under Secretary considers appropriate to carry out basic, applied, and advanced research projects and ocean exploration missions to meet the objectives described in subparagraphs (A) through (D) of subsection (c)(1); or any other type of project to meet other mission objectives, as determined by the Under Secretary. The transaction agreements authorized are limited to research and development activities and may only be used as follows:
- i. For the construction, use, operation, or procurement of new, improved, innovative, or value-adding systems, including satellites, instrumentation, ground stations, data, and data processing;
 - ii. To make determinations on how to best use existing or planned data, systems, and assets of NOAA; and,
 - iii. Only when the objectives of NOAA cannot be met using a cooperative research and development agreement (CRADA), grant, procurement contract, or cooperative agreement.
- b. Effective date.** These procedures and delegations are effective on the date of signature and remain in effect unless revised or rescinded. As the HCA, I retain the right to rescind any delegation cited herein in its entirety or for an individual OTA.
- c. Definitions and Responsibilities:**
- 1. Other Transaction Agreement (OTA):** The term “other transaction” is best defined by what it is not. An OTA is not a CRADA, grant,³ procurement contract,⁴ or cooperative

³ The Federal Grant and Cooperative Agreement Act (FGCA) provides that: “An executive agency shall use a **grant agreement** as the legal instrument reflecting a relationship between the US Government and a State, a local government, or other recipient when- (1) the principal purpose of the relationship is to transfer a thing of value to the State or local government or other recipient to carry out a public purpose of support or stimulation authorized by a law of the US instead of acquiring property or services for the direct benefit or use of the US Government; and (2) substantial involvement is not expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement. (31 U.S.C. §6304 (emphasis added))

⁴ "Other transactions" are not subject to the Federal Acquisition Regulation (FAR). The FAR "applies to all acquisitions as defined in Part 2 of the FAR" (*FAR 1.104*). "Other transactions" are not defined in FAR Part 2. Additionally, *FAR 4.601* defines *contract action* as “any oral or written action that results in the purchase, rent, or lease of supplies or equipment, services, or construction using appropriated dollars over the micropurchase threshold, or modifications to these actions regardless of dollar value. Contract action **does not include** grants, cooperative agreements, **other transactions**, real property leases, requisitions from Federal stock, training authorizations, or other non-FAR based transactions.” Also, the FGCA states: “An executive agency shall use a **procurement contract** as the legal instrument reflecting a relationship between the Government and a State, a local government, or other recipient when (1) the principal purpose of the instrument is to acquire (by purchase, lease, or barter) property or services for the direct benefit or use of the U.S. Government; or (2) the agency decides in a specific instance that the use of a procurement contract is appropriate.”

agreement.⁵ OTAs establish a set of legally enforceable promises between NOAA and the other parties to those agreements. An OTA includes the body of the other transaction authority (i.e., the terms and conditions), associated attachments including determinations and findings, and OTA funding documents, which are expressly incorporated into and made a part of the OTA. The overarching agreement does not obligate funds; the OTA Funding Order obligates funds.

2. **DOC Office of General Counsel:** The DOC Assistant General Counsel for Transactions and Technology , Contract Law Division (AGC-T&T CLD) is responsible for reviewing each OTA and advising the Agreements Officer on the proposed terms and conditions.
3. **OTA Funding Order (OFO):** An official NOAA funding document that obligates Government funding to support the other transaction objectives identified therein.
4. **Head of Contracting Activity (HCA):** The Under Secretary of Commerce for Oceans and Atmosphere and NOAA Administrator. The SPE delegated OTA authority to the HCA. The HCA is responsible for designating the Program Official and for outlining the duties and responsibilities of the Program Official with respect to both the OTA and the operation of agreements. The HCA is also responsible for delegating the authority to enter into OTAs to the Bureau Procurement Official who may re-delegate such authority to Agreements Officers.
5. **Bureau Procurement Official (BPO):** By this memorandum and the authority granted to me as the HCA under the memorandum from the SPE titled “Delegation of Other Transaction Authority under the Weather Research and Forecasting Innovation Act,” dated August 31, 2022, (or subsequent extensions to the authority delegated to me as the HCA), I hereby delegate the authority to enter into OTAs for the purposes outlined in Section 301(c) and (d) of the Weather Research and Forecasting Innovation Act, as amended by the National Oceanic and Atmospheric Administration Commissioned Officer Corps Amendments Act of 2020 (the Act), regardless of dollar value, to the Director of the Acquisition and Grants Office and BPO.

The BPO may delegate the authority to enter into, administer, make related determinations and findings, and terminate OTAs to Agreements Officers who have successfully completed OTA training deemed appropriate by the BPO and who possess a level of responsibility, business acumen, and judgment that enables them to operate in the relatively unstructured environment of other transactions. The BPO will develop review and approval thresholds and any supplemental procedures necessary to ensure that Agreements Officers are supported through appropriate oversight and training, commensurate with the risks and complexity of the agreements they oversee.

6. **Agreements Officer:** Agreements Officers are warranted, senior-level contracting officers designated by the BPO to enter into, administer, or terminate OTAs and make related determinations and findings, including written determinations that the objectives

⁵ Pursuant to the FGCA, the principal difference between a grant and cooperative agreement is that with a cooperative agreement, “Substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.”

of NOAA cannot be met using a CRADA, grant, procurement contract, or cooperative agreement. Agreements Officers are responsible for negotiating agreements that appropriately reflect the risks undertaken by all parties to the agreement, incorporating good business sense, and including appropriate safeguards to protect the Government's interest. Agreements Officers may bind the Government only to the extent of the authority delegated to them as contracting officers, and their warrants must specifically state the authority and identify OTAs as within the scope of their warrants.

The Agreements Officer, in coordination with the Project Manager, is responsible for executing each OFO entered into under an OTA.

7. **Program Official:** The Program Official must have the capabilities and experience to manage large scale, complex change initiatives encompassing people, processes, and technology and should possess a Federal Acquisition Certification for Contracting Officer Representatives, a Federal Acquisition Certification in Program/Project Management, or experience comparable to that required for such certifications.

By this memorandum and the authority granted to me as the HCA under the memorandum from the SPE titled "Delegation of Other Transaction Authority under the Weather Research and Forecasting Innovation Act," dated August 31, 2022, (or subsequent extensions to the authority delegated to me as the HCA), I hereby designate the Deputy Assistant Administrator for Systems as the Program Official and Government Manager for the Next Generation Satellite Architecture program/projects.

The Program Official must review each OTA prior to execution and advise the Agreements Officer on how well the terms and conditions of the agreement meet the intent of the program. The Program Official is responsible for all reporting requirements identified in Section 301(f) of the Act and the Oversight and Reporting section of this memorandum.

8. **Project Manager:** The Project Manager assists the Program Official and will act as the alternate point of contact for the OTAs to which they are assigned. The Project Manager will review each OFO issued under the OTA and ensure that the transaction meets the objectives to be pursued and that the funds are available and used for the purposes for which they are appropriated. The Project Manager, in coordination with the Agreements Officer, is responsible for the planning and execution of the OFOs issued under the OTA to which they are assigned. The Project Manager, in conjunction with the Agreements Officer, should be the first point of contact for any technical issues or discrepancies arising from their assigned OTA before the problem escalates to higher authorities. The Project Manager's goals are to maintain progress and manage multiple parties' interactions and tasks in order to reduce/mitigate the risk of project delays, maximize benefits, minimize costs, and ensure project success.

- d. Applicability of Regulations and Statutes.** Many statutes that apply to procurement contracts and financial assistance instruments do not apply to OTAs. The following regulations and statutes are among those that do not apply to OTAs except to the extent that the Agreements Officer determines them necessary to carry out the objectives of the OTA:
- Federal Acquisition Regulation
 - Competition in Contracting Act
 - Small Business Act
 - Contract Disputes Act
 - Procurement Integrity Act
 - Walsh-Healey Public Contracts Act
 - McNamara-O’Hara Service Contract Act
 - Davis-Bacon and Related Acts
 - Drug-Free Workplace Act
 - Single Audit Act
 - Buy American Statute/Trade Agreements Act
 - Bayh-Dole Act
- e. Selection:** Agreements Officers may enter into OTAs only when a CRADA, procurement contract, grant, or cooperative agreement, cannot be used to meet the prescribed requirement(s). The decision to use the authority must be documented. The Program Official will provide the Agreements Officer with a written rationale for using an OTA. Upon review and acceptance, the Agreements Officer will prepare a determination and findings (D&F), using the template at Attachment A. After obtaining the necessary reviews and approval, including legal clearance, the D&F will apply to the entire OTA and each OFO under that agreement.
- f. OTA Terms, Condition, and Price:** Generally, in addition to the performance requirements of the parties, OTAs should address changes, termination, payments, audit requirements, disputes, reporting requirements, Government property, intellectual property rights, technology restrictions (e.g., foreign access to technology), and flow-down considerations. Further, the Agreements Officer must determine the negotiated price fair and reasonable prior to executing the OTA.
- g. Competition:** The use of an OTA should encourage competition when practicable. If the OTA will be negotiated with a single provider, the D&F granting approval to use an OTA must discuss the rationale for selecting the provider.
- h. Review and Approval:** The Agreements Officer should engage the Program Official and AGC-T&T CLD as early as possible in the process of planning, drafting, and negotiating an OTA. The Agreements Officer shall submit all OTAs to the AGC-T&T CLD for review and clearance in accordance with this policy prior to execution. The AGC-T&T CLD will normally provide their review within ten (10) business days of receipt of the request. The Agreements Officer should allow at least that

much time in each OTA schedule. If additional time to conduct the legal review is needed, the assigned attorney will notify the requestor prior to the end of the review period and specify the date by which the review will be completed. The Agreements Officer must document and obtain BPO approval prior to deviating from or ignoring the advice of the AGC-T&T CLD.

All OTAs must have Program Official review and concurrence prior to execution. The BPO is responsible for developing review/approval thresholds and any supplemental procedures deemed necessary to establish an OTA.

- i. Funding:** Each OTA must include one or more OFOs that describe the specific other transaction objectives and NOAA's financial obligation to disburse funds to the solution provider(s). No Agreements Officer or employee of the Government may create or authorize an obligation exceeding the amount of appropriations legally available or in advance of appropriations to NOAA unless otherwise authorized by law. The NOAA Finance Office is responsible for recording obligations incurred through the mutual execution of any OFO and any financial disbursements and related activities.
- j. Transparency:** Pursuant to Section 301(e) of the Act, within 60 days of awarding an OTA, the Program Official shall ensure all uses of the authority under Section 301(d) of are provided on a public NOAA website, including an estimate of committed NOAA resources, the expected benefits to NOAA, and objectives for the OTA. Before posting notices, the Program Official must redact all proprietary, sensitive, and classified information.

OVERSIGHT AND REPORTING:

- a. Post Award Oversight/Reporting to the Office of Acquisition Management (OAM).**
 - 1. The BPO shall submit a copy of all OTAs to the DOC OAM within 10 days of execution.
 - 2. The Program Official, supported by the BPO and other members of the agreements team, shall provide a status update to the SPE on all active OTAs beginning six months after the first OTA is executed and every six months thereafter. At a minimum, the update shall include a description of the purpose and authority of each OTA, a high-level review of activities conducted under each OTA since execution or the previous update, total award value of each OTA, obligations to date, any projected changes to the value, and identification of all counterparties and participants in each OTA.

b. Annual Report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives.

1. Pursuant to Section 301(f) of the Act, not later than 90 days after September 30 of each fiscal year through September 30, 2030, the NOAA Under Secretary is required to submit a report on the use of other transaction authority for the previous fiscal year to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives.
 - A. The Program Official, in coordination with other members of the agreements team shall prepare the report and obtain the required review/clearances.
 - B. The Program Official shall ensure the report is completed and provided for final submission within the required timeframes outlined in Section 301(f) of the Act.
2. Contents. As required by Section 301(f)(2) of the Act, the report shall include:
 - A. For each OTA in effect during the fiscal year covered by the report:
 - i. An indication of whether the OTA is a reimbursable, non-reimbursable, or funded agreement;
 - ii. A description of—
 - I. The subject and terms;
 - II. The parties;
 - III. The responsible NOAA line office;
 - IV. The value;
 - V. The extent of the cost sharing among Federal Government and non-Federal sources;
 - VI. The duration or schedule; and
 - VII. All milestones;
 - iii. An indication of whether the OTA was renewed during the previous fiscal year;
 - iv. The technology areas in which research projects were conducted under the OTA;
 - v. The extent to which the use of the OTA—
 - I. Has contributed to a broadening of the technology and industrial base available for meeting NOAA needs; and
 - II. Has fostered, within the technology and industrial base, new relationships and practices that support the United States; and
 - vi. The total value received by the Federal Government under that agreement for that fiscal year; and
 - B. A list of all anticipated reimbursable, non-reimbursable, and funded OTAs for the upcoming fiscal year.

DETERMINATION AND FINDINGS

Use of Other Transaction Agreement (OTA) Authority under Section 301(c) and (d) of the Weather Research and Forecasting Innovation Act of 2017, as amended by the National Oceanic and Atmospheric Administration Commissioned Officer Corps Amendments Act of 2020

FINDINGS

1. Description/title of the goal of the OTA:

2. Rationale for using an OTA:

Describe the specific technology or research methodology required.

Explain why an OTA is the most suitable solution for the requirement. Include why a procurement/contract/grant/cooperative agreement/CRADA is not suitable for the requirement. Explain why this requirement could not be accomplished using these other agreement instruments (e.g., the prospective solution provider(s) would be hesitant to participate if an instrument other than an OTA were used).

Identify the ways the OTA minimizes barriers to non-traditional participation, including but not limited to:

- a. Consortia and/or Consortia members who collaborate as peers with the Government to manage the project and potentially share its costs (Government may be voting or non-voting member);*
- b. Non-profit entities that have subject matter expertise and an interest in the goals of the OTA program; and*
- c. Individuals.*

For purposes such as:

- a. Programmatic needs that require fluid implementation;*
- b. Non-traditional review/oversight/participation/cooperation/collaboration is necessary because the science is likely to be highly evolving with requirements for additional aims or expertise added to, or removed from, the project throughout the agreement period.*
- c. Collaborative involvement by the Government in the technical direction of the research.)*

3. Efforts to obtain competition: *(This section should include the survey of industry, academia, and other entities. Address the likelihood of receiving competition were this action to be broadly advertised. Provide back-up documentation.)*

Attachment A - D&F Template

4. If negotiations with a single provider are contemplated, discuss the rationale used including the named provider's unique capabilities and/or special circumstances.
5. The total estimated amount of the OTA is \$____. *(This amount should include all current funding and potential future requirements and associated funding.)*
6. Proposed OTA term: *(Date of last signature on Agreement through _____.)*
7. Provide any pertinent additional information: *(This would include agreement considerations such as congressional direction, funding restrictions, legal considerations, existing infrastructure for the project, etc.)*
8. Attach evidence of legal review and clearance of the OTA.

RECOMMENDATION

(Describe the recommendation to enter into an OTA, reflecting the considerations addressed above and any other relevant considerations.)

[Name]
Program Official

Date

DETERMINATION

On the basis of the above findings and recommendation, I hereby determine that NOAA's use of OTA authority is suitable for this project and approve its use as described above.

[Name]
Agreements Officer

Date