




MEMORANDUM FOR: NOAA Senior Bureau Procurement Official, Agreements Officers,
Program Official(s), Office of the Chief Financial Officer

JAN 23 2020

FROM: Dr. Neil Jacobs 
Assistant Secretary of Commerce for Environmental
Observation and Prediction
Performing the duties of Under Secretary of Commerce
For Oceans and Atmosphere and
Head of Contracting Activity

SUBJECT: Other Transaction Agreements (OTAs) under the
Weather Research and Forecasting Innovation Act

AUTHORITY: This memorandum provides the NOAA policy and procedure for the use of other transaction authority to execute Other Transaction Agreements (OTAs) 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 the National Integrated Drought Information System Reauthorization Act of 2018. 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 HCA¹ (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)(1) of the Act:

“The Under Secretary 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-adding technological advancements; and (D) improve weather forecasting and predictions.”

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

POLICY AND PROCEDURES:

¹ “Delegation of Other Transaction Authority under the Weather Research and Forecasting Innovation Act” - Memorandum from Barry Berkowitz, SPE and Director for Acquisition Management to Dr. Neil Jacobs, Head of the Contracting Activity (HCA), NOAA, dated October 24, 2019.

² The Reorganization Plan No. 5 of 1950 states: The Secretary of Commerce may from time to time make such provisions as he 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



a. Uses and Limitations. Under Section 301(d) of the Act, "In order to enhance the effectiveness of data and satellite 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 to meet the objectives described in subparagraphs (A) through (D) subsection (c)(1) (described in the "Authority" section above). 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 satellites, instrumentation, ground stations, and data;
- 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. 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 agreement.⁵ OTAs establish a set of legally enforceable promises between NOAA and the other party(s) to those agreements.

An OTA includes the body of the other transaction authority (e.g. terms and conditions), associated attachments including the Determination and Findings (D&F), and OTA funding documents, which are expressly incorporated in and made a part of the OTA. The overarching agreement does not obligate funds; the OTA Funding

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 micro-purchase threshold, or modifications to these actions regardless of dollar value. Contract action **does not include** grants, cooperative agreements, **other transactions**, real property leases, requirements 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 US Government; or (2) the agency decides in a specific instance that the use of a procurement contract is appropriate.

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."

Order (OFO) obligates funds.

2. **Department of Commerce (DOC) Office of General Counsel:** The DOC Assistant General Counsel for Administration and Transactions (AGC-ADTRAX), Contract Law Division (CLD) is responsible for reviewing each OTA and providing advice on the proposed terms and conditions to the Agreements Officer.
3. **OTA Funding Order (OFO):** An official NOAA funding document that states other transaction objectives to be pursued and obligates Government funding to support the stated effort.
4. **Head of Contracting Activity (HCA):** HCA has been delegated OTA authority from the DOC SPE. The NOAA HCA is responsible for designating the Program Official and for delegating the authority to enter into OTAs to the Senior Bureau Procurement Official (SBPO) who may designate such authority an Agreement Officer. The HCA is also responsible for outlining the duties and responsibilities of the Program Official with respect to the OTA and the execution of any actions under Section 301(d) of the Act.
5. **Senior Bureau Procurement Official:** The NOAA SBPO is delegated authority to enter into OTAs by the HCA. The SBPO is responsible for designating the authority to enter into the OTA to an Agreements Officer(s) who possesses a level of responsibility, business acumen, and judgment that enables them to operate in the relatively unstructured environment of "other transactions." The SBPO is also responsible for ensuring that the Agreements Officer(s) is supported through appropriate oversight and training, commensurate with the risks and complexity of the agreement.
6. **Agreements Officer:** A NOAA Agreements Officer is a warranted senior-level contracting officer with authority to enter into, administer, or terminate OTAs and make related Determinations and Findings (D&F), including a determination, in writing, that the objectives of NOAA cannot be met using a CRADA, grant, procurement contract, or cooperative agreement. Agreements Officers are responsible for negotiating OTAs 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. The Agreements Officers must demonstrate possession of a level of responsibility, experience, business acumen, and judgment that enables them to operate in the relatively unstructured business environment of OTAs.

The Agreements Officer, in coordination with the Program Official, is responsible for executing each OFO entered into under an OTA. Agreements Officers may bind the Government only to the extent of the authority delegated to them, and their warrants must specifically state the authority and identify OTAs as within their scope. The Agreements Officer delegation may be made to individuals who have successfully completed OTA training deemed appropriate by the SBPO.

7. **Program Official:** The Program Official is the Government manager for the Next Generation Satellite Architecture program/projects and is responsible for reviewing the OTA prior to execution and providing advice to the Agreements Officer on how well the terms and conditions of the agreement meet the intent of the program. The Program Official is also responsible for all reporting requirements identified in Section 301(f) of the Act and the “Oversight and Reporting” section of this memorandum. The Program Official must have the capabilities and experience to manage large scale, complex change initiatives encompassing people, processes, and technology and typically possesses Federal Acquisition Certification for Contracting Officer Representatives (FAC-COR), Federal Acquisition Certification in Program/Project Management (FAC-P/PM), or experience comparable to that required for such certifications.

 8. **Project Manager:** The Project Manager assists the Program Official and will act as the alternate point of contact for the specific OTA for 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 is responsible for the planning and execution of the OFOs issued under the OTA to which he/she is 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 his/her assigned OTA before the problem escalates to higher authorities. The Project Manager’s goals are to maintain progress and manage multiple parties’ interaction and tasks in order to reduce/mitigate the risk of project delays, maximize benefits, minimize costs; and, ultimately, ensure project success.
- c. **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 is necessary to carry out the objectives of the OTA:
1. Federal Acquisition Regulation (FAR)
 2. Competition in Contracting Act (CICA)
 3. Small Business Act
 4. Contract Disputes Act
 5. Procurement Integrity Act
 6. Walsh Healey Act
 7. Service Contract Labor Standards
 8. Wage Rate Requirements
 9. Drug-Free Workplace Act
 10. Single Audit Act
 11. Buy American Act/Trade Agreement Act
 12. Bayh-Dole Act

- d. Selection:** OTAs may be entered into 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 a written rationale for use of OTA to the Agreements Officer. Upon review and acceptance, the Agreements Officer will prepare a D&F, using the D&F Template in Attachment A. After obtaining the necessary review and approval, including legal clearance, the D&F will be executed for an entire OTA and will apply to each of the OTA Funding Orders under that agreement.
- e. 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 (i.e., foreign access to technology), and flow-down considerations. Further, the negotiated price must be determined fair and reasonable by the Agreements Officer prior to executing the OTA.
- f. 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 for OTA usage must include a discussion of provider selection rationale.
- g. Review and Approval:** The Agreements Officer should engage the Program Official and DOC AGC-ADTRAX CLD as early in the process of planning, drafting, and negotiating an OTA. The Agreements Officer shall submit all OTAs to the DOC AGC-ADTRAX CLD for review and clearance in accordance with this policy prior to execution. The DOC AGC-ADTRAX CLD will normally provide their review within ten (10) business days of receipt of the request. The Agreement Officer should allot 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 to indicate that additional time is required and specify the date on which the review will be completed.

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

- h. Funding:** An OFO shall be issued under the OTA to describe specific other transaction objectives and any financial obligation of NOAA 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 shall be responsible for recording obligations incurred through the mutual execution of any OFO and any financial disbursements or related activities.
- i. Transparency:** Pursuant to Section 301(e) of the Act, within 60 days of an awarded 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 and the expected benefits to NOAA objectives for the OTA, with appropriate redactions for proprietary, sensitive, or classified information.

OVERSIGHT AND REPORTING:

a. Post Award Oversight/Reporting to the Office of Acquisition Management (OAM).

1. The SBPO shall submit a copy of all OTAs to the DOC Office of Acquisition Management within 10 days of execution.
2. The Program Official, supported by the SBPO and other members of the agreements team, shall provide a status update to the HCA 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, 2023, the 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 required.
 - 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 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 a list of all anticipated reimbursable, non-reimbursable, and funded transaction agreements for the upcoming fiscal year.
- B. A list of all anticipated reimbursable, non-reimbursable, and funded OTAs for the upcoming fiscal year.

Attachment A - D&F Template

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

FINDINGS

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

2. Rationale for Use of an OTA:

(What is the specific technology or research methodology required?)

Explain why use of OTA is the most suitable solution for the requirement. Include why a procurement/contract/grant/cooperative agreement/CRADA is not suitable for the requirement. Why could this requirement not be accomplished using these other agreement instruments? Would prospective solution provider(s) 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 or other entities. Would competition be likely if this were broadly advertised? Provide back-up documentation.)*

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 potential future requirements and associated future + current funding.)*
6. Proposed OTA term: *(Date of last signature on Agreement through _____.)*
7. Provide any pertinent additional information: *(This would include term of agreement considerations -such as congressional direction, funding restrictions, legal, existing infrastructure for project, etc.)*
8. Attach Memorandum reflecting legal review and clearance of the OTA.

RECOMMENDATION

(Describe here 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.

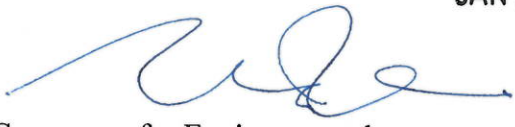
[Name]
Agreements Officer

Date



MEMORANDUM FOR: Deputy Assistant Administrator for Satellite and
Information Services

JAN 23 2020

FROM: Neil A. Jacobs, Ph.D. 
Assistant Secretary of Commerce for Environmental
Observation and Prediction
Performing the duties of Under Secretary of Commerce
For Oceans and Atmosphere and
Head of Contracting Activity

SUBJECT: Designation as the Program Official for Other Transaction
Agreements

Background: As outlined in my memorandum dated January 23, 2020, entitled “Other Transaction Agreements (OTA) under the Weather Research and Forecasting Innovation Act,” the Program Official is the Government manager for OTAs under the Next Generation Satellite Architecture program/projects as referenced in Section 301(c) and (d) of the Weather Research and Forecasting Innovation Act.

Delegation: Pursuant to the Other Transaction Agreement (OTA) authority granted to me as the Head of Contracting Activity (HCA) under memorandum from the Department of Commerce (DOC) Senior Procurement Executive (SPE) entitled “Delegation of Other Transaction Authority under the Weather Research and Forecasting Innovation Act,” dated October 24, 2019, (or subsequent extensions to the authority delegated to me as the HCA), I hereby designate you as the Program Official and Government manager for the Next Generation Satellite Architecture program/projects and responsible party for reviewing the OTA prior to execution and providing advice to the Agreements Officer on how well the terms and conditions of the agreement meet the intent of the program.

As the Program Official, you are also responsible for all reporting requirements identified in Section 301(f) of the Act and the “Oversight and Reporting” section of my memorandum. The Program Official must have the capabilities and experience to manage large scale complex change initiatives encompassing people, processes, and technology and typically possesses Federal Acquisition Certification for Contracting Officer Representatives (FAC-COR), Federal Acquisition Certification in Program/Project Management (FAC-P/PM), or experience comparable to that required for such certifications.


This designation is effective on the date of signature and remains in effect unless revised or rescinded. As the HCA, I retain the right to rescind this delegation.





MEMORANDUM FOR: Director, Acquisition and Grants Office and
Senior Bureau Procurement Official

JAN 23 2020

FROM: Neil A. Jacobs, Ph.D. 
Assistant Secretary of Commerce for Environmental
Observation and Prediction
Performing the duties of Under Secretary of Commerce
For Oceans and Atmosphere and
Head of Contracting Activity

SUBJECT: Delegation of Authority for Other Transaction Agreements to the
Senior Bureau Procurement Official

Background: As outlined in my memorandum dated January 23, 2020, entitled “Other Transaction Agreements (OTA) under the Weather Research and Forecasting Innovation Act,” the Senior Bureau Procurement Official (SBPO) is responsible for designating Agreements Officers who possess a level of responsibility, business acumen, and judgment that enables them to operate in the relatively unstructured environment of “other transactions.” The SBPO is also responsible for ensuring that Agreements Officers are supported through appropriate oversight and training, commensurate with the risks and complexity of the agreement. Authority to enter into an OTA is delegated to the SBPO by the Head of Contracting Activity (HCA). The SBPO may then delegate such authority to the Agreements Officer.

Delegation: Pursuant to the Other Transaction Agreement (OTA) authority granted to me as the HCA under the memorandum from the Department of Commerce (DOC) Senior Procurement Executive (SPE) entitled “Delegation of Other Transaction Authority under the Weather Research and Forecasting Innovation Act,” dated October 24, 2019, (or subsequent extensions to the authority delegated to me as the HCA) I hereby delegate the authority to enter into an OTA for the purposes outlined in Section 301(c) and (d) of the Weather Research and Forecasting Innovation Act (“the Act”), regardless of dollar value, to you, Director of the Acquisition and Grants Office, acting in your capacity as the SBPO. As referenced above, as the SBPO you are responsible for designating the authority to enter into, administer, terminate OTAs, and make related Determinations and Findings to an Agreements Officer who meets the requirements included in my memorandum referenced above. You are responsible for the development of the review/approval thresholds and any supplemental procedures based upon the dollar value/complexity of each OTA.

This delegation is effective on the date of signature and remains in effect unless revised or rescinded. As the HCA, I retain the right to rescind this delegation in its entirety or for an individual OTA covered by this delegation.

THE ADMINISTRATOR





UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer
Assistant Secretary for Administration
Washington, D.C. 20230

MEMORANDUM FOR: Dr. Neil Jacobs
Assistant Secretary of Commerce for Environmental
Observation and Prediction
Performing the duties of Under Secretary of Commerce
For Oceans and Atmosphere and
Head of Contracting Activity

FROM: Barry E. Berkowitz
Senior Procurement Executive and
Director for Acquisition Management

SUBJECT: Delegation of Other Transaction Authority under the Weather
Research and Forecasting Innovation Act

BARRY
BERKOWITZ

Digitally signed by
BARRY BERKOWITZ
Date: 2019.10.24
09:42:41 -04'00'

1. Delegation

The National Integrated Drought Information System Reauthorization Act of 2018 amends Section 301 of the Weather Research and Forecasting Innovation Act of 2017 (15 U.S.C. 8531) by adding subpart (c) *Next Generation Satellite Architecture* and subpart (d) *Additional forms of Transaction Authorized*. Under Section 301(c), the Under Secretary of the National Oceanic and Atmospheric Administration (NOAA) is directed to analyze, test, and plan the procurement of future data sources and satellite architectures, including respective ground system elements, identified in 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-adding technological advancements; and (D) improve weather forecasting and predictions. In order to enhance the effectiveness of data and satellite 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 to meet the objectives described in Section 301(c).

Under the authority vested in me as Senior Procurement Executive (SPE) for the Department of Commerce and in accordance with Department Administrative Order (DAO) 208-2 Contracting Authority and Commerce Acquisition Manual (CAM) 1301.70 Department of Commerce Delegation of Contracting Authority, you are hereby delegated other transaction agreement (OTA) authority as the Head of Contracting Activity (HCA) for NOAA pursuant to Section 301 of the Weather Research and

2. Limitations and Conditions

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

a. Uses:

In general an OTA shall be 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 satellites, instrumentation, ground stations, and data; (ii) to make determinations on how to best use existing or planned data, systems, and assets of the National Oceanic and Atmospheric Administration; and (iii) only when the objectives of NOAA cannot be met using a cooperative research and development agreement, grant, procurement contract, or cooperative agreement.

b. Responsibilities:

- i. Head of Contracting Activity: 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 the agreement. The HCA is also responsible for delegating the authority to enter into an OTA on behalf of NOAA to the Senior Bureau Procurement Official (BPO) who may re-delegate such authority to an Agreements Officer.
- ii. Bureau Procurement Official (BPO): The BPO is responsible for designating Agreements Officers 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 is also responsible for ensuring that Agreements Officers are supported through appropriate oversight and training, commensurate with the risks and complexity of the agreement.
- iii. Agreements Officer: Agreements Officers are warranted contracting officers with authority to enter into, administer, or terminate OTAs and make related determinations and findings, including a determination, in writing, that the objectives of NOAA cannot be met using a cooperative research and development agreement, grant, procurement contract, or cooperative agreement. These individuals are responsible for negotiating agreements that appropriately reflect the risks undertaken by all parties to the agreement, incorporate good business sense and include 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.

- iv. Program Official: The Program Official is the Government manager for the Next Generation Satellite Architecture program/projects and is responsible for reviewing the OTA prior to execution and providing advice to the Agreements Officer on how well the terms and conditions of the agreement meet the intent of the program. The Program Official must have the capabilities and experience to manage large scale complex change initiatives encompassing people, processes, and technology and typically possesses Federal Acquisition Certification for Contracting Officer Representatives (FAC-COR), Federal Acquisition Certification in Program/Project Management (FAC-P/PM), or experience comparable to that required for such certifications.
- v. Office of General Counsel: The Assistant General Counsel for Administration and Transactions, Contract Law Division is responsible for reviewing the OTA and providing advice on the proposed terms and conditions to the Agreements Officer.

c. Agreement Terms, Conditions, and Price

In general, in addition to the performance requirements of the parties, OTAs should address changes, termination, payments, audit requirements, disputes, reporting requirements, Government property, intellectual property, technology restrictions (i.e. foreign access to technology), and flow-down considerations. Further, the negotiated price must be determined fair and reasonable by the Agreements Officer prior to executing the OTA.

d. Review and Approval Process

The Agreements Officer should engage the Contract Law Division and Program Official early in the process of planning, drafting and negotiating an OTA. The Agreements Officer shall submit all OTAs to the Contract Law Division for review and advice prior to execution. The Contract Law Division will normally provide legal review within ten (10) business days of receipt of the request and the Agreements Officer should allot at least that much time in the OTA schedule. If additional time to conduct the legal review is needed, the assigned attorney will notify the requester prior to the end of the review period to indicate that additional time is required and specify the date on which the legal review will be complete.

The Agreements Officer shall document and obtain approval from the BPO prior to deviating from or ignoring the advice of the Contract Law Division. All OTA's must be reviewed and concurred with by the Program Official.

e. Post-Award Oversight

The BPO shall submit a copy of all OTAs to the Office of Acquisition Management within 10 days of execution. 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.

3. Duration and Effective Date

The period of this authority is from date of this memorandum until the end of fiscal year 2023.

4. Summary

This delegation grants OTA authority to the HCA for NOAA pursuant to Section 301 of the Weather Research and Forecasting Innovation Act of 2017 (15 U.S.C. 8531), as amended, subject to the limitations and conditions articulated herein. Nothing in this delegation should be construed to be a waiver of any Departmental policies or procedures in the operation of the Next Generation Satellite Architecture projects except as expressly determined by the Secretary or his designee.

If you have any questions, please contact Virna Winters at OAM_Mailbox@doc.gov.