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Government Contracts: Other Transaction Authority

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A Practice Note discussing "other transaction" (OT) authority of certain federal government agencies, particularly the Department of Defense (DOD), to enter into other transaction agreements (OTAs) with contractors for research and development. This Note reviews OT authority, which agencies and contractors are eligible to enter into OTAs, and explains the differences between OTAs, procurement contracts, cooperative agreements, and grants. This Note also addresses key considerations for contractors when negotiating an OTA with the government and how contractors can challenge the solicitation or award of an OTA.

While the US government can fund research and development in cooperative agreements and grants, these traditional funding mechanisms have dissuaded many companies from partnering with the federal government due to the government's inflexible contracting requirements, especially regarding intellectual property provisions. This Note discusses the "other transaction" (OT) authority available to certain US government agencies, particularly the Department of Defense (DOD) to enter into other transaction agreements (OTAs) with contactors to perform research and develop prototypes of new inventions and technologies.

OTAs provide flexibility in contracting terms and conditions, as many traditional government contracting obligations do not apply to OTAs. Although the government's OT authority has existed in some form for decades, the use of OTAs has increased in recent years and provided contractors with the opportunity to partner with the federal government in research and development initiatives without being overly burdened with traditional government contracting requirements.

This Note explains:

- The purposes for which OT authority can be used (see OT Authority Purposes).
- Which government agencies have OT authority (see Government Agencies with OT Authority).
- Types of OTAs that can be issued by the DOD (see Types of OTAs).
- Which non-governmental entities are eligible for the award of an OTA (see Which Entities Are Eligible for Award of an OTA?).
- Key differences between OTAs, procurement contracts, and federal funding agreements such as cooperative agreements and grants (see Key Differences Between OTAs, Procurement Contracts, and Federal Funding Agreements).
- Where an offeror or a disappointed offeror for an OT award can bring a bid protest challenging the solicitation for, award of, or failure to award an OTA (see Challenging the Solicitation or Award of an OTA).
- Key considerations for non-governmental entities to consider when negotiating an OTA with the government (see Key Considerations for Contractors When Negotiating OTAs).

OT Authority Purposes

OTAs are designed to invite the participation of non-traditional defense contractors with the aim of increasing development for the benefit of both the public and the private sector. A non-traditional defense contractor is an entity that is not currently performing and has not for at least one-year before the solicitation performed any contract or subcontract for the DOD that is subject to the cost accounting standards prescribed under 41 U.S.C. § 1502 (10 U.S.C. § 2302(9)). For more information, see Non-Traditional Defense Contractors.

DOD's Other Transactions Guide, issued by the Office of the Under Secretary of Defense for Acquisition and Sustainment in July 2023, states that OTs can help achieve the following results:

- Foster new relationships and practices involving traditional and non-traditional defense contractors, especially those that may not be interested in entering into contracts with the government subject to the Federal Acquisition Regulation (FAR).
- Broaden the industrial base available to government.
- Support dual-use projects.
- Encourage flexible, quicker, and cheaper project design and execution.
- Leverage commercial industry investment in technology development and partner with industry to ensure DOD requirements are incorporated into future technologies and products.
- Collaborate in innovative arrangements.

(DOD Guide at 4-5.)

OT authority falls within one of two categories:

- **Research.** A research OT is used to support basic, applied, and advanced research and development projects. The research category is broad, and generally is used when the OT is not intended to be a prototype OT.
- **Prototype.** A prototype OT is used to fund the development of a prototype of a physical, virtual, or conceptual creation that may be beneficial to the government. The category of prototype OT also includes the production of the prototype developed under the initial transaction. The DOD is authorized to carry out 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 DOD; or
  - the improvement of platforms, systems, components, or materials used by the armed forces.

  (10 U.S.C. § 4022(a)(1).)

Government Agencies with OT Authority

The DOD is the primary agency that uses OT authority, although other government agencies have the authority to enter into some form of OT that does not fall within the categories of contracts, cooperative agreements, or grants. OT authority is granted by Congress. Agencies that have OT authority can enter into OTAs for the purpose authorized, as follows:

Agency	Research Authority	Prototype Authority	Statute
Advanced Research Project Agency – Energy	Yes	No	42 U.S.C. § 16538
DOD/Military Departments	Yes	Yes	10 U.S.C. §§ 4021, 4022
Department of Energy	Yes	No	42 U.S.C. § 7256
Department of Health and Human Services	Yes	No	42 U.S.C. § 247d-7e
Department of Transportation	Yes	No	49 U.S.C. § 5312
Domestic Nuclear Detection Office	Yes	Yes	6 U.S.C. § 596
Federal Aviation Administration	Yes	No	49 U.S.C. § 106(l)
National Aeronautics and Space Administration	Yes	Yes	51 U.S.C. § 20113(e)

Agency	Research Authority	Prototype Authority	Statute
National Institutes of Health	Yes	No	42 U.S.C. § 287a (Cures Acceleration Network); 42 U.S.C. § 285b-3 (National Heart, Blood Vessel, Lung, and Blood Diseases and Blood Resources Program); 42 U.S.C. § 284n (certain demonstration projects)
Transportation Security Administration	Yes	No	49 U.S.C. § 114(m)

Types of OTAs

The DOD can enter into three types of OTAs:

- Research (see Research OTAs).
- Prototype (see Prototype OTAs).
- Production (see Production OTAs).

Research OTAs

The DOD is authorized by 10 U.S.C. § 4021 to enter into research OTAs to carry out basic, applied, and advanced research projects (10 U.S.C. § 4021(a)). Research OTs are intended to spur dual-use research and development, taking advantage of economies of scale without burdening companies with government regulatory overhead. Traditional and non-traditional defense contractors can participate in research OTAs, but both are encouraged to:

- Use commercial practices or standards.
- Diversify into the commercial sector.
- Partner with non-traditional defense contractors (primarily if they are a traditional defense contractor).

The DOD imposes the following conditions on the use of research OTAs:

- The research OTA should not duplicate research already being conducted by the DOD programs (to the maximum extent practicable).
- The non-government party should provide 50% of the cost share of the OTA (to the extent practicable).
- The research OTA should be awarded competitively (to the maximum extent practicable).
- Award of a procurement contract, grant, or cooperative agreement for the research and development is not feasible or appropriate.

If the OTA is competitively awarded, the DOD typically engages in a competitive procedure seeking proposals or responses to a solicitation for the OTA. Once the government determines the most advantageous solutions, the entities offering those solutions are selected for negotiation of the terms of the OTA. If the government cannot come to agreement with the selected offeror, it may move on to the next most advantageous offeror.

Prototype OTAs

The DOD is authorized by 10 U.S.C. § 4022 to enter into prototype OTAs to carry out 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 DOD.
- Improvement of platforms, systems, components, or materials in use by the armed forces.

(10 U.S.C. § 4022(a)(1).)

The DOD imposes the following conditions on the use of prototype OTAs:

- The award must satisfy one of the four requirements listed below:
  - there is at least one non-traditional defense contractor or nonprofit research institution participating to a significant extent in the prototype project;

  - all significant participants in the transaction other than the government are non-traditional defense contractors or small businesses, including small businesses participating in a program described under section 9 of the Small Business Act (15 U.S.C. § 638) (for more information, see Practice Note, Government Contracts: Small Business Concerns);
  - at least one third of the total cost of the prototype project is to be paid out of funds provided by sources other than the government; or
  - 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 are not feasible or appropriate under a contract or provide an opportunity to expand the defense supply base in a manner that is not practical or feasible under a contract.

  (10 U.S.C. § 4022(d)(1).)
- Cost share is not required if:
  - a non-traditional defense contractor participates and compensation for fee or profit is negotiable; and
  - the agreement is awarded competitively (to the maximum extent practicable).

  (10 U.S.C. § 4022(b).)

The DOD can award a prototype OTA with a value of up to $100 million without any special approvals.

If the prototype OTA is to be valued at more than $100 million but no more than $500 million, the senior procurement executive for the agency or the Director of the Defense Advanced Research Projects Agency must provide a written determination that both:

- The requirements of 10 U.S.C. § 4022(d) are to be met.
- The use of the OTA is essential to promoting the success of the prototype project.

(10 U.S.C. § 4022(a)(2)(A).)

If the prototype OTA is to be valued at more than $500 million, both of the following criteria must be met:

- The Under Secretary of Defense for Research and Engineering or the Under Secretary of Defense for Acquisition and Sustainment must provide a written determination that the requirements of 10 U.S.C. § 4022(d) are to be met and the use of the authority of this section is essential to meet critical national security objectives.
- The congressional defense committees are notified in writing at least 30 days before that authority is exercised.

(10 U.S.C. § 4022(a)(2)(B).)

As with the research OTAs, if the prototype OTA is competitively awarded, the DOD issues a solicitation seeking proposals and then negotiates the OTA with the selected offeror.

Production OTAs

A prototype OTA may provide for the award of a follow-on production OTA to the participants of the OTA transaction (10 U.S.C. § 4022(f)(1)). A follow-on production OTA may be awarded to the participants in the transaction without the use of competitive procedures if:

- Competitive procedures were used for the selection of the participants in the prototype OTA.
- The participants in the transaction successfully completed the prototype project.

(10 U.S.C. § 4022(f)(2).)

A follow-on production OTA also may be awarded when the DOD determines that an individual prototype or prototype subproject part of a consortium is successfully completed by the participants (10 U.S.C. § 4022(f)(3)).

Which Entities Are Eligible for Award of an OTA?

An OTA can be awarded to:

- A single entity.
- A joint venture.
- A partnership.
- A consortium (for more information, see Non-Traditional Defense Contractors).
- A team.
- A prime contractor with subcontract relationships.

Non-Traditional Defense Contractors

The government uses OTAs to engage non-traditional defense contractors and other commercial entities that do not typically do business with the US government.

The DOD can also engage with non-traditional defense contractors by awarding an OTA to a consortium, which can be comprised of:

- Non-traditional defense contractors.
- Traditional defense contractors.
- Other entities, such as non-profit research institutions.

A consortium may have only a few members or hundreds of members. The consortium may be managed administratively by one firm that coordinates the management of the proposal and transaction administration processes for all consortium members. Members of the consortium can pool resources and collaborate with the DOD, which may strengthen an industrial base to support defense applications. Alternatively, members of the consortium may operate independently, with each member performing an individual project without the assistance of other consortium members. Consortium members may also be financial contributors, potential end users of products and technologies developed by the consortium, or otherwise interested in the project funded by the OTA.

Key Differences Between OTAs, Procurement Contracts, and Federal Funding Agreements

OTAs are not subject to many of the statutory and regulatory requirements that apply to federal procurement contracts, including the following:

- The FAR and FAR supplements found in C.F.R. Title 48, which govern federal procurement contracts and include the mandatory terms and conditions that must be included in certain procurement contracts and compliance obligations that are incorporated into procurement contracts.
- The Truthful Cost or Pricing Data Act (10 U.S.C. § 2306a), which requires disclosures of the basis for pricing for procurement contracts.
- The Competition in Contracting Act (10 U.S.C. § 2304, 41 U.S.C. 3301), which requires that procurement contracts be awarded on full and open basis in most circumstances. Although some OTAs are awarded competitively, that competition does not need to comply with the Competition in Contracting Act.
- The Cost Accounting Standards (41 U.S.C. Chapter 15), which govern the measurement, timing and allocability of costs charged to certain procurement contracts.
- The FAR cost principles (48 C.F.R. Part 31), which govern whether costs can be reimbursed under cost-reimbursement procurement contracts.
- The Contract Disputes Act (41 U.S.C. §§ 7101-7109), which governs disputes and claims under procurement contracts.
- The Bayh-Dole Act (35 U.S.C. §§ 201-204, 10 U.S.C. §§ 2320-2321), which governs the rights in inventions made under federal procurement contracts.
- Labor laws as made applicable by 48 C.F.R. Part 22, which sets out the labor requirements applicable to government contracts, including equal employment opportunity and wage and hour requirements. However, an OTA may incorporate employment nondiscrimination requirements, such as 42 U.S.C. § 2000d, which prohibits a program or activity receiving federal financial assistance from discriminating against a person on the ground of race, color, or national origin.

OTAs are also not subject to many of the statutory and regulatory requirements applicable to cooperative agreements and grants, such as:

- The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200), which govern cooperative agreements and grants and include the mandatory terms and conditions that must be included in certain cooperative agreements and grants.
- The Bayh-Dole Act (35 U.S.C. §§ 201-204, 10 U.S.C. §§ 2320-2321), which governs the rights in subject inventions made under federal funding agreements, including grants and cooperative agreements.
- Non-discrimination statutes incorporated into the cooperative agreement or grant as part of the agency's terms and conditions, which may include:
  - 42 U.SC. § 2000d, prohibiting discrimination based on race, color, or national origin;
  - Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681-1688), prohibiting discrimination based on gender, blindness, or visual impairment; and
  - 29 U.S.C. § 794, prohibiting discrimination based on disability.

  As noted above, some of these statutes may be incorporated into an OTA, but are not mandatory.

Challenging the Solicitation or Award of an OTA

Because OTAs are not procurement contracts, their solicitation, award, failure to award cannot be challenged in the same way an offeror or potential offeror can challenge a federal procurement. For more information on challenging federal procurements, see Practice Notes:

- Government Contracts: Agency-Level Bid Protests.
- Government Contracts: GAO Bid Protests.
- Government Contracts: COFC Bid Protests.

An interested party can protest a solicitation for an OTA on the basis that it:

- Should be awarded as a procurement contract.
- Fails to comply with applicable OT authority.

These protests can be brought before the US Government Accountability Office (GAO). The GAO, however, lacks jurisdiction over protests of the evaluation of proposals in response to a solicitation for an OTA or the failure to award an OTA to the protester. The US Court of Federal Claims (COFC) and federal district courts have yet to exercise jurisdiction over protests of the evaluation of proposals for an OT award and the failure to award an OTA to the protester, indicating those courts also may lack jurisdiction over those types of bid protests.

Protests of an Agency's Use of its OT Authority

The GAO generally does not review protests of awards of OTAs or solicitations pertaining to OTAs. The GAO does, however, review protests alleging that an agency is improperly using a non-procurement instrument to procure goods or services (4 C.F.R. § 21.5(m)). Using its authority under the Competition in Contracting Act of 1984, the GAO can hear a protest that an agency improperly issued a solicitation for award of an OTA for a requirement that should be awarded as a procurement contract, to ensure that an agency is not attempting to avoid the requirements of procurement statutes and regulations (see *MorphoTrust USA, LLC*, B-412711, May 16, 2016, 2016 CPD ¶ 133 at 7-8; *Rocketplane Kistler*, B-310741, Jan. 28, 2008, 2008 CPD ¶ 22 at 3; *Exploration Partners, LLC*, B-298804, Dec. 19, 2006, 2006 CPD ¶ 201 at 5).

The GAO also has jurisdiction over a protest that an OT solicitation or award does not comply with the applicable OT authority. See *ACI Technologies, Inc.*, B-417011, Jan. 17, 2019, 2019 CPD ¶ 24 at 4-7 (protest that solicitation for a prototype OT included projects that were not within the scope of the term "prototype") and *Oracle Am., Inc.*, B-416061, May 31, 2018, 2018 CPD ¶ 180 at 10-11 (protest that non-competitive follow-on production OTA did not comply with requirements of 10 U.S.C. § 4022).

These protests typically must be filed by the time set for receipt of proposals for the OT award (4 C.F.R. § 21.2(a)(1) and see *Blade Strategies, LLC*, B-416752, Sept. 24, 2018, 2018 CPD ¶ 327 at 2 and *Exploration Partners, LLC*, supra, at 6 n.4). However, in cases where the protester does not learn of the use of OT authority until after award, a protest to GAO is due not later than ten days after the basis of protest is known or should have been known (4 C.F.R. § 21.2(a)(2) and see *Oracle Am., Inc.*, B-416061, May 31, 2018, 2018 CPD ¶ 180 at 11 n.20).

Protests of the Evaluation of OT Proposals and Failure to Award an OTA

The GAO cannot hear protests of an agency's evaluation of the protester's proposal and the resulting decision not to enter into an OTA with the protester where the protest does not challenge the use of an OTA in lieu of a procurement contract (*Sys. Architecture Info. Tech.*, B-418721, June 2, 2020, 2020 CPD ¶ 184 at 2 and *MD Helicopters, Inc.*, B-417379, Apr. 4, 2019, 2019 CPD ¶ 120 at 2).

The COFC refused to exercise jurisdiction over a bid protest of the award or failure to award an OTA, holding that OTAs are not covered within its bid protest jurisdiction under 28 U.S.C. § 1491(b)(1) (*Space Exploration Technologies Corp. v. United States, et al.*, 144 Fed. Cl. 433 (2019)). The COFC has, however, exercised jurisdiction over a disappointed bidder's post-award bid protest challenging the Army's award of an OTA on the basis that the OTA would have included the possibility for a follow-on production contract without the use of competitive procedures and therefore the OTA was "in connection with" a proposed procurement. *Hydraulics Int'l, Inc. v. United States*, 161 Fed. Cl. 167 (2022).

One federal district court heard an OTA bid protest after the COFC denied jurisdiction to the *Space Exploration Technologies* protest. (*Space Exploration Technologies Corp. v. United States*, 2020 WL 7344615 (C.D. Cal. Sept. 24, 2020).) The district court reviewed the award of the OTA as a "final agency action" under the Administrative Procedures Act (*Space Exploration Technologies,* 2020 WL 7344615, at *5).

One other published decision indicated the federal district court cannot exercise jurisdiction over an OT bid protest because the COFC had jurisdiction over that type of action

(*MD Helicopters, Inc. v. United States*, 435 F. Supp. 3d 1003 (D. Ariz. 2020)). The case law surrounding OT bid protests in federal court is still developing. It remains an open question whether federal district courts are the correct forum in which an offeror or a potential offeror for an OT competition can challenge any aspect of the OT competition in court.

Agency-Level Bid Protests

An agency issuing OT solicitations may permit agency-level protests of the OT solicitation, evaluation, or award. DOD agencies are encouraged by the DOD Guide to describe the agency-level protest procedures in the OT solicitation. However, if no explanation of protest procedures is given in the OT solicitation, OT offerors cannot be certain the agency is likely to entertain an agency-level protest if one were submitted.

Key Considerations for Contractors When Negotiating OTAs

Because OTAs are not procurement contracts, cooperative agreements, or grants and are intended to increase participation of non-traditional defense contractors, the government has more flexibility in negotiating the terms and conditions of OTAs. To limit the contractor's risk and maximize the benefits of an OTA, contractors should understand which provisions are negotiable and which are required. Below are some of the key terms and conditions that companies can expect to see in a DOD OTA.

Terms Required by Statute

The following terms must be included in DOD OTAs:

- If a prototype agreement has a value more than $5 million, it must include a clause that provides for the Comptroller General to examine the records of any party to the agreement and any entity that participates in the performance of the agreement. (10 U.S.C. § 4022(c)(1)). However, this audit right is subject to the following limitations:
  - the audit requirement does not apply to a party or subordinate element of a party that has not entered into any other agreement that provides for audit access by a government entity in the year before the date of the OTA (10 U.S.C. § 4022(c)(2));
  - if the only agreements or OTAs that the party at issue has entered into with the government in the year before the date of the OTA are cooperative agreements or OTAs issued under 10 U.S.C. § 4021 or 10 U.S.C. § 4022, then the only records of that party that the Comptroller General may examine are the records of the same type as the records that the government has had the right to examine under the audit access clauses of the party's previous cooperative agreements or OTAs (10 U.S.C. § 4022(c)(3));
  - the head of the contracting activity carrying out the OTA may waive this audit right if they determine that it is not in the public interest to exercise the audit right (10 U.S.C. § 4022(c)(4)); and
  - the audit right only applies up to three years after the final payment is made under the agreement (10 U.S.C. § 4022(c)(5)).
- If the DOD or the awardee want to ensure the government can award a non-competitive, follow-on production OTA after performance of a prototype OTA, the prototype OTA must provide that the government may award a follow-on production contract or OTA (10 U.S.C. § 4022(f)(1), (f)(2)). This provision also should include the conditions under which the agreement is to be considered successfully completed so that a follow-on production agreement can be awarded.

Terms Permitted by Statute

The DOD has authority to, but is not required to, include the following terms in an OTA:

- A clause requiring the agreement holder to make payments to the DOD or any other department or agency of the federal government as a condition for receiving support under the agreement (10 U.S.C. § 4021(d)(1)).
- A clause in a prototype or production OTA that provides for prototypes or production items to be provided to another contractor as government-furnished equipment (10 U.S.C. § 4022(g)).

Intellectual Property Considerations

OTAs are **not** subject to:

- The Bayh-Dole Act (35 U.S.C. §§ 201-204) governing the government's rights in inventions and patents.
- The DOD requirements governing the government's license rights in technical data and computer software.

As a result, while the DOD is likely to use the intellectual property contract clauses from the FAR and DOD FAR Supplement (DFARS) as a starting point, these clauses are subject to negotiation.

The intellectual property provisions of the OTA should address:

- The contractor's rights to retain ownership of any intellectual property developed, created, conceived, or reduced to practice under the OTA, as well as the government's license rights in that intellectual property.
- The contractor's license rights in any intellectual property developed, created, conceived, or reduced to practice by the government under the OTA.
- Whether the government receives a license in the contractor's pre-existing intellectual property that may be used in performing the OTA or delivered to the government under the OTA.
- The contractor's reporting obligations regarding intellectual property developed, created, conceived, or reduced to practice under the OTA.

For more information on intellectual property issues in federal government contracts that are subject to the Bayh-Dole Act and the DOD requirements, see Practice Note, Government Contracts: Protecting Intellectual Property.

Physical Property Considerations

The government is not required to take title to physical property acquired or produced by a private party under an OTA, except the property that is identified as a deliverable. The DOD advises its agencies to consider whether known or future efforts may be fostered by government ownership of the property in deciding whether to take title to property under an OTA.

If the government is taking title to property acquired under the OTA or is furnishing government property to the contractor, then the OTA should include the following:

- A list of property to which the government is obtaining title and when title is transferring to the government, including whether the contractor or the government is:
  - responsible for maintenance, repair, or replacement of the property;
  - liable for loss, theft, destruction of, or damage to the property; and
  - liable for loss or damage resulting from use of the property.
- The procedures for accounting for, controlling, and disposing of the property. If the awardee is a company that does not traditionally do business with the government, the DOD should use the company's commercial property control system to account for government property.
- What guarantees the government makes regarding the property's suitability for its intended use, the condition in which the property should be returned, and any limitations on how or the time the property may be used.
- A list of property the government is furnishing for the performance of the agreement.

(DOD Guide at 18.)

If the government is not taking title to property acquired under the OTA, the agreement should either specify any conditions on the disposition of the property at the end of the OTA or state that there are none.

If the OTA includes a cost share provided by the contractor and the contractor has title to the property that is to be factored into the contractor's cost share amount, the contractor and the government should agree on the method for determining the value of the property. That method should be included in the OTA.

Payment Considerations

Payments under an OTA can be based on a variety of payment methods, including one or more of the following:

- Payable milestones (fixed price).
- Advance payment (such as payments for large, up-front expenditures).
- Interim reimbursements based on amounts generated from the awardee's financial or cost records.

The OTA may require the contractor to provide some of the funding as a cost share. The government also may seek to include a provision for recoupment of government investment funding if, for example, the contractor buys back the prototype or other program materials from the government.

The government also may attempt to impose requirements on the contractor's accounting system, but the requirements are only potentially appropriate for an expenditure-based or resource-sharing agreement. The DOD discourages agencies from imposing requirements that may cause the contractor to revise or alter its existing accounting system.

Changes, Disputes, and Termination Considerations

The OTA should address how modifications are to be handled. The government may, but is not required to, seek to include the right to make unilateral changes.

Disputes are not subject to the Contracts Disputes Act, but a similar procedure for handling disputes can be included in the OTA (see Practice Note, Federal Government Contracts: Overview: Contract Disputes). The government typically prefers to include an alternative dispute resolution procedure in OTAs, such as mediation with a neutral third party.

The OTA should include termination procedures. The agreement may allow both parties the right to terminate the agreement. The government typically prefers to impose conditions on the contractor's right to terminate the agreement, but the contractor may also impose conditions on the government's right to terminate. This way neither party has the option to terminate for its convenience. If the OTA provides that the government may terminate for cause or the contractor can terminate the agreement, DOD policy requires that the agreement include what remedies are due to the government if the agreement is so terminated, such as recoupment of payments made or government purpose license rights in intellectual property.