



## **OTHER TRANSACTIONS** **(PROTOTYPES)**

### **1. PURPOSE**

The purpose of this document is to provide the SPAWAR claimancy policy and procedures for transactions other than contracts, cooperative agreements and grants for prototype projects.

### **2. POLICY**

It is the policy of SPAWAR to encourage and foster aggressive use of the authority first granted by Congress in 1996 for military Service Secretaries to use “other transactions” (OTs) to enter into prototype projects. This authorization was contained in 10 USC 2371 and Section 845 of the National Defense Authorization Act (NDAA) for Fiscal Year 1994 as amended by Section 804 of the NDAA of 1997 and continues under the NDAA for FY99. ASN RD&A Memo of 10 September 1997 extends this authority to SPAWAR. These OTs are agreements used for basic, applied, advanced research and prototype projects and are not contracts, grants, or cooperative agreements. The OT is a new, highly flexible business tool. Use of this tool requires application of astute business acumen to ensure smarter, more efficient acquisition of systems for the Department of Defense. Guidance may be found in the “[The Other Transactions Guide for Prototype Projects](#)” from the Office of the Under Secretary of Defense for Acquisition, Technology and Logistics website at <http://www.acq.osd.mil>

### **3. RESPONSIBILITY**

The Contracting Officer has the overall responsibility for ensuring that proper Determinations and Findings (D&Fs) are submitted for approval, briefings are delivered, business clearances are filed, agreements are executed, and reports are submitted.

### **4. PROCEDURES**

- a. SPAWAR 2.0*

- (1) Determinations and Findings (D&Fs). Prior to embarking on the use of an Other Transaction, a D&F shall be submitted to 2.0/2.0A for approval. Further policies and procedures for this are found in the Planning 1.0 of the SCPPM at Determinations and Findings.
- (2) Briefings. The purpose of the briefings is to help ensure that other transaction authority is used in a manner that is consistent with law, regulation, policy, and good business judgment by informing senior management (i.e., 2.0A, 3.0, and the cognizant Program Manager) of the status of an acquisition. The briefings advise 2.0A, Program Manager, and legal counsel of the intent to use Other Transaction authority and the supporting rationale. The briefings must include a description of the effort, the competitive environment, the rationale for using OT authority, vice a traditional vehicle, and any special terms and conditions that may apply.
  - The following briefings are mandatory and shall occur as indicated:
    - ✓ Within a reasonable time after receipt of proposals;
    - ✓ Prior to eliminating an offeror from any further consideration;
    - ✓ Prior to source selection; and
    - ✓ When it becomes apparent that conditions exist that may impact either the source selection decision or the terms and conditions of the resulting agreement in an unusual way.
  - Briefing prior to submitting the D&F document is optional.
- (3) Business Clearance Memorandum. The purpose of the business clearance memorandum is to ensure a proposed OT instrument conforms to applicable laws, regulations, and Navy procurement policies and practices. This document along with its exhibits provides a written record of the issues, circumstances and conditions associated with implementation of an OT. General guidance is provided in the SCPPM at Evaluation 3.0 at Business Clearances. Although each OT, because of its flexible nature, will have unique elements that require the application of sound business judgment to ensure the Navy's rights and interests are protected, specific guidance on minimum OT Business Clearance Memorandum contents is that each should address:
  - The procurement background;
  - The source selection process (i.e. evaluation factors, sharing arrangement, competitiveness, discussions with offerors, and award decision);
  - The cost and/or price evaluation;
  - Pre-award compliances and certifications;
  - Use of government property;
  - Milestone payments and the timing of those payments; and
  - Any unique terms and conditions of the agreement (e.g., intellectual property rights, disputes, funding profile, inclusion of the 'Comptroller General access to Records' clause, etc).
- (4) Comptroller General and Department of Defense Access to Records Clauses.

Release 3.1 (February 2015, updated the SPAWAR codes only)

(a) A clause must be included in solicitations and agreements for prototype projects awarded under authority of 10 U.S.C. 2371, that provide for total government payments in excess of \$5,000,000 to allow Comptroller General access to records that directly pertain to such agreements.

(b) In addition to the clause requiring Comptroller General access to records, a clause must also be included in prototype projects in excess of \$5,000,000 that allows the Department of Defense access to awardee and subawardee records. When a Department of Defense access to records clause is included as part of the Other Transactions agreement, the following areas may be addressed during the negotiation of the clause: (1) Frequency of audits, (2) Means of accomplishing audits, (3) Scope of audit, (4) Length and extent of access, and (5) Awardee flow down responsibilities.

(c) Specific guidance on the applicability and text of the Comptroller General access to records clause can be found in the “[The Other Transactions Guide for Prototype Projects](#)” from the Office of the Under Secretary of Defense for Acquisition, Technology and Logistics website at <http://www.acq.osd.mil>

(d) Specific guidance on the applicability, exceptions, and details concerning the text and areas to be addressed in the Department of Defense access to records clause can be found in the “Other Transactions Guide for Prototype Projects” at the Office of the Under Secretary of Defense for Acquisition, Technology and Logistics website at <http://www.acq.osd.mil>

Numbering. The Office of the Under Secretary of Defense (AT&L) “[The Other Transactions Guide for Prototype Projects](#)” establishes the policy for numbering Other Transactions for prototype projects. DFARS 204.70 shall be used for assigning the Procurement Instrument Identification Number (PIIN) with one exception, the 9<sup>th</sup> position of the PIIN shall be coded “9” for all Section 845 other transactions (e.g. N00039-98-2-0001). The Other Transactions Guide can also be found at the Office of the Under Secretary of Defense (AT&L) <http://www.acq.osd.mil>

- (5) Nontraditional Defense Contractors. The Other Transactions Guide implements recent legislation requiring that, “...there is at least one nontraditional defense contractor participating to a significant extent in the prototype project; or if not, at least one third of the total cost of the prototype project is to be paid out of funds provided by ... other than the federal government.” The OT Guide provides the definition of Nontraditional Defense Contractors.
- (6) Reporting. The DD2759TEST form has been developed for collection of common data elements for every Section 845 other transaction obligation or deobligation. Instructions concerning DD2759 completion can be found in the Other Transactions Guide, Appendix 3. All activities shall complete and forward the form within 10 days of the execution of the OT agreement to SPAWAR 2.3.1.

Title 10 USC 2371(h) requires an annual report to Congress on use of OT authority. Effective in FY 01, this report must be prepared in accordance with Appendix 2 of the OT Guide and submitted to SPAWAR 2.0A for review

PRIOR to awarding a new OT. The approved report will be forwarded to SPAWAR 2.3.1 within 10 days of OT award. No additional end of year reporting is required.

*b. SSC San Diego*

- (1) Procedures shall be as above, except for routing.
- (2) Determination and Finding. A D&F must be submitted to Code D21 prior to using Other Transaction Authority. The D&F must then be submitted to SPAWAR 2.0/2.0A for approval per Delegation Authority Memorandum (SER 02-41E/002 dated 27 May 1998). The format for the D&F shall be the sample attached to this instruction.
- (3) Business Clearance Memorandum. The review and approval process for the business clearance memorandum for an OT instrument shall be the same as that for any other acquisition business clearance memorandum at SSC-SD. However, specific thresholds as referenced herein and in Delegation Authority Memorandum (SER 02-41E/002 dated 27 May 1998 must be adhered to. Routing procedures are the same as all other business clearance memoranda.
- (4) Agreement Execution. Agreements shall be signed by warranted Agreement/Contracting Officers.
- (5) Numbering and Reporting. The numbering and reporting of other transactions shall be the same as outlined for SPAWAR 2.0 above and in accordance with the OT Guide. See CSOP No. 105 on Grants, Cooperative Agreements and Other Transactions for reference only.

*c. SSC Charleston*

- (1) Procedures shall be as above, except for routing.
- (2) Determination and Finding. A D&F must be submitted to Code 11 (via Codes 111 and 11A) prior to using an Other Transaction Authority. The D&F must then be submitted to SPAWAR 2.0/2.0A for approval per Delegation Authority Memorandum (SER 02-41E/002 dated 27 May 1998).
- (3) Briefings. The briefings should be consistent with the briefings referred to in Section 4 with the exception that they should be presented to Code 11 (SSC Charleston's senior management). The briefings will be in the format of a presentation to the Contract Review Board.
- (4) Business Clearance Memoranda. Reference is made to the Delegation Authority Memorandum (SER 02-41E/002 dated 27 May 1998) for approval levels of the business clearance memoranda. Routing procedures are the same as all other business clearance memoranda.

- (5) Agreement Execution. Agreements shall be signed by warranted Agreement/Contracting Officers.
- (6) Numbering and Reporting Procedures. The numbering and reporting of other transactions shall be the same as outlined in the SPAWAR 2.0 procedures above and in accordance with the OT Guide.

## 5. APPROVALS

- a.* ASN (RD&A) memo 21 Feb 97 delegated authority to enter into prototype projects to the “Heads of Contracts” including the principal deputy to such official. ASN (RD&A) memo 10 Sep 97 clarified that the “Heads of Contracts” must approve the use of an Other Transaction but may further delegate the authority to execute the Other Transaction Agreement. SPAWAR 00 memo of 15 July 97 further delegated authority to 2.0 and 2.0A to enter into other transactions for prototype projects. Specific authority is as delineated below for the reviews, signatures, approvals, and determinations. Those functions delegated are to the permanent incumbent of that position holding a warrant of such and cannot be assumed by anyone filling that position on temporary assignment.

**OTHER TRANSACTION APPROVAL LEVELS**

<u>Action</u>	<u>Purpose</u>	<u>Delegation</u> <u>(Approval Authority)</u>
Determination & Finding	Document the appropriateness of and authorize use of Other Transaction	Retained by 2.0/2.0A
Business Clearance HQ	Documentation of business decision and rationale	Division Director and/or 2.0/2.0A as set forth elsewhere herein
SSC CH		2.0A
SSC SD		2.0A
Other Transaction Agreement	Execution	Procuring Contracting Officer

- b. Business clearance approval thresholds for OTs are in accordance with SPAWAR Memorandum, SER 02-41E/002 dated 27 May 1998. Authority to approve the business clearance at SPAWAR headquarters rests with the Division Director for any one program under \$1 Million as reflected in the table below. However, if the Division Director or Branch Head determines that the issues surrounding negotiations and the terms of the resulting agreement are significantly complex, he/she is obligated to forward the clearance to 2.0A for final review and approval authority. 2.0A is the approval authority for clearances covering agreements valued over \$1,000,000. For field activities, all business clearances must be forwarded to 2.0A for approval. It is incumbent upon the Division Directors to employ their business acumen when contemplating status reporting, workload assignment, and negotiation decisions.

**OT BUSINESS CLEARANCE APPROVAL LEVELS**

<u>ORGANIZATION</u>	<u>DOLLAR THRESHOLD</u>	<u>APPROVAL AUTHORITY</u>
SPAWAR 2.0	< \$1,000,000/program > \$1,000,000/program	Division Director 2.0A
SSC CH	ALL	2.0A
SSC SD	ALL	2.0A

Sample OT D&F  
**PUT ON SPAWAR LETTERHEAD**

DETERMINATION AND FINDING  
FOR THE USE OF "OTHER TRANSACTION" AUTHORITY

**DETERMINATION**

Upon the basis of the following justification, I, as Director of Contracts, Space and Naval Warfare Systems Command, hereby determine that an "Other Transaction" Agreement is appropriate for the acquisition described below. This agreement will be issued pursuant to the authority of (pick one - either **10 USC 2371** - for a research OT or **Public Law 104-201, Section 804** - for a prototype OT).

**JUSTIFICATION**

1. Nature/Description of Action to include a description of what is to be acquired (research or prototype) and whether action will be competitive or sole source. Describe why competition is limited, or sole source.
2. Explanation as to why an OT is the most appropriate vehicle (in the case of research OTs, this justification must be expanded to include a justification as to why a standard contract, cooperative agreement or grant is not feasible or appropriate). Show how basic requirements for Prototype or Basic Research OT are met and not duplicated. Show how this acquisition fits some definition of a prototype.
3. Description of any known special terms and conditions (e.g., cost sharing, and patents). Since research OTs require a 50% minimum cost share, this paragraph should either include an affirmative statement that this will be required or a justification as to why a waiver to the requirement is justified. It is recommended, although not required, that this section address the issue of whether a prototype OTs will require cost sharing as well. Additionally, it is becoming Navy Policy to provide justification for no cost share on prototypes just as it is under Other Transactions for Research.

**REMINDER: STOP, start a separate page for certification/approval (signature page).**

**TECHNICAL AND REQUIREMENTS CERTIFICATION**

I certify that the facts and representations under my cognizance which are included in this justification and which form a basis for this justification are complete and accurate.

**Signature:** \_\_\_\_\_

\_\_\_\_\_  
Printed/Typed Name and Title                      Code      Phone      Date

**CONTRACTING OFFICER CERTIFICATION**

I certify that this DETERMINATION is accurate and complete to the best of my knowledge and belief.

**Signature:** \_\_\_\_\_

\_\_\_\_\_  
Printed/Typed Name and Title                      Code      Phone      Date

**REVIEW FOR LEGAL SUFFICIENCY**

This DETERMINATION is determined legally sufficient.

**Signature:** \_\_\_\_\_

\_\_\_\_\_  
Printed/Typed Name and Title                      Code      Phone      Date

**APPROVAL BLOCK**

**APPROVED:**

**Signature:** \_\_\_\_\_

\_\_\_\_\_  
Printed/Typed Name and Title                      Code      Phone      Date