

OTAs (Other Transactional Agreement): A "newer" Federal Contracting Mechanism

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Objectives

- Define Other Transactional Agreement (OTA)
- Review agencies with OTA authority
- Describe types and structures of the OTA mechanism
- Pre-award considerations
- Post-award considerations
- Key Takeaways



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What exactly is an OTA?



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Definition of OTA

Other Transaction Agreements (OTA) are legally binding agreements other than standard procurement contracts, grants, or cooperative agreements.

What OTAs are **NOT**...

- **NOT** Federal procurement contracts that are directly subject to the Federal Acquisition Regulations (FAR)
- **NOT** Grants or cooperative agreements that are subject to Uniform Guidance (2 CFR 200)
- **NOT** Cooperative Research and Development Agreements (CRADA)



**Agencies with
OTA authority**

Agencies authorized to fund OTAs

- Dept of Defense (DoD) – all branches (DARPA, AFRL)
- U.S. Dept of Transportation (DOT)
 - Federal Aviation Administration (FAA)
- U.S. Dept of Homeland Security (DHS)
 - Transportation Security Administration (TSA)
 - DHS Domestic Nuclear Detection Office (DNDO)
- U.S. Dept of Health and Human Services (DHHS)
 - National Institutes of Health (NIH)
- U.S. Dept of Energy
 - DOE Advanced Research Projects Agency-Energy (ARPA-E)
- National Aeronautics and Space Administration (NASA)

OTA Types and Structure



What are the 3 types of OTAs?

R&D (Research and Development)

- Medical research
- Pharmaceuticals
- Community engagement

Prototype activities

- Military technology improvements
- Energy development and security research
- Oil and pipeline safety

Production activities

- May follow on after prototype activity is completed



R&D (Research and Development) OTAs

- Used for basic, applied, and advanced research
- Should allow for greater speed, flexibility, and accessibility for research activities
- Reduces the burden of Government regulatory overhead allowing for a more competitive environment within the **commercial** (non-defense) sector
- Can address IP concerns and cost accounting standards by providing terms that may be more desirable to commercial partnerships



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Prototype and Production OTAs

- Prototype OTAs allow for projects that are directly relevant to weapons or weapons systems proposed to be acquired or developed by the Department of Defense.
- Production OTAs allow for a non-competitive, follow-on OTA to the prototype agreement that has been successfully completed. Government must give advanced consideration, and notice is to be made of the potential follow-on OTA. Therefore, all solicitations will include a notice that there is the future possibility of a follow-on OTA.

OTA Structures

- OTAs' structure allows the government flexibility to include, amend, or exclude traditional procurement clauses.
- Different OTA structures:
 - Direct relationship between single government agency and provider
 - Joint ventures
 - Partnerships
 - Multiple agencies collaborating to fund an agreement across multiple providers
 - Consortium Pass-through

Other positive considerations for the federal use of an OTA

OTA's do not include onerous contracting obligations found in a federal procurement contract such as:

- Bayh-Dohl Act;
- Buy American Act;
- Contract Disputes Act;
- Truthful Cost or Pricing Act;
- Cost Accounting Standards

National Institutes of Health (NIH) OTA Structure

National Institutes of Health (NIH)

- Direct flow of funds to UNC
- Pass-thru funding to RTI (Contract Research Organization aka CRO)

Department of Defense (DOD) OTA Structure

- Department of Defense typically funds via a Consortium Agreement which is defined as an organized group focusing on a specific technology area (non-profits, academia, or contractors)
- Pass-through consortiums/CRO from which UNC has received funding:
 - Medical Technology Enterprise Consortium (MTEC)
 - Medical CBRN Defense Consortium (MCDC)
 - Nano-Bio Materials Consortium (NBMC)

**What to
look for at
Pre-award?**



Pre-award Challenges

- Agency may or may not have a RFA or BAA.
- Proposal for work may be initiated at an agency level to seek out certain research specialties that have requisite knowledge in a field that the agency is interested in. This method is conducive to expediting research projects.
- Agency will still require proposal and provide a specially created opportunity number.
- Agency will detail documents needed in RFA/BAA or an email and request an application to be submitted via specific portal or email.

Pre-award Challenges Cont.

- Prior experience has proven, specifically with NIH, the original budget may be increased or decreased upon agency review of the proposed deliverables resulting in a request for new budget documents before it is awarded.
- Budget may be task-based creating an additional level of complexity.
- Expectations of quick turnaround on all requests made by the sponsor.

How can OSR and the department partner at the pre-award stage to meet these challenges?

At the pre-award stage, provide your SPS all details immediately upon notice from agency or intent to reply to funding announcement

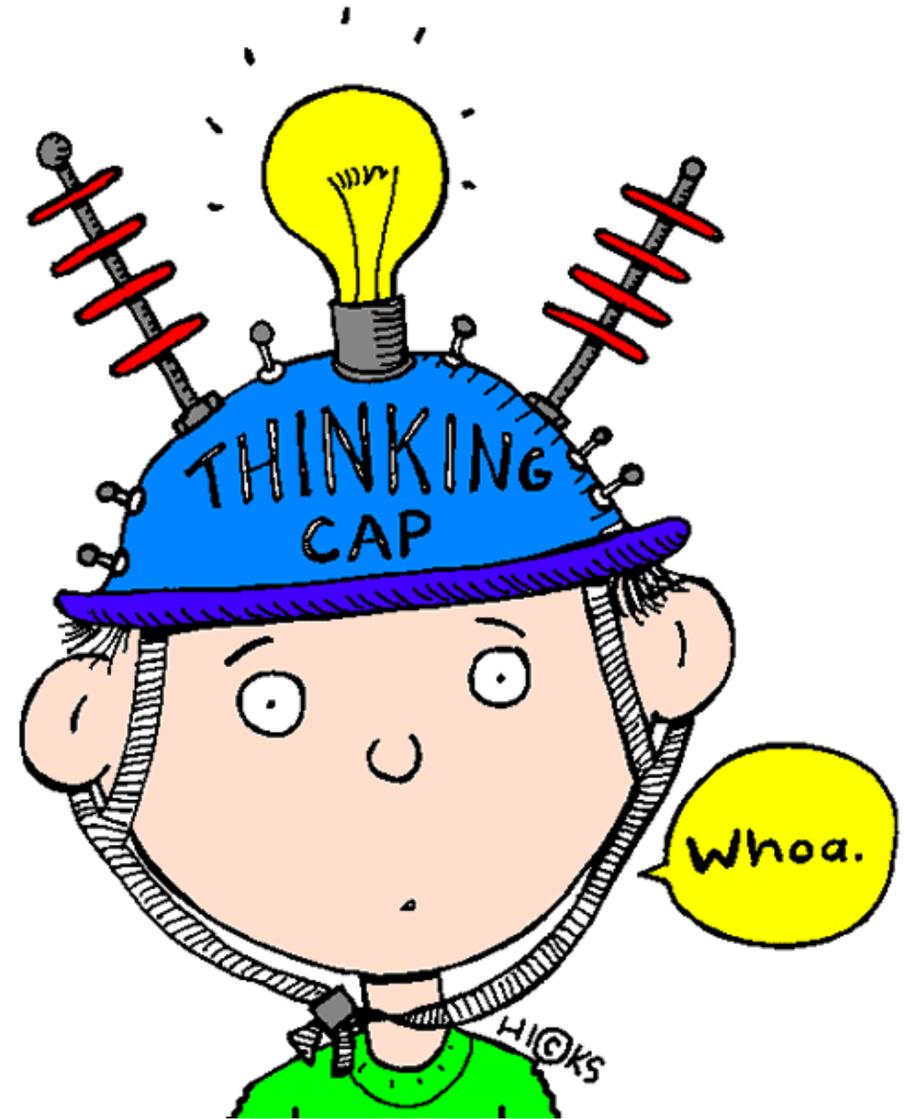
Provide all necessary documents **five days** before submission for review as there are often onerous requirements that need additional review

Be careful of classifying an industry partner as a vendor rather than a subcontractor, and review these situations before proposal development

Be prepared to potentially change course quickly based on agency needs

Most important – keep "lines of communication" open between department and OSR

What
happens
when
awarded?



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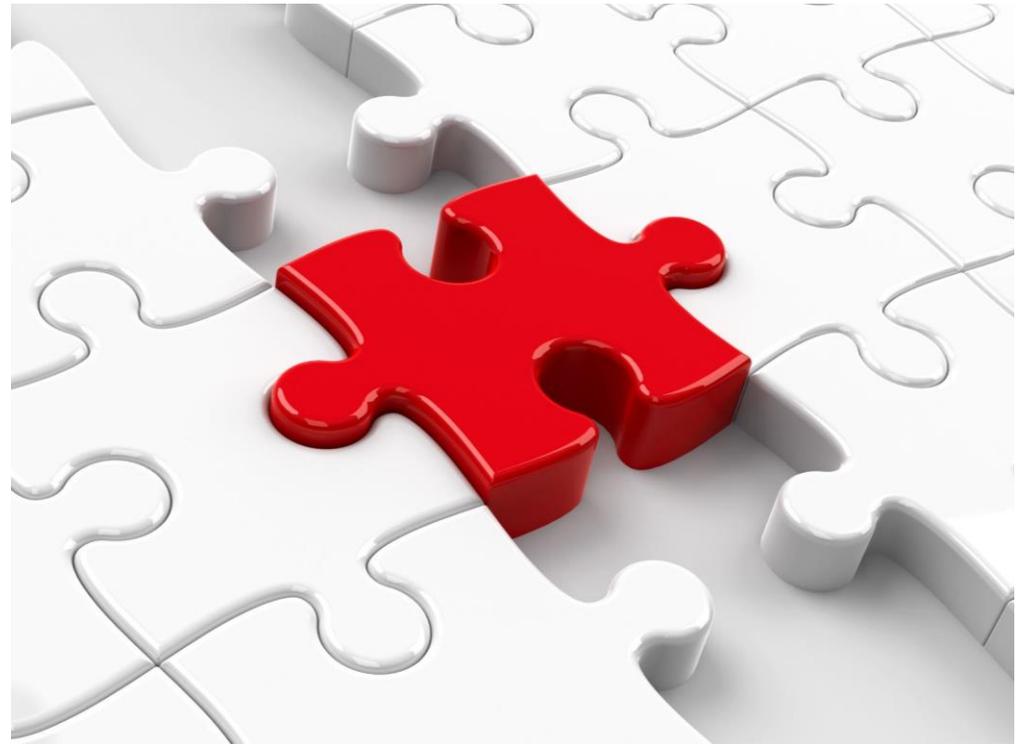
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Post-award Challenges for OSR RA and Departments

- OTA's provide many "opportunities" and some of the most experienced are:
 - Subawards
 - Frequent changes to project direction
 - Industry partner relationships
 - Agency turnaround times
 - Negotiation



Post-award Challenges for OSR RA and Departments - Subawards

- Sponsor expects quick turnaround of all subawards to be drafted, negotiated and executed.
- Potential “Opportunities”:
 - Working with small community-based partners that lack the financial resources to work without being advanced funds;
 - Industry partners that will be performing a large portion of the scope of work and will prefer being classified as a vendor rather than a subcontractor
 - Lack of understanding of the subaward process from the federal partner and subrecipient

Overcoming Post-award Challenges

- Be aware of the potential sponsor expectations and of a quick turnaround for all subawards to be drafted, negotiated and executed.
- Be in constant communication with small community-based partners from the notice of award to understand their needs to be able to participate
- Recognize that industry partners look like vendors at times, and if proposed as a vendor, this will cause additional negotiation as well as reworking UNC's F&A
- Lack of understanding of the subaward process from the federal partner and subrecipient
- If the sponsor is using a CRO to manage the funding and subcontract to each partner, we need to keep in mind that the sponsor can change the CRO from year to year

How does OSR and the department partner to best meet these challenges?



Important takeaways

OTA's are becoming more prevalent as a federal award mechanism;

Budgets will often be revised based upon needs of the agency before final award is made;

Funds may be pass-through via a consortium;

Negotiations may take longer than normal due to certain terms and conditions, or expectations of consortium;

Small community-based partners may have limited financial resources to do the work; and

COMMUNICATION!!!! "Communication works for those who work at it." – John Powell



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Questions?



Can you tell us why OSR enforces the vendor vs. sub rules when standard T&C don't apply?

While the standard terms and conditions may not apply to an OTA, we wouldn't consider the vendor versus subcontractor rules as standard terms and conditions. These rules are clearly defined throughout the federal sector and there are federal standards in which UNC must remain consistent across all awards.



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