

**Report to Congress
On the
Use of Other Transaction
Authority for Prototype Projects
In FY 2020**



Office of the Under Secretary of Defense
for Acquisition and Sustainment

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DEPARTMENT OF DEFENSE USE OF OTHER TRANSACTION AUTHORITY FOR PROTOTYPE PROJECTS

Introduction

This report fulfills the Department of Defense (DoD) FY 2020 reporting requirement on the use of the Other Transaction (OT) Authority, pursuant to section 873 of the John S. McCain National Defense Authorization Act (NDAA) for FY 2019 (Public Law 115-232), as amended by section 819 of the NDAA for FY 2020 (Public Law 116-92). In addition, page 153 of the Joint Explanatory Statement (JES) accompanying the Department of Defense and Labor, Health and Human Services, and Education Appropriations Act for 2019 (Public Law 115-245) requests that the Department report to the House and Senate Appropriations Committees on OTs on a quarterly basis beginning in FY 2019.

The Office of the Under Secretary of Defense for Acquisition and Sustainment (OUSD (A&S)), Defense Pricing and Contracting (DPC) is responsible for preparing the report and promulgation of policy and guidance on OTs for prototype projects, specifically under title 10 United States Code (U.S.C.) § 2371b. This FY 2020 report to Congress combines the authorization and appropriation requirements into a single annual report due to the significant resources, time, complexity, and coordination necessary to prepare the response. Collecting, consolidating, and analyzing the data required a manual data call to the DoD components with OT authority because the existing Federal Procurement Data System–Next Generation (FPDS-NG) module for OT reporting does not capture all of the data elements and information required for the report.

The Principal Director, DPC obtained inputs from the military departments and defense agencies on activities that used the title 10 U.S.C. § 2371b authority. Appendix A of this report lists each active OT award reported in FPDS-NG for FY 2020, with the following data elements: the contracting agency, major command, contracting office, award/effective date and completion date (period of performance), product service code, awardee/vendor, award value, dollars obligated, agreements officer, appropriation, budget line item, consortium, total expenditures for the reporting period, purpose/program goal/description, status of project, brief description of successes/challenges for case examples. The OTs include follow-on production, which are identified in the report, and include the estimated cost, period of performance, deliverables, delivery dates, and source of funding.

Background

Congress provided the Department additional authority and flexibility in the use of OTs for prototypes to spur innovation and attract non-traditional and small businesses with leading edge technologies to enable more rapid acquisition of innovative technologies. Therefore, the Department is pursuing innovative business practices to increase the use of OT authorities to provide the agility and speed necessary to outpace our adversaries' capabilities. The title 10 U.S.C. § 2371b authority offers the Department broad flexibility in terms of the award process. Virtually all terms and conditions of an OT are negotiable between the two parties, including data rights, payment terms, and dispute processes. OTs for prototype project authority was

expanded to all DoD components with acquisition authority in the USD(A&S) policy memorandum “Authority for Use of Other Transactions for Prototype Projects Under 10, United States Code, Section 2371b,” dated November 20, 2018. The Department also released an updated “Other Transactions Guide” at the same time to help educate the acquisition community on their appropriate use. The Department is developing a subsequent update to the “Other Transactions Guide” scheduled for release in FY 2021. As a result of Congress’s provisions and the Department’s efforts, the acquisition community is increasingly using OTs to acquire innovative products and services in support of rapidly evolving Warfighter needs.

Analysis

The Department has experienced significant growth in the use of OTs for prototype projects over the past four fiscal years as measured by the total number of OT actions and dollars obligated set forth in the table below for FY 2016 through FY 2020.

| Department of Defense | | |
|-----------------------|---------------|-------------------|
| Fiscal Year | Total Actions | Total Dollars |
| 2016 | 308 | \$ 1,392,828,813 |
| 2017 | 501 | \$ 2,200,262,428 |
| 2018 | 843 | \$ 3,982,545,323 |
| 2019 | 1,704 | \$ 7,378,804,576 |
| 2020 | 1,434 | \$ 16,023,234,473 |

The table shows the increase in number of OTs and amount obligated for these years, with the number of actions increasing from 308 in FY 2016 to 1,434 in FY 2019 and total dollars obligated increasing from \$1.39 billion to \$16.02 billion. It should be noted that 52 percent of OT Obligations in FY 2020 was for efforts related to combatting the COVID-19 virus.

In FY 2020, the Department saw a decrease in total number of OT actions compared with an increase in total dollars obligated. Though dissimilar to the FY 2016 through FY 2019 trend activity, the divergence results from the issuance of very few high dollar OTs associated with COVID-19 related efforts. Obligations unrelated to COVID-19 efforts amount to \$7.7 billion, which is in line with FY 2019 obligations.

FY 2020 Obligations by Contracting Agency

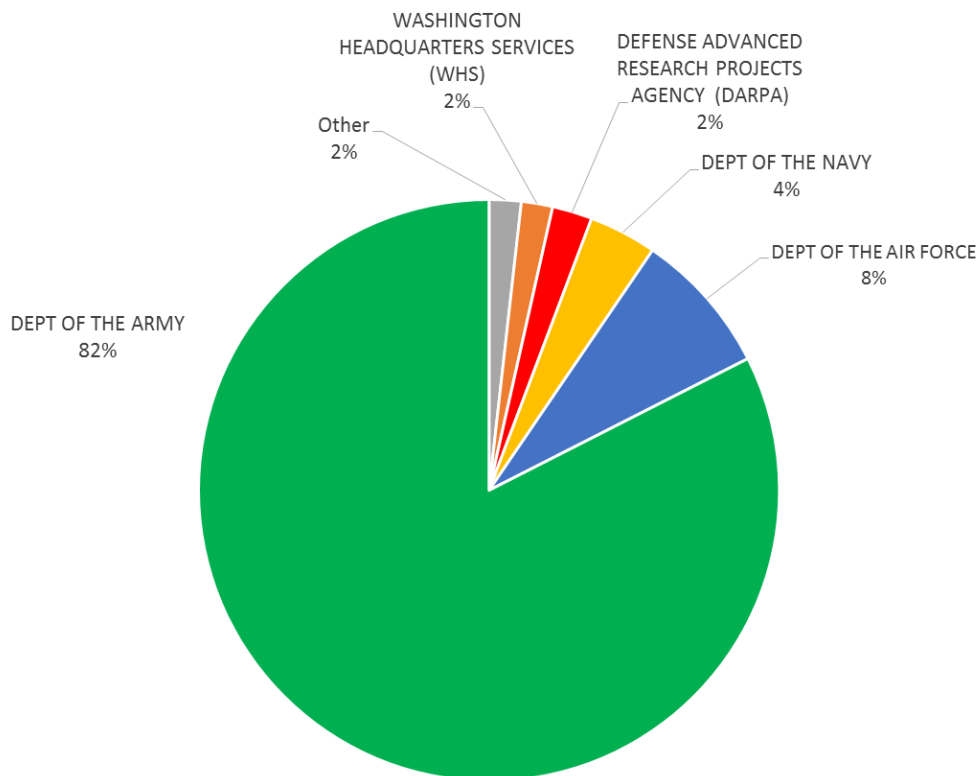


Figure 1 –FY 2020 OT Obligations by Contracting Agency

Figure 1 presents the FY 2020 obligations by DoD Contracting Agencies with OT for prototype project authority. Consistent with prior years, the Army spending was the largest at 82 percent of obligations followed by the Air Force at eight percent, Navy at four percent, Defense Advanced Research Projects Agency at two percent, Washington Headquarters Service at two percent, and nine additional commands and agencies at less than one percent each. The Army obligations are more than the other components because they awarded OTs on behalf of others; and in some cases through Army awarded consortia OTs that components can leverage to meet their own requirements. It should be noted that the Army’s portion of OTs grew from 68 percent in FY 2019 to 82 percent in FY 2020 primarily due to their role in awarding OTs associated with efforts to combat the COVID-19 virus.

FY 2020 Obligations by Category Management Group

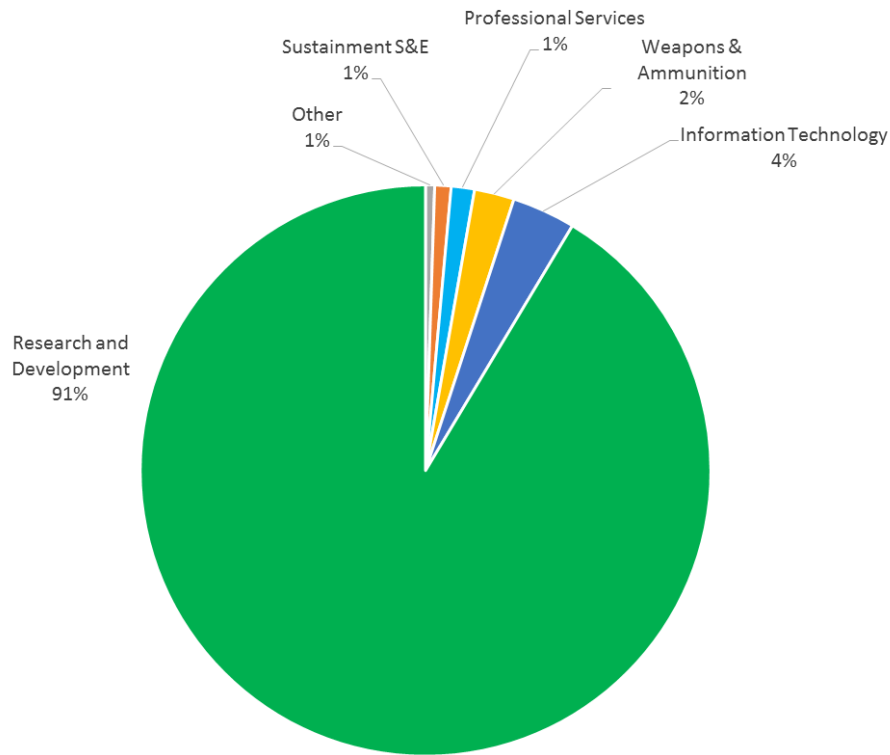


Figure 2 – FY 2020 Obligations by Category Management Group

Figure 2 shows the distribution of FY 2020 OT obligations by Category Management Group based on product service code descriptions. The authority under title 10 U.S.C. § 2371b is designated for carrying out OT prototype projects focused on research, development, test, and evaluation activities directly relevant to enhancing the mission effectiveness of the military. As a result, the majority (91 percent) of FY 2020 obligations are under the Research and Development category, further separated into phases for Systems Development (81 percent), Technology Base (16 percent), and Operational Systems Development (three percent). It should be noted that a surge in proportional percentage associated with Research and Development, particularly Systems Development, includes obligations associated with the development of medical, pharmaceutical and diagnostic technologies associated with efforts to combat the COVID-19 virus.

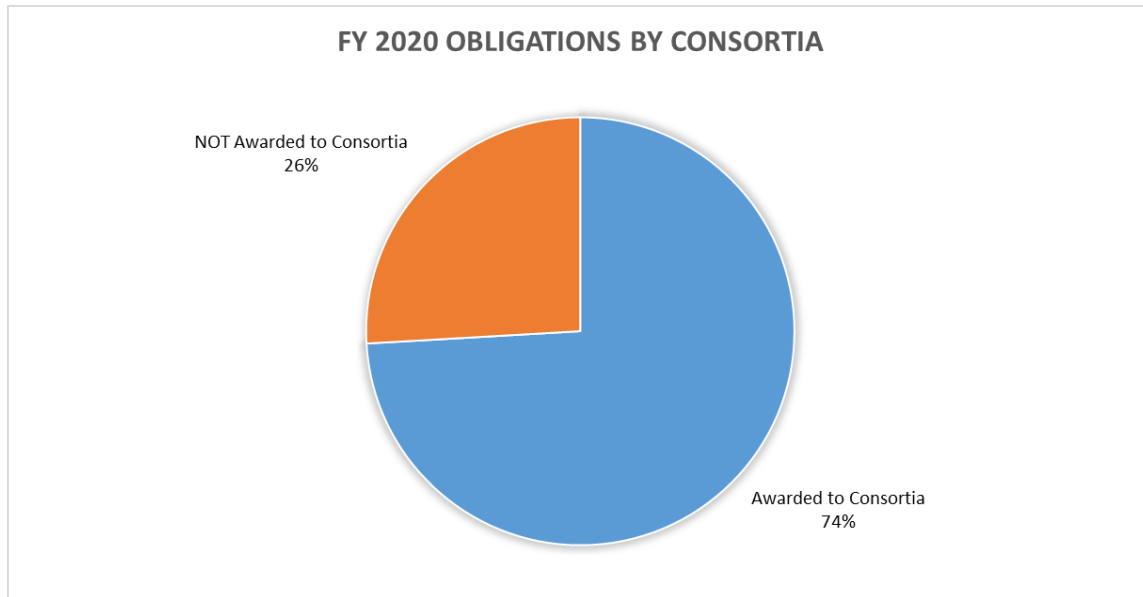


Figure 3 – FY 2019 and First Quarter of FY 2020 OTs with Consortia Breakout

Figure 3 provides a breakout of the FY 2020 FPDS-NG reported OT prototype project obligations associated with consortia (74 percent) and other than consortia (26 percent). Each consortia is made up of contractors, nonprofit organizations, and academic institutions in a specific technology area established to offer the Department a pool of stakeholders to help develop new technologies or processes that further innovation. OTs for prototype projects permit numerous types of arrangements, including awards to a consortium for performance by its members, a single company, prime-subcontractor, joint venture, or partnership. Each arrangement has benefits and challenges depending on the nature of the requirement. In each case, the government acquisition team is expected to possess the knowledge, business acumen, and judgment necessary to determine the appropriate arrangement for the requirement.

The Department considers the consortium model beneficial to help stimulate innovation and attract non-traditional contractors. However, there are challenges of using the consortium model, including FPDS-NG reporting, the presence of competition for awards to be made by consortium managers, accountability of performance with the authorized agent, and intellectual property rights, which are being evaluated in the upcoming OT Guide Revision.

FY 2020 OBLIGATIONS BY TRADITIONAL AND NON-TRADITIONAL CONTRACTORS

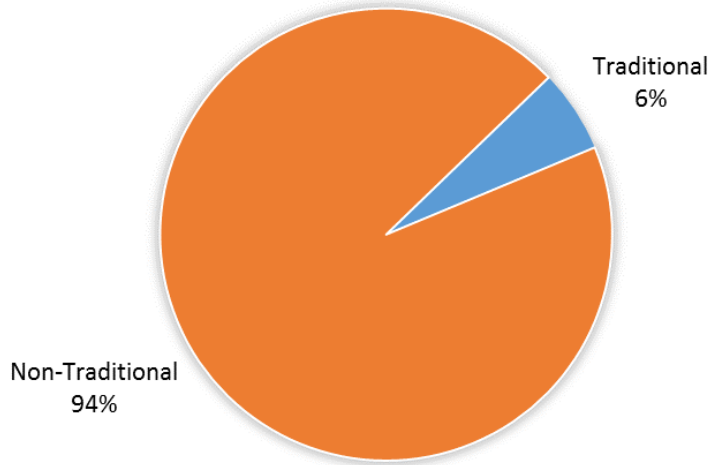


Figure 4 –FY 2020 OTs by Traditional and Non-Traditional Contractors

Figure 4 above shows the breakout of OT prototype project obligations in FY 2020 by the number of Traditional and Non-Traditional Defense Contractors (NDCs). An NDC is defined as significant participation by a non-traditional defense contractor.¹ In FY 2020, 94 percent of obligations went to NDCs and the other 6 percent went to traditional contractors. Congress authorized OTs for prototype projects to bolster innovation in military use, and the OT authority facilitates acquisitions with NDCs by removing some of DoD’s traditional contracting rules. The definition of an NDC (paraphrased from 10 U.S.C. 2302(9)) is a company that has not done business with DoD within the last year, or does not meet the full coverage requirements for cost accounting standards.

¹ See Other Transactions Guide glossary for definition of significant.

FY 2020 OT PROJECTS WITH FOLLOW-ON PRODUCTION

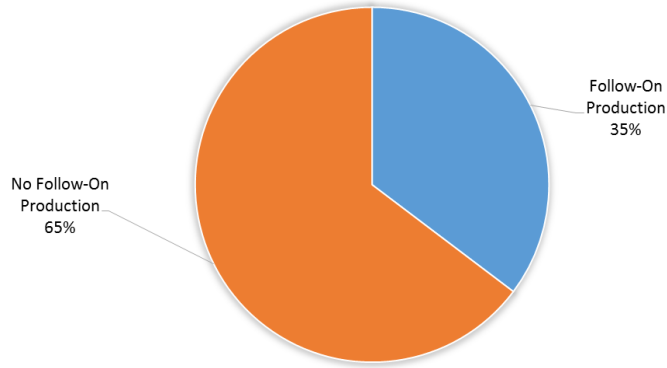


Figure 5 - FY 2020 OTs with Follow-on Production

Figure 5 above shows the breakout of OT prototype projects with potential follow-on production included in the prototype award. Follow-on production may only be included when the underlying prototype was competitively awarded, and the prototype project was successfully completed. In FY 2020, 35 percent of OT prototype projects included or currently involved follow-on production capability while the other 65 percent did not include the production capability.

FY 2020 OT OBLIGATIONS RELATED TO COVID-19

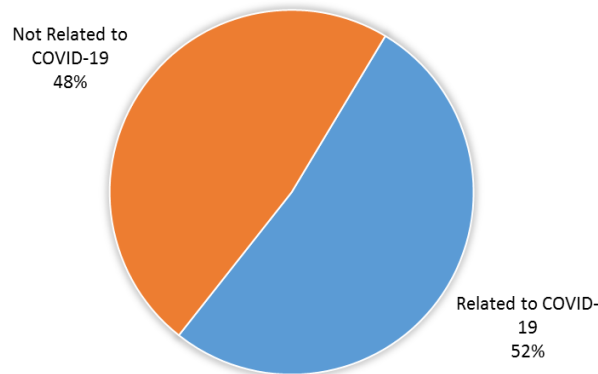


Figure 6 - FY 2020 OTs related to COVID-19

Figure 6 above shows the breakout of FY 2020 OT prototype project obligations that support efforts to combat the COVID-19 virus. In FY 2020, 52 percent of OT obligations related to efforts made to combat the COVID-19 virus while the other 48 percent did not relate to COVID-19. The most significant activity associated with COVID-19 related obligations was awarded to a non-traditional consortia management firm in the amount of \$7.1 billion. Managed by the Army Materiel Command, this transaction provided for the research and development into medical, pharmaceutical and diagnostic technologies to enhance mission effectiveness of military personnel.

Conclusion

As indicated by section 873, the Department is in the process of using and leveraging the data collected and included in this report to update policy and guidance related to the use of OTs. Although (as noted in the introduction) FPDS-NG does not capture all the data elements required for this report, the Department continues to establish standard reporting formats to improve future collection of OT data. The planned reporting format will improve transparency and accountability on the use of OTs for prototype projects, including those issued under consortia arrangements.

The Department plans to submit the FY 2021 report to congress on the use of OTs by the end of February 2022.