Acquisition Innovation Essentials
Procurement Strategies for Technology Insertion at the Speed of Relevance

Benjamin McMartin, Esq., CPCM, Fellow
January 2020
A Shift in How Governments Procure Technology

**Standard Approach**
1. Requirements Development (Solution)
2. Market Research
3. Synopsis
4. RFP
5. Source Selection
6. Award

**Acquisition Innovation Approach**
1. Define the Problem
2. Market Research
3. Publication
4. Solicitation
5. Negotiation
6. Award

Federal Acquisition Regulations & Associated Supplements

| 15 USC 3724 | 10 USC 2374a | 10 USC 2371 |
| 15 USC 3715 | 10 USC 2371b | 10 USC 2373 |

Section 804 Rapid Prototyping & Rapid Fielding
### Defining the Problem and Performing Market Research

#### Standard Approach

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**Section 804 Rapid Prototyping & Rapid Fielding**

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15 USC 3724 | 10 USC 2374a
15 USC 3715 | 10 USC 2371b
10 USC 2373 | 10 USC 2373
Defining the Problem and Performing Market Research

Traditional Acquisition

- Market Survey
- Request For Information
- Sources Sought
- Industry Day

Passive Market Research

Acquisition Innovation

- Market Survey
- Request For Information
- Sources Sought
- Industry Day
- Conducting crowdsourcing events
- Use of Partnership Intermediaries
- Compiling a capabilities database
- Conducting reverse industry days
- Conducting Prize Challenges
- Hackathons
- Publishing surveys

Active Market Research
Defining the Problem and Performing Market Research

Crowdsourcing and Citizen Science

15 USC 3724

citizenscience.gov
Crowdsourcing and Citizen Science

- **Crowdsourcing** - method to obtain needed services, ideas, or content by soliciting voluntary contributions from a group of individuals or organizations, especially from an online community.
- **Citizen Science** – A form of open collaboration in which individuals or organizations participate voluntarily in the scientific process in various ways, including—
  
  (A) enabling the formulation of research questions;  
  (B) creating and refining project design;  
  (C) conducting scientific experiments;  
  (D) collecting and analyzing data;  
  (E) interpreting the results of data;  
  (F) developing technologies and applications;  
  (G) making discoveries; and  
  (H) solving problems.

This searchable database provides a government-wide listing of citizen science and crowdsourcing projects designed to improve cross-agency collaboration, reveal opportunities for new high-impact projects, and make it easier for volunteers to find out about projects they can join.

15 USC 3724
Defining the Problem and Performing Market Research

Use of Partner Intermediaries

15 USC 3715
Partnership Intermediary Agreements (PIA)

• **Partnership Intermediary Agreement (PIA):** An agreement between the government and an intermediary organization to perform intermediary services.

• **Partnership Intermediary:** An agency of a State or local government, or a nonprofit entity that assists, counsels, advises, evaluates, or otherwise cooperates with small business firms or institutions of higher education, to provide services for a Federal laboratory.

• **PIA Services**
  • *Innovation Hubs* – Leverage tools & resources in an “open door” environment under one roof
  • *Prize Challenges* – Invite the public's help to solve perplexing mission-centric problems
  • *STEM* – Host challenges & events
  • *Shark Tanks* – Compete & pitch ideas
  • *Technology Sprints* – 3 to 14 days event attacking a problem, speeding up decision making process
  • *Technology Accelerator* – “Boot camp” consisting of workshops & mentorship
  • *Technology Incubator* – Business, government & academic resources providing counsel

15 USC 3715
Partnership Intermediary Examples (DoD)

**TechLink**
- Sources and pre-screens technology from DoD labs for marketing by PIA Network
- Serves as focal point to labs for licensing
- Helps other PIAs and their clients to develop high-quality license applications and commercialization plans

**MILTECH™**
- Assist DOD Labs, with manufacturing expertise,
- Assist DOD Labs, DOD R&D efforts, to include DOD procurement organizations, with technology scouting
- Act as a Lab’s, PM’s, PEO’s, or a command’s “Honest Broker” with industry and vendors

**NAVSEA**
- Technology transition
- Technology transfer Innovation & Collaboration
- Workforce development (current & future, STEM)
- Concept prototyping

**CRANE**
- Technology Transfer/Commercialization and Collaboration:
  - STEM: Collaborative camps, curriculum writing for state educational requirements
  - Educational Partnership Agreements
Defining the Problem and Performing Market Research

Agency Resources for Problem Refinement

**H4D** Hacking 4 Defense

- University-sponsored class that allows students to research Department of Defense problem sets
- Government problem sponsors partner with the nation’s top students, solving national security issues with lean business practices.
- Sponsors guide their students while they rapidly create and deploy solutions.

**National Security Innovation Network**

- Frame problems and provide innovation tools (Education).
- Collaborate with non-traditional partners and venture community to identify solutions (Collaboration).
- Adapt solutions through public funding or dual-use venture (Acceleration).

**#FUTAIRS** Innovation Road Show

- Coaching, mentoring, training, and direct acquisition support to Department of Defense activities.
- “Transaction Intensive Management Events (TIME)” to assist acquisition teams in defining problem sets and match acquisition approaches.
- Training to Govt and Industry on alternative authorities for Federal Procurement

**Defense Innovation Unit**

- Embedded engagement with Silicon Valley
- Translating DOD problem sets into actionable problems, easily translated to commercial solution providers
- Pioneered use of Commercial Solutions Opening as Solicitation method

**S^2M^2RTS** Advanced Nuclear//Unmanned Systems

**Acquisition**

**Innovation Road Show**
Publication and Solicitation

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Section 804 Rapid Prototyping & Rapid Fielding

15 USC 3724
15 USC 3715

10 USC 2374a | 10 USC 2371
10 USC 2371b | 10 USC 2373
Publication & Solicitation

- Traditional Acquisition
  - Synopsis
  - Request For Quote/Proposal (RFQ/RFP)

- Acquisition Innovation
  - Publication & Solicitation
    - Synopsis
    - RFQ/RFP
    - Broad Agency Announcement
    - Commercial Solutions Opening
    - Request For Solutions
    - Requests For White Paper
    - Prize Contest
    - Hackathon
    - Shark-Tank
    - Pitch Event
Competitive solicitation process pioneered by Defense Innovation Unit (DIU) and Army Contracting Command New Jersey (ACC-NJ). The CSO is a three-phase process including (1) evaluation of company solution briefs; (2) pitch to the government; and (3) invitation to submit proposals to be negotiated with the government.

Competitive solicitation process in which the Government identifies broad topic areas for investment, along with current Government capability gaps to a consortium of companies. In response industry submits white paper solutions for further development, negotiation, collaboration and award.

Agency announcement with Peer or Scientific Review for the acquisition of basic and applied research and that part of development not related to the development of a specific system or hardware procurement. Issued annually to solicit meaningful proposals with varying technical/scientific approaches.

Competitions among individuals, private industry, academia, and Government stakeholders, requiring them to submit solutions in response to a defined problem set. Challengers are incentivized through the use of monetary or non-monetary rewards.

"Agencies that intend to award only OTs from a solicitation are free to create their own process to solicit and assess potential solutions"
**Prize Challenges**

**Prize challenges are:** Competitions among individuals, private industry, academia, and Government stakeholders, requiring them to submit solutions in response to a defined problem set

- Challengers are incentivized through the use of monetary or non-monetary rewards

**Purpose:** To increase the attention on the problem set and help to diversify the vendor pool for proposed solutions beyond the traditional Government industry partners

**Previous Challenges:**

- Longitude and ship navigation
- Lindbergh's transatlantic flight
- Designs for the U.S. Capitol and White House
- Cost-effective clean water systems
- Gunshot detectors
- Robots that can set up life support on Mars

Launched in 2010, Challenge.gov allows federal agencies to crowdsource ideas from the public and solve problems with thinkers and doers from any neighborhood and field of expertise. Since 2010, the U.S. government has run nearly 1,000 challenges and offered well over $250 million in cash prizes for the best ideas.

10 USC 2374a
Recent Prize Challenges

**DEFENSE INNOVATION UNIT**

**DIU’S XVIEW2 - ASSESSING BUILDING DAMAGE**

Computer Vision for Building Damage Assessment - Automate damage assessment to accelerate recovery from natural disasters

**Open Until:** 12/31/2019 11:59 PM ET

**View Details**

**Veterans’ Employment Challenge**

**#MissionMatch**
**#WorkforceGrandChallenge**

Department of Labor

**VETERANS’ EMPLOYMENT CHALLENGE**

Build a better application to match the skills of those who have served in the military with employer needs.

**Open Until:** 01/24/2020 05:00 PM ET

**View Details**

**Department of Defense - Defense Advanced Research Projects Agency**

**DARPA SUBTERRANEAN (SUBT) CHALLENGE**

Create breakthrough technologies and capabilities for underground operations.

**Open Until:** 09/30/2021 12:00 AM ET

**View External Challenge Details**
Stacking Authorities – Prize Challenge to Production

10 USC 2374a
(Prizes for Advanced Technology Achievements)

10 USC 2373
(Procurement for Experimental Purposes)

10 USC 2371b
(Prototype OTA)

Leveraging solutions resulting from a prize challenge / Hackathon, the Government may buy supplies, including parts and accessories, and designs thereof, for experimental or test purposes by contract or otherwise.

Leveraging the Prize Challenge / Hackathon as a solicitation method, the Government may, in addition to awarding prize money, enter into a prototype other transaction agreement for further development and delivery of a prototype.*

"[A]gencies are encouraged to leverage other events, activities, or even authorities to provide for the collection of potential solutions."

"Where the prototype is successfully completed, the Government may pursue sole-source, follow-on Production through OTA or contract.

WHY STACK? - Stacking authorities maximizes the value of activities such as prize challenges or Hackathons through challenge.gov or similar agency-organized activities. Leveraging such activities as both a market research tool and a solicitation for future efforts allows the Government to identify novel technologies, reward creative solutions, test potential applications, prototype hardware and processes, and produce the materiel solutions of tomorrow.
**Negotiation and Award**

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15 USC 3715

10 USC 2374a | 10 USC 2371
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Negotiation & Award

10 USC 2371
Basic, Applied, and Advanced Research

10 USC 2373
Procurement for Experimental Purposes

10 USC 2371b
Prototype Authority
Research & Acquisition Authorities
(Other than Contract, Grant, or Cooperative Agreement)

10 USC 2371

- For basic, applied, and advanced research projects
- 50/50% Cost Share (to the Extent Practicable
- Used where contract, grant, or cooperative agreement are not “feasible or appropriate”
- Custom IP negotiated at arms length
- No FAR/DFARS or DODGARS

10 USC 2371

- Technology Investment Agreement (TIA)
- For basic, applied, and advanced research projects
- 50/50% Cost Share (to the Extent Practicable
- Used where contract, grant, or cooperative agreement are not “feasible or appropriate”
- Standard IP provisions
- No FAR/DFARS but DODGARS does apply

10 USC 2373

- Purchase for Experimentation
- For purchase of ordnance, signal, chemical activity, transportation, energy, medical, space-flight, and aeronautical supplies, for experimental or test purposes
- Purchase quantities are limited to the amount necessary for experimentation.

10 USC 2371b

- Prototyping OT
- For prototyping directly relevant to DOD mission
- 1/3 Cost Share or significant NDC participation
- Custom IP negotiated at arms length
- No FAR/DFARS or DODGARS
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 Department of Defense, or to **improvement** of platforms, systems, components, or materials in use by the armed forces.

A proof of concept, model, reverse engineering to address obsolescence, pilot, novel application of commercial technologies for defense purposes, agile development activity, creation, design, development, demonstration of technical or operational utility, or combinations of the foregoing. A process, including a business process, may be the subject of a prototype project.

(A) There is at least one **nontraditional defense contractor** or nonprofit research institution participating to a **significant extent** in the prototype project.

(C) 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 federal government.
A **Non-traditional Defense Contractor** is “[a]n entity that is not currently performing and **has not performed**, for at least the one-year period preceding the solicitation of sources by the Department of Defense for the procurement or transaction, any contract or subcontract for the Department of Defense that is **subject to full coverage under the cost accounting standards** prescribed pursuant to section 1502 of title 41 and the regulations implementing such section. (10 USC 2302(9))

**Most Entities** will find they qualify as Non-traditional Defense Contractors, because:

- Small businesses are exempt from CAS requirements
- Exclusively perform contracts under commercial procedures (FAR Part 12)
- Exclusively perform Fixed-Price Contracts with Adequate Price Competition
- Perform less than $50M in CAS covered efforts during the previous accounting period


The Three P’s - PARTICIPATION

**Significant Extent**: Examples of what might be considered a significant contribution include, but are not limited to, supplying new key technology or products, accomplishing a significant amount of the effort, or in some other way causing a material reduction in the cost or schedule or increase in the performance.

**Significant Extent**: the Agreements Officer (AO) is expected to consider input from relevant technical advisors in assessing the totality of the circumstances for each proposed prototype project.

The AO should consider, by way of illustration and not limitation, whether the NDC/nonprofit research institution will supply a new key technology, product or process; supply a novel application or approach to an existing technology, product or process; provide a material increase in the performance, efficiency, quality or versatility of a key technology, product or process; accomplish a significant amount of the prototype project; cause a material reduction in the cost or schedule of the prototype project; or, provide for a material increase in performance of the prototype project.
Drafting & Negotiating

It is the Government team's responsibility to negotiate appropriate terms for the particular project and provide for any expected future program needs. It is important to note that terms and conditions can evolve via modification as a project proceeds through multiple phases of differing degrees of technological maturity. In negotiating terms, the Government team should consider the following:

- Price Reasonableness
- Intellectual Property
- Title to Property
- Payment Terms
- Modifications
- Disputes
- Termination

- Remedies
- Follow-On Activities
- Recovery of Funds
- Comptroller General Access
- Accounting Systems
# OTA Consortia

7 Management Firms | 34 Agreements | $40 Billion in Ceiling

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<th>Consortium Management Firm (CMF)</th>
<th>19 Consortia</th>
<th>7 Agreements</th>
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Consortia

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**Technology Areas**

- Modeling and Simulation
- Collaboration
- Mobility
- Survivability
- Architecture, Security, and Modularity
- Testing and Evaluation
- Automotive Cyber Security
- Vehicle Light Weighting
- Connected Vehicles
- Propulsion Technologies

**Available to all DOD Customers**

For Interested Industry and Academic Partners, Contact NAMC at: www.defensemobility.org
For Interested Government Agencies, Contact GVSC at: usarmy.detroit.rdecom.mbx.tardec-vra-po@mail.mil

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<td>![DEVCOM Logo]</td>
<td>![National Advanced Mobility Consortium Logo]</td>
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**Technology Areas**

- Autonomy
- Platforms
- Powertrain
- Fuels and Lubes
- External Systems
- Petroleum and Water Systems
- Vehicle Safety Technologies
- Autonomous Vehicles and Intelligent Systems
- Advanced Energy Storage Technologies
- Active Suspension Technologies

**Available to all Army Customers**

For Interested Industry and Academic Partners, Contact DATC at: http://datc.saeitc.org/
For Interested Government Agencies, Contact GVSC at: usarmy.detroit.rdecom.mbx.tardec-vra-po@mail.mil
Prototyping, Production, and Fielding

- Section 804 (FY2016 NDAA) – Middle Tier of Acquisition for Rapid Prototyping and Rapid Fielding
- 10 USC 2371b(f) – Prototype to Production
Prototyping, Production, and Fielding

Section 804

Rapid Prototyping

• Use innovative technology to rapidly develop fieldable prototypes to demonstrate new capabilities and meet emerging military needs.
• Must field a prototype that can be demonstrated in an operational environment; and
• Provide for residual operational capability within 5 years of an approved requirement

Rapid Fielding

• Use proven technologies to field production quantities of new or upgraded systems with minimal development required. The objectives are:
  • Begin production within 6 months
  • Complete fielding within 5 years of an approved requirement

Program Management Tools

Prototyping OTA

• For prototyping directly relevant to DOD mission
• 1/3 Cost Share or significant NDC participation
• Custom IP negotiated at arms length
• No FAR/DFARS or DODGARS

Not subject to JCIDS and DODD 5000.01

Production OTA

• follow-on production contract or transaction, authorized where: (A) competitive procedures were used for the selection of parties for participation in the transaction; and (B) the participants in the transaction successfully completed the prototype project provided for in the transaction.

Procurement Tools

10 USC2371b

Not subject to JCIDS and DODD 5000.01
“At a minimum, potential follow-on activities, to include follow-on production shall be identified in the solicitation and any resulting OT Agreements. The level of fidelity for production follow-on efforts is naturally limited by the nature of prototyping efforts. Therefore, the level of detail required as to follow-on activities needs to be sufficient for prospective technology providers within the technology sector to make an informed decision whether to bid on the prototyping effort, with the understanding that size, scope and value of potential follow-on activities may vary.”


Information For Government

The Government should provide sufficient information regarding follow-on activities to allow industry to make an informed bid/no-bid decision at the prototyping stage.

The Government should avoid requiring industry to provide fixed price production options prior to prototype development.

Information For Industry

Industry Should make bid/no-bid decision based upon prototype effort requirements and the Government’s notice of potential follow-on activities.

Industry should understand that identification of potential follow-on production is provided as notice only, and is subject to change.
Funding OTAs

General Rules for OTA Funding

1. Fiscal Law applies to the expenditure of Federal Funds, regardless of procurement instrument;

2. The determination of appropriateness of available funding and fund type (Green Determination) is independent of the determination of appropriateness of the award instrument (Blue Determination); and

3. The agency decision to use an OT does not expand, nor restrict available appropriations.

“There is a common misperception that OTs are limited to RDTE funded efforts. This is simply not true. All fund types are available, provided that the acquisition team complies with both Fiscal Law and the requirements of the OT statute. The Green/Blue Determination is a valuable method to assure compliance.”

In Practice

**Step 1: “Green Determination”**
(Funds Identification and Certification)

1.A – “The Problem”
Obsolescence of Spare Part for Major Weapon System

Reverse Engineering and Prototyping Effort to create replacement part and drawings

1.C – Green Determination
Current Year O&M is the Proper Fund Type for this Requirement

(Comptroller / Budget Analyst / Fiscal Law Attorney)

**Step 2: “Blue Determination”**
(OT Statutory Compliance)

2.A – “Purpose”
Is the requirement to improve or enhance a DOD component?

2.B – “Prototype”
“Reverse Engineering for Obsolescence” is defined as a “prototype for purposes of 10 USC 2371b

2.C – “Participation”
1/3 cost-share or Significant NDC Participation?

(OT Statutory Compliance)

**Step 3: “Award”**
(Funding applied to OT)

2.D – “Blue Determination”
Effort meets the requirements of a prototype OTA under 10 USC 2371b

(OTA Project / Operations & Maintenance Funding Example)

3.A – “Award”
Award the OTA project with the identified funding

(Agreements Officer)
PRACTICAL CONSIDERATIONS COMPETITION

10 U.S.C. 2304 and 41 U.S.C. 3301 require, with certain limited exceptions, that contracting officers shall promote and provide for full and open competition in soliciting offers and awarding Government contracts.

- 6 Exemptions (See 6.001 – Applicability)
- 7 Exceptions (See 6.2 – Full and Open After Exclusion of Sources)
- 7 Exceptions (See 6.3 – Other Than Full and Open Competition)

To the maximum extent practicable, competitive procedures shall be used when entering into agreements to carry out the prototype projects.

Agencies are free to create their own process to solicit and assess potential solutions provided it is a fair and transparent process, provides for competitive procedures to be used to the maximum extent practicable, and documents the rationale for making the Government investment decision.

The evaluation of any set of solutions must be fair and transparent, and should be conducted in accordance with industry norms for the technology being solicited.
- OT Prototype Projects should take as long as they should take.

- Best Practice recommendation: Don’t set an “everything done in 30 days” metric.

- Set a project schedule based on the complexity and value of the effort; eliminate all steps that don’t add value; and sell out to support your team.

“America is all about speed. Hot, nasty, bad ass speed.”
Eleanor Roosevelt, 1936
Government Rejects Non-Responsive Proposals

Initial Evaluation

Clarifications

Competitive Range Determination

Full Evaluation

Discussions (Negotiation)

Final Proposal Revisions

Final Evaluation

Vendor Develops and Submits Full Technical and Cost Proposal

Vendor Develops 3-5 Page White paper & ROM

Government Evaluates WPs and Down selects for Panel Pitch

Vendor prepares and Presents 45 minute Pitch

Government evaluates and makes selections

Selection Notification

90 Days from Submission

Negotiation of Terms, Scope, and Price

Award

Selection Notification

360 Days from Submission

The Objective of the OTA Evaluation Process is to balance the effort required by industry with the effort required by the Government, and to give early notice to vendors who don't present the best solutions
Similar Offerings From Public Spend Forum

• **Other Transaction Authority – Advanced** – Become a subject matter expert on all things OTA. From Planning to Market Research, Publication, Solicitation, Negotiation, Award, and Administration. Available for Industry and Government Agencies.

• **Acquisition Innovation Workshops** – Multi-day acquisition strategy planning and execution session that puts Agency Acquisition teams to the test. Develop your acquisition strategy, and outline your procurement documents for approval during an aggressive time frame. The Acquisition Innovation workshop is meant to dramatically cut down on the planning and procurement development process for Federal Agencies. Bring your shot-callers, because we are making decisions and moving forward!

• **Consulting** - Looking for direct support for your Agency or company? PSF GovAIRS can provide expert consulting and advisory services, in partnership with leading firms, to diagnose complex supply chain and market issues, develop robust program acquisition strategies, or drive organizational changes.
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ESQ | TEDx Speaker | CPCM | Fellow

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