

Doing Business with DARPA



The Defense Advanced Research Projects Agency (DARPA) is the central research and development agency within the Department of Defense. DARPA's mission is to maintain the technological superiority of the U.S. military and prevent technological surprise from harming our national security by sponsoring revolutionary, high-payoff research that bridges the gap between fundamental discoveries and their military use.

DARPA succeeds by finding people with innovative technical ideas.

DARPA's Goals in Business Agreements

- Develop innovative business relationships and practices
- Match military requirements with technological opportunities
- Protect information and ideas
- Create agreements for investments in DARPA-hard projects with high risk, revolutionary technologies and systems
- Promote innovation by using a flexible strategy in crafting agreements—"one type does not fit all"

How DARPA Does Business

Four areas should be considered when interested in doing business with DARPA:

1. Getting your ideas considered by a DARPA program manager;
2. Notices of business opportunities by DARPA;
3. DARPA methods for soliciting business;
4. DARPA's toolkit of agreement instruments.

Getting Your Ideas Considered by a DARPA Program Manager

The key to working with DARPA is through the program manager.¹

Do not constrain your great ideas by how you think DARPA may react. Just because DARPA does not appear active in a particular area does not mean the Agency will not be interested in a great technological idea in a new arena. In fact, these new ideas sometimes lead to whole new areas of research.

DARPA **program managers can help** in any number of ways:

- **Give feedback** if an idea is suited to DARPA.
- **Help shape the idea** so it is a better fit to an ongoing or new DARPA program.
- In some cases, significantly **change** what he or she is planning to do **based on a great idea**.

A big part of a **program manager's job** is to **find great ideas on which to build a new program**. Information exchanges with DARPA program managers are the foundation for "Doing Business with DARPA." Some of the best opportunities to pitch ideas for DARPA programs are with DARPA program managers who are starting new programs.

¹ To maintain an entrepreneurial atmosphere and the flow of new ideas, DARPA's strategy is to hire program managers for a period of only 4 to 6 years; the best way to foster new ideas is to bring in new people with fresh outlooks. DARPA has special statutory authority to hire eminent scientists and engineers expeditiously.

In considering your idea, a DARPA program manager may ask:

- What are you trying to do?
- How is this done now, and what are the limitations?
- How will this approach remove those limitations and improve performance?
- By how much?
- If an idea is successful, what difference will it make?

Through questions like these, the program manager will better understand your idea.

DARPA program managers often **fund studies, or “seedlings,” as initial research.** DARPA funds these initial seedlings to determine if a more formal program is appropriate. This brochure provides guidance on how to transform those ideas into agreements with DARPA.

Notices of Business Opportunities by DARPA

For information on DARPA programs and areas of research by individual technical offices, visit www.darpa.mil, “Offices.”

To find solicitations, visit www.darpa.mil, “Solicitations” or the official federal acquisition opportunities web site www.fedbizopps.gov.

Find DoD SBIR Program Solicitations at www.acq.osd.mil/sadbu/sbir and DARPA SBIR programs at www.darpa.mil/sbir/.

DARPA Methods of Soliciting Business

Requests for Proposal (RFPs)

Federal Acquisition Regulation (FAR), Part 15, discusses the negotiation of procurement contracts, which can be done through competitive or noncompetitive negotiation.

RFPs list the Government requirements, solicitation provisions, potential discussions, and the evaluation method for the review of proposals. An RFP serves as the basis for the selection for an award.

If the proposed award is for a cost-type contract, the awardee must have an approved cost accounting system to audit costs.

Broad Agency Announcements (BAAs)

FAR Section 35.016 discusses the acquisition of basic and applied research and the part of development not related to a specific system or hardware procurement through the use of BAA procedures. DARPA generally uses a Program Information Pamphlet (PIP) for BAA information.

BAAs describe:

- The agency’s research interest, for either an individual program requirement or broadly defined areas of interest covering full range of agency’s requirements
- The criteria for selecting proposals, their relative importance, and the method of the evaluation
- The specific time available for submission of proposals
- Specific instructions for the preparation and submission of proposals

Types of BAAs

DARPA “Office-wide” BAAs—Each DARPA technical office has an office-wide BAA that is usually open for 1 year or more. These BAAs usually cover a broad range of topics.

DARPA Program Specific BAAs

Preproposal Information

DARPA Industry Days—“Industry days” are held after the publication of a program notice and prior to the submission of proposals. They provide the opportunity to hear program managers and meet potential industry partners for teaming. DARPA industry days are not limited to the promotion of BAAs; they are used for all methods of soliciting business.

BAA White Papers—White papers are the initial ideas submitted to a DARPA program manager and are not considered proposals. These papers permit the presenter to make a detailed written explanation of the idea/concept. Check the BAA for page limitation and informational requirements.

Submitting a white paper can allow:

- Feedback from the DARPA program manager
- A response from a program manager expressing interest or disinterest in the concept and, if appropriate, a request for a proposal. Presenters can still submit a proposal despite a negative response on the associated white paper.

BAA Evaluation and Award

BAA proposals are reviewed based on technical merit and are not compared to other proposals. There is no common statement of work. DARPA identifies general areas of interest, but does not tell companies how to propose work or how to solve

problems. The primary **basis for the selection** of proposals is the **technical importance** toward Agency programs and **funding availability**.

Cost realism and **reasonableness** is also considered, to the appropriate extent, in the evaluation of a proposal. The award may be in the form of a contract, assistance agreement, or an “Other Transaction.” The proposal can list the type of preferred agreement; however, DARPA will review and negotiate the appropriate type of award.

Program Solicitations

Program solicitations are:

- Used for soliciting proposals for Other Transactions (OTs) for prototypes
- Formatted similar to BAAs
- FAR-based procurement contracts, with OT awards being a possibility

Small Business Innovation Research (SBIR) Program

The purpose of the SBIR Program is to:

- Stimulate technological innovation
- Increase private sector commercialization of Federal R&D
- Increase small business participation in Federally funded R&D
- Generate participation by minority and disadvantaged firms in technological innovation

To participate in the SBIR program, a firm must:

- Be a U.S. for-profit small business with 500 or fewer employees
- Perform work in the United States
- Have a minimum of 2/3 of the effort performed by the proposing firm in Phase I
- Have a minimum of 1/2 of the effort in Phase II

- Have the principal investigator spend more than 1/2 of the time employed by the proposing firm

It is possible to be awarded a Phase I SBIR agreement with no follow-on Phase II award.

Three phases are used to identify SBIR proposals:

- Phase I is limited to 6-month efforts that should not exceed \$99k.
- Phase II is limited to 2-year efforts that do not exceed \$750k.
- Phase III should commercialize technology with non-SBIR funds.

Small Business Technology Transfer (STTR) Program

The STTR Program is for cooperative R&D projects involving a small business and a research institution (i.e., university, federally funded R&D center, or nonprofit research institution).

DARPA's Toolkit of Agreement Instruments

DARPA has the authority for several different funding instruments. The selection of the appropriate agreement instrument and the terms of the instrument are determined by the purpose of the research and negotiation of the parties. The agreement instruments range from different forms of **Other Transactions** (OTs), which allow great flexibility in acquiring research to a traditional **procurement contract** for the acquisition of supplies and services, or a **grant** or **cooperative agreement** (considered “assistance agreements” because they are not for the acquisition of supplies or services).

Other Transactions for Research

Authority for OTs is found in 10 U.S.C. 2371, “Research projects: transactions other than contracts and grants”

OTs for research and development **allow DARPA to invest in research to stimulate scientific fields of interest to DoD**. OTs carry out basic, applied, and advanced research projects. They are authorized when a contract, grant, or cooperative agreement is not feasible or appropriate.

There is an equal cost sharing of other transactions if practicable. OTs for the purpose of research leverage the capabilities of firms that may not normally participate in the traditional government contracting process. The normal Federal contracting rules do not apply to OTs.

Technology Investment Agreement (TIA)

TIA is also under the authority of 10 U.S.C. 2371. TIA guidelines are found in Part 37, Department of Defense Grant and Agreement Regulation (DoDGAR). The purpose of this type of agreement is to **stimulate research** and **foster civil-military integration**. It reduces barriers for commercial firms participating in defense, while promoting new relationships among R&D performers in both the defense and commercial sectors. TIAs are frequently awarded to consortia and not individual performers.

The general rule for the TIA cost share by recipients, is equal cost sharing if practicable.

Section 845, Other Transactions for Prototypes

The authority is created in Section 845 of Public Law 103-160, as amended (10 U.S.C.A. 2371 note). Section 845 OTs are **prototype projects that are directly relevant to weapon systems**. Section 845 OTs are not procurement contracts. The FAR contract rules do not apply to Section 845 OTs. There is no requirement to use a Section 845 OT

when a contract, grant, or cooperative agreement is not feasible or appropriate. A key advantage of Section 845 OTs is the flexibility of intellectual property provisions.

Consult the DoD Other Transaction Guide for Prototype Projects for a list of statutes not applicable to OTs, which can be found at www.acq.osd.mil (“AT&L Documents,” “DoD Contracting Regulations,” “DPAP Directories,” “Policy,” “Specific Policy Areas,” and “Other Transactions”).

Requirements for Use of Section 845 OT Authority

1. There is at least one *nontraditional defense contractor* participating to a significant extent in the prototype project; OR
2. No nontraditional defense contractor is participating to a significant extent, but at least *one* of the following:
 - At least one of third of the total cost by parties other than the Federal government.
 - It is DARPA’s determination that exceptional circumstances justify the use of a transaction that provides for innovative business arrangements or structures that would not be feasible or appropriate under a contract.

What is a Nontraditional Defense Contractor Under Section 845 OT Authority?

A nontraditional defense contractor means an entity that has not, for a period of at least 1 year prior to the date that a transaction, (other than a contract, grant, or cooperative agreement) entered into or performed on:

1. Any contract that is subject to full coverage under the cost accounting standards (CAS), 41 U.S.C. 422
2. Any other contract in excess of \$500,000 to carry out prototype projects or to perform basic, applied, or advanced research projects for a Federal agency, that is subject to the Federal Acquisition Regulation

What is a “Prototype” Project Under Section 845 OT Authority?

A prototype project could include prototypes of weapon systems, subsystems, components, or technology. A physical or virtual model used to evaluate the technical or manufacturing feasibility or military utility of a particular technology or process, concept, end item, or system can also be considered a prototype project. The quantity developed should be limited to that needed to prove technical or manufacturing feasibility or evaluate military utility.

Procurement Contract

A procurement contract is the **traditional** form of **agreement between the government** and a contractor governed by the FAR 2.101. To find the FAR on the internet visit <http://www.arnet.gov/far/>.

An acquisition under the FAR is the “acquiring by contract with appropriated funds of supplies and services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated.”

Grants

A grant is **an assistance agreement**, not a procurement contract. It is a legal instrument which, consistent with 31 U.S.C. 6304, is used to enter into a relationship, with:

- The principal purpose being to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by law of the United States
- Substantial involvement not expected between the Department of Defense and the recipient when carrying out the activity contemplated by the grant

Cooperative Agreements

A cooperative agreement is also **an assistance agreement**, not a procurement contract.

A cooperative agreement is a legal instrument which, consistent with 31 U.S.C. 6305, is used to enter into the same kind of relationship as a grant.

However, there is a requirement that a substantial involvement is expected between the Department of Defense and the recipient, when carrying out the activity contemplated by the cooperative agreement.

The websites listed below are useful reference tools for more information on agreement instruments.

U.S. Code on the internet:

www.gpoaccess.gov/index.html

Department of Defense Grant and Agreement Regulation, DoD 3210.6-R:

alpha.lmi.org/dodgars/

DoD regulations on the internet:

www.dtic.mil/whs/directives

Protecting Ideas

The ground rules for protecting proprietary and government information in establishing and performing agreements are based on a balancing of the following interests:

- National security interests
- Congressional and Department of Defense directions on Intellectual Property (IP)
- Protecting ideas

Protection of Information in Submission of Proposals

U.S. Laws Requiring Protection of Proprietary Information:

- The Procurement Integrity Act, 41 U.S.C. 423 addresses contractor bid and proposal information and source selection information
- Freedom of Information Act (FOIA) 5 U.S.C. 552

- Trade Secrets Act, 18 U.S.C. 1905— prohibits unauthorized release of proprietary information by Government employees

Intellectual Property (IP)

IP includes technical data, software, patents, copyrights, trademarks, and trade secrets.

OSD IP Guide “Intellectual Property: Navigating Through Commercial Waters” at www.acq.osd.mil/dpap/Docs/intelprop.pdf is applicable to procurement contracts, but provides helpful background information on all types of agreements. IP statutes like the Bayh-Dole Act, 35 U.S.C. 202-204 do not apply to OTs, so there is great flexibility in negotiating IP issues.

In the traditional procurement contract, the contractor retains the title to IP and the government receives a non-exclusive, royalty free license for inventions conceived or first reduced to practice during the agreement under Bayh-Dole principles. For OTs, the parties are allowed even more flexibility to negotiate IP since Bayh-Dole does not apply. DARPA normally does not acquire any IP rights that will impede commercialization of technology.

Protection of Program Information

The National Security Decision Directive (NSDD) 189, September 21, 1985 states “to the maximum extent possible, the products of fundamental research remain unrestricted.” The government does not have a requirement for pre-publication approval if the program information is considered fundamental research.

What is Fundamental Research?

Contracted fundamental research includes grants and contracts that are:

- Funded by budget Category 6.1 (Research), whether performed by universities or industry
- Funded by budget Category 6.2 (Exploratory Development) and performed on-campus at a university

The research shall not be considered fundamental in those rare and exceptional circumstances where the 6.2-funded effort presents a high likelihood of disclosing performance characteristics of military systems or manufacturing technologies that are unique and critical to defense, and where agreement on restrictions have been recorded in the contract or grant.

See DoD Instruction 5230.27, "Presentation of DOD-Related Scientific and Technical Papers" (October 6, 1987)

Consult the DFARS clause 252.204-7000, "Disclosure of Information" (December 1991) for pre-publication approval by DARPA of non-fundamental research.

Foreign Access to Technology

International Traffic in Arms Regulations (ITAR) 22 C.F.R. 120-130 controls the release of defense articles specified on the U.S. munitions list; also controls defense services.

ITAR—information in the public domain not subject to requirement for licenses for the export of technical data and classified defense articles (22 C.F.R. 125.1).

Public domain means information is published and is generally accessible or available to the public, including through fundamental research (22 C.F.R. 120.11).



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