



Commercial Solutions Opening

Innovation in Contracting

Office of the Under Secretary of Defense for
Acquisition, Technology and Logistics
(Defense Procurement and Acquisition Policy)

May 17, 2017

Introduction

Public perception is that business arrangements with the federal government cannot keep pace with innovative technologies coming out of Silicon Valley.

Reasons most cited are: a culture that is risk averse and adversarial; unyielding statutory and regulatory demands; and a workforce under siege.

- Today's Agenda
 - Part 1: Overview
 - Part 2: Other Transactions Agreements (OTA) for Prototype Projects
 - Part 3: Commercial Solutions Opening (CSO)



Part 1

OVERVIEW



Contracting Tools and Alternatives

- Military Purpose Non-Developmental Items
- Risk-based Pilot to Apply Reduced TINA Thresholds
- Streamlined Awards for Contracts Awarded to Small Business or Nontraditional Defense Contractors
- Commercial Item Acquisitions
- “Other Transactions” for Experimental Purposes
- **“Other Transactions” for Prototype Projects**
- **Commercial Solutions Opening**

Notice: DFARS Case 2017-D029

- **Title:** Defense Pilot Program to Acquire Innovative Commercial Items (aka CSO)
- **Synopsis:** Implements section 879 of the NDAA for FY 2017 (Pub. L. 114-328) to establish a pilot program to acquire innovative commercial items, technologies, and services
- **Last Update:** DARC received draft proposed DFARS rule from DAR staff and will discuss on May 24, 2017



CSO Timeline

- **September 2016**

- DIUx began the CSO pilot in June 2016 using non-FAR based contracts; ACC-NJ awarded 12 OTAs in 3 months with total value of \$36M

- **November 2016**

- CSO training incorporated into a DoD-wide OTA training event
- DIUx published lessons learned in a CSO How-to Guide available at www.diux.mil
- USD(AT&L) sent email announcing CSO as a new rapid contracting tool

- **December 2016**

- Section 879 and 880 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 authorized CSO pilots for FAR-based contracts

- **January 2017**

- DoD opened Defense FAR Supplement (DFARS) case D017-D029
- DoD published an updated version of the “Other Transactions Guide for Prototype Projects” that acknowledges the CSO technique



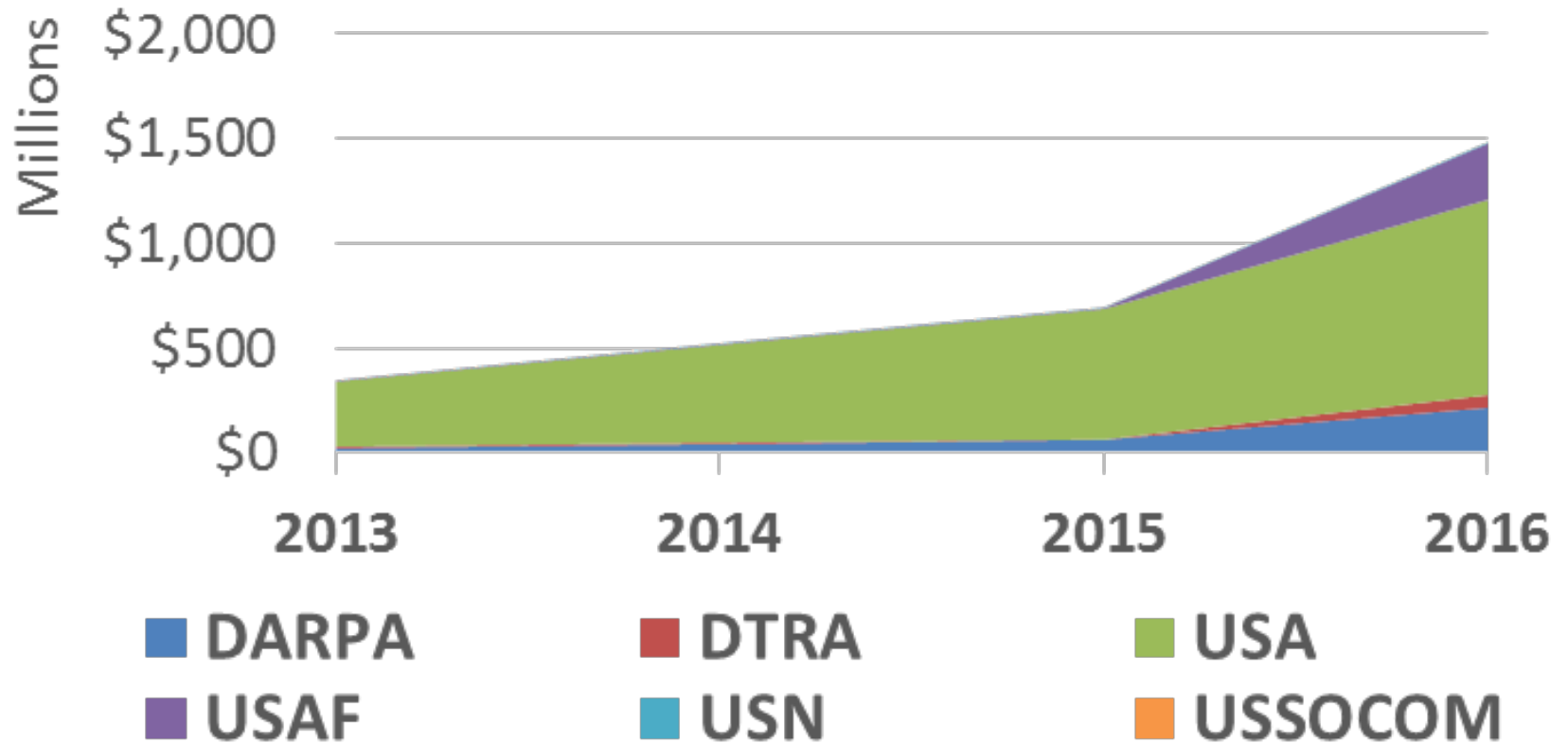
Part 2

“OTHER TRANSACTIONS” FOR PROTOTYPE PROJECTS

Perspective Across Time

- 1831 Appellate Court Case: United States vs Tingey
 - Contracting Officer Bonds: Protection from “liability for all moneys received for all public property committed to a purser’s care”
 - “It has been the constant practice of the government to take such bonds, without express legislative authority; and it has been the understanding of congress that such bonds were regular”
 - “It is expressly understood and agreed between the secretary of the navy (acting in behalf of the United States) and the within named obligors, that the said obligors are not to be held responsible for any loss ...”
- FAR 1.102(d) in 2017:
 - “In exercising initiative, Government members of the Acquisition Team may assume if a specific strategy, practice, policy or procedure is in the best interests of the Government and is not addressed in the FAR, nor prohibited by law (statute or case law), Executive order or other regulation, that the strategy, practice, policy or procedure is a permissible exercise of authority.”

OTA Trend Across DoD



OTA for Prototype Projects

- Authority to...
 - “...carry out prototype projects that are directly relevant to enhancing mission effectiveness of military personnel and the supporting platforms, systems, components, or materials proposed to be acquired or developed...OR to improvement of platforms, systems, components, or materials in use by the armed forces”
- Prototype Project Participants
 - At least one nontraditional defense contractor participating to a significant extent;
 - All significant participants in the transaction other than the Federal Government are small businesses or nontraditional defense contractors;
 - At least one third cost share for traditional defense contractor; or
 - Senior Procurement Executive Approval for exceptional circumstances

The Big Picture

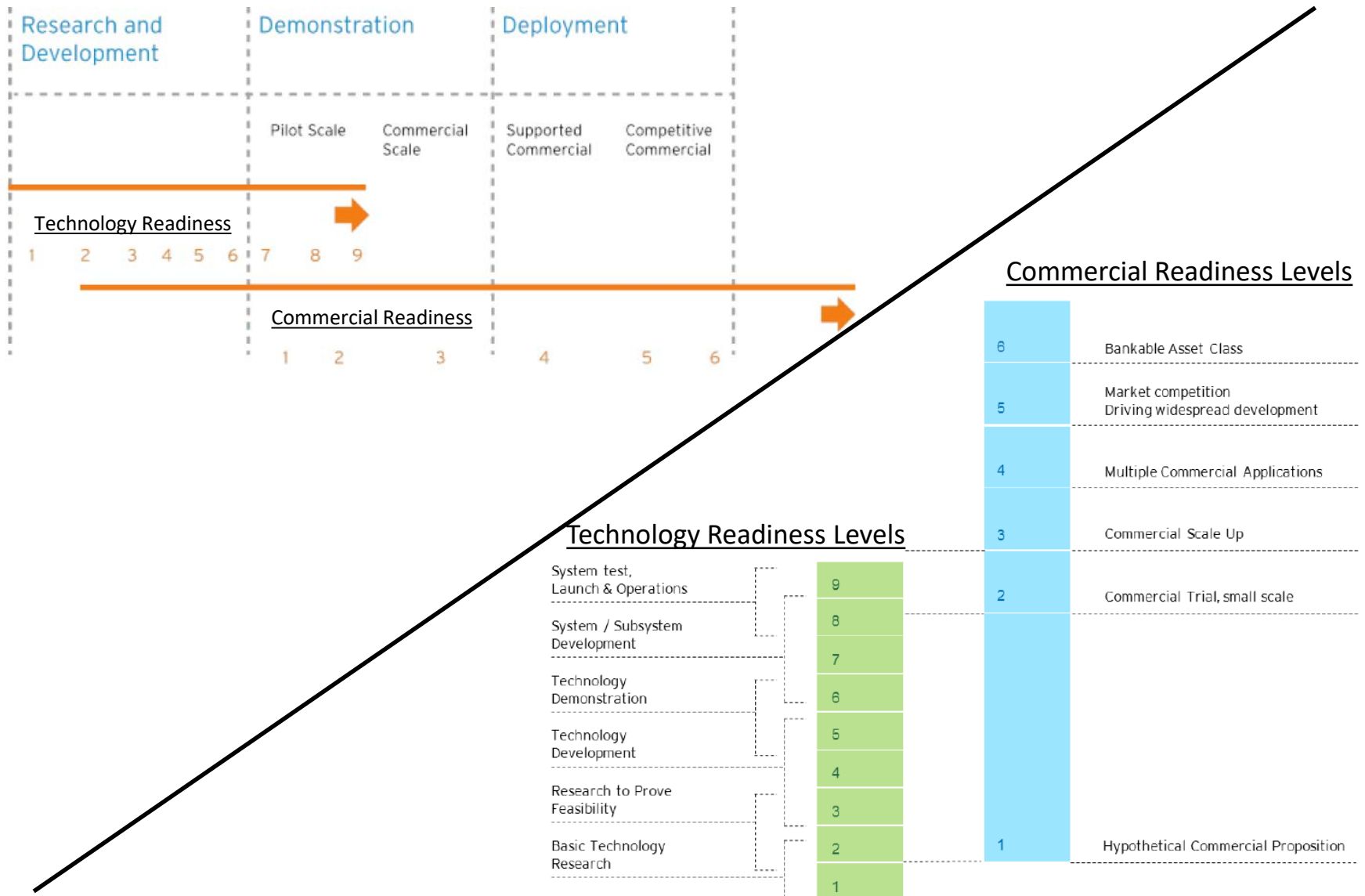
Pathway	Acquisition		Financial Assistance		
Instrument	Contracts	Other Transactions for Prototype Projects	Grants	Cooperative Agreements	Technology Investment Agreements
Authority	10 U.S.C. 2358	10 U.S.C. 2371b	10 U.S.C. 2358	10 U.S.C. 2358	10 U.S.C. 2358 10 U.S.C. 2371
Fiscal Year Obligations	98%	< 1%	< 1%	< 1%	< 1%
Purpose	To acquire	To acquire via prototyping	To support / stimulate	To support / stimulate with substantial Gov't involvement expected	
Outcome	Direct Gov't benefit or use		Carries out a public purpose authorized by U.S. law		



Part 3

COMMERCIAL SOLUTIONS OPENING

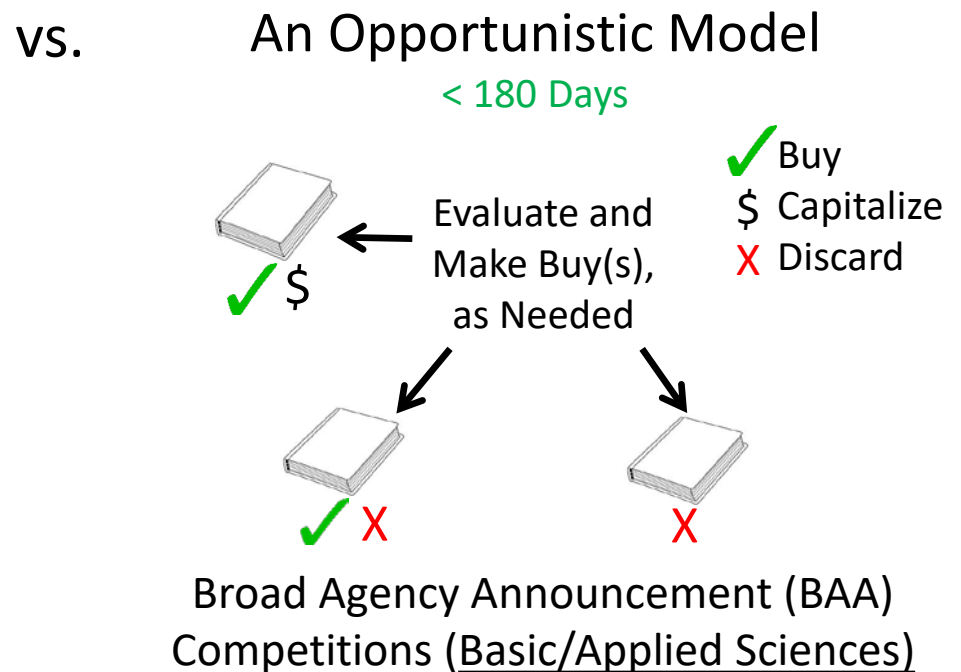
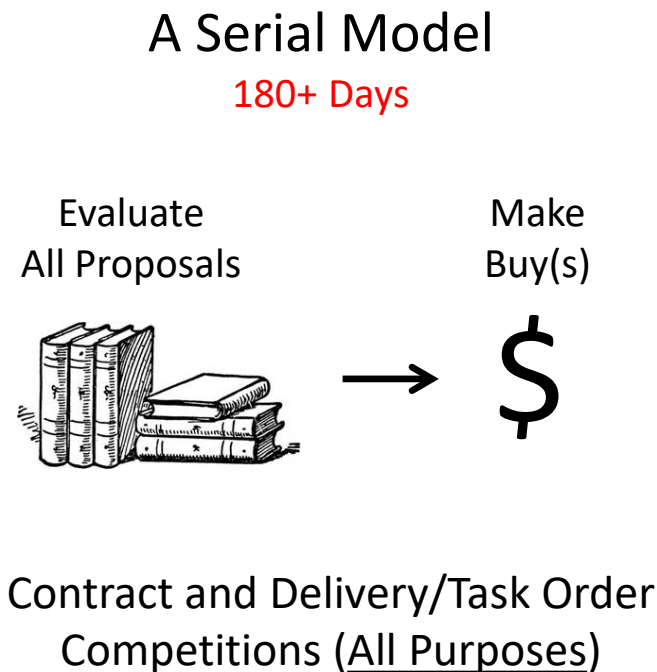
Consider: Technical vs Commercial Readiness Levels



“Apps” Problem

The rate of innovation exposes a weakness in how commercial technologies are currently acquired. Commercial items built on modularity principles are being competed under a strategy that does not similarly reflect modularity.

Consider two very different bid selection processes below:





Limitations of BAAs

- Broad Agency Announcements (BAAs) have features of the opportunistic model:
 - Award timelines that are *consistently less* than 180 days
 - Gives agencies the *flexibility* to hold proposals
- However, BAAs are limited to basic and applied research
 - Until the FY2017 NDAA, no similar authority existed to use BAAs to acquire late-stage or commercial items under the FAR
 - BAAs *cannot* address a specific system or hardware solution



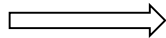
CSO Purpose and Limits

- To acquire innovative commercial items, tech, and services
 - Innovation is defined to mean:
 - “Any technology, process, or method, including research and development, that is new as of the date of submission of a proposal; or
 - Any application that is new as of the date of submission of a proposal of a technology, process, or method existing as of such date”
- Considerations
 - Best-value Continuum vs Merit-based Selection Strategy
 - Limited to \$100 million per transaction without written determination from USD(AT&L) or the relevant SAE
 - Limited to fixed-price, including fixed-incentive fee contracts
 - Items, technologies, and services acquired under the pilot, including R&D, shall be treated as commercial items

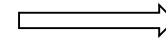
COMMERCIAL SOLUTIONS OPENING

Fast, Flexible, Collaborative

**Phase I -
Evaluation:**
*Technology
and Company*



**Phase II -
Pitch:** *Cost,
Schedule, Use
Case*



**Phase III -
Proposal:**
Project Design

Results from Pilot Under OTA Authority

- From June 2016 to February 2017, DIUx awarded 18 agreements for a total of \$42.3M, within an average of 96 days of first contact with a company
- This 96 days encompasses not only the contracting process, but also the collaborative project design between DIUx, the company, and the DoD customer

Shield AI



Sonitus



Saildrone



Resources

Specific

- DFARS Case 2017-D029 implements the CSO bid strategy
- DIUx's CSO "How-to" guide
 - <https://www.diux.mil/CSOguide>
- Coming: DHS pilot program and GSA ordering vehicle...

General

- DPAP Website "Innovation in Contracting"
 - http://www.acq.osd.mil/dpap/cpic/cp/innovation_in_contracting.html
- DoD OTA Presentations on OMB's Max Website (CAC-enabled)
 - <https://community.max.gov/x/gJAWRQ>

OPEN DISCUSSION