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Injecting New Ideas and New Approaches in Defense Systems: Are 'Other Transactions' an Answer?

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Injecting New Ideas and New Approaches in Defense Systems – Are “Other transactions” an Answer?

Richard L. Dunn

Statutory Authority for OT's

- Basic Statute is 10 U.S.C. 2371, enacted 1989; permanent legislation; applicable to basic, applied, and advanced research
- Prototype Authority is section 845, Public Law 103-160, enacted 1993; amended several times most recently in 2008; authority is available currently and until 2013
- Authority to engage in follow-on production after a prototype project available until 2010
- Related authority (10 U.S.C. 2373) allows for purchase of aeronautical, signals, chemical warfare and ordnance equipment in experimental quantities outside Armed Services Procurement Act
- “Other Transactions” and section 2373 are exempt from FAR and other statutes and regulations specific to the procurement system

Criteria for use

- 2371: “basic, applied and advanced research”; cost-sharing not mandatory; standard contract not “feasible or appropriate”
- Prototype (845): relevant to military systems; use in lieu of procurement contract; must have (a) significant involvement of a “non-traditional” participant or (b) cost sharing
- 2373: limited to experimental quantities and certain types of equipment
- Follow-on production: non-competitive after competitive prototype; considered a FAR Pt. 12 “commercial item”

Some Advantages of OT's

- Permits great flexibility in contractual relationships – non-adversarial/collaborative relations; consortia agreements
- Permits flexibility in intellectual property
- Permits accommodation of commercial business systems (accounting, property management and others)
- Facilitates a re-thinking of “business as usual” approaches
- Freedom from FAR; non-regulatory freedom of contract approach
- Promotes communication between government and industry and among the industry team
- Have the potential to greatly accelerate the development and fielding of new systems; tailored to situation; no protests
- OT contracting can *reflect* programmatic imperatives; Contrast, FAR contracting *drives* some programmatic issues

Disadvantages of OT's

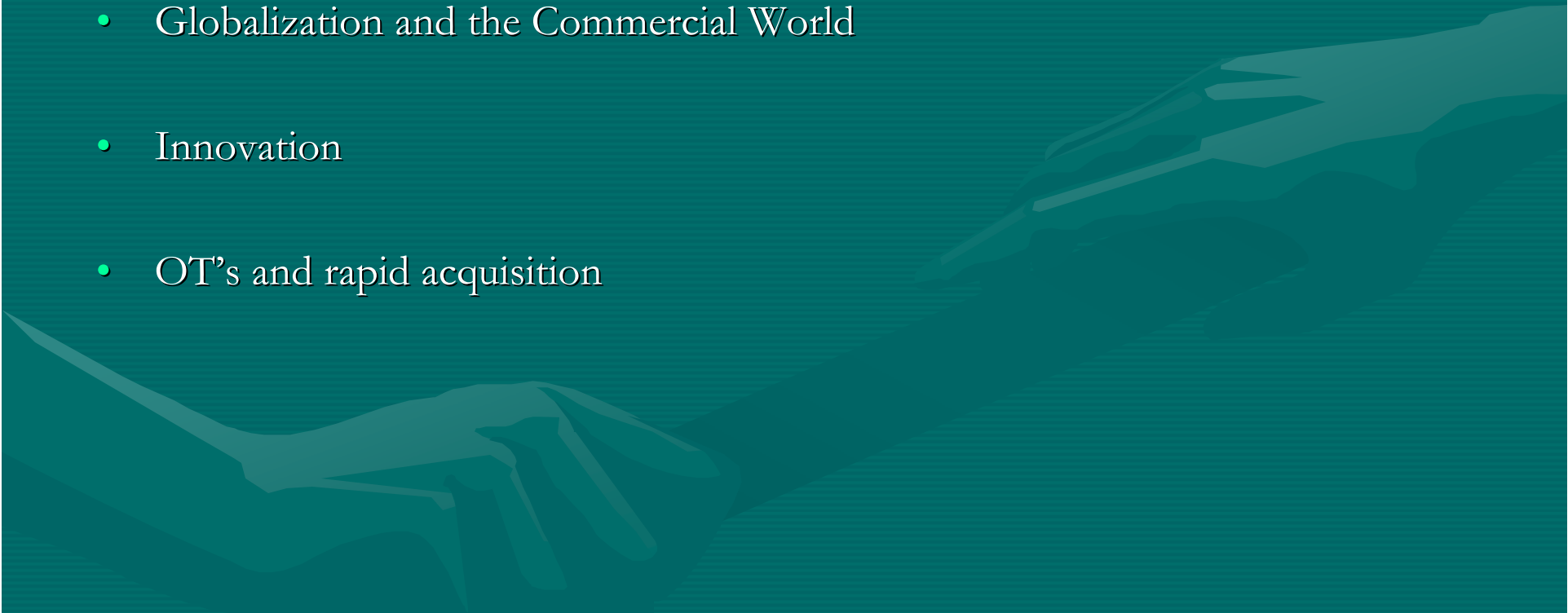
- OT's are poorly understood by many traditional procurement professionals – contracting officers, procurement policy officials, IG, DCAA, lawyers
- OT's are subject to unwarranted criticism (mainly for reason stated above)
- OT environment is challenging and rewarding for some, challenging and bewildering to others
- “Clean sheet” of paper approach to negotiations requires thoughtful preparation and a well thought-out program

Summary of OT Basics

- OT's are legal, based in statute, and currently available to DOD
- OT's have been in use for nearly two decades and account for \$billions in obligations and hundreds of projects
- OT's have pioneered many new techniques and innovative relationships
- Research studies of OT's (Rand, LMI, GAO, IDA, NPGS) are virtually unanimous in finding substantial benefits from using OT's
- OT's are especially useful when exploitation of commercial technologies or companies is important to a project
- OT's have been used in small and medium sized S&T projects, consortia arrangements as well as to develop major capabilities

OT's and the Current Environment

- Threat Environment
- Globalization and the Commercial World
- Innovation
- OT's and rapid acquisition

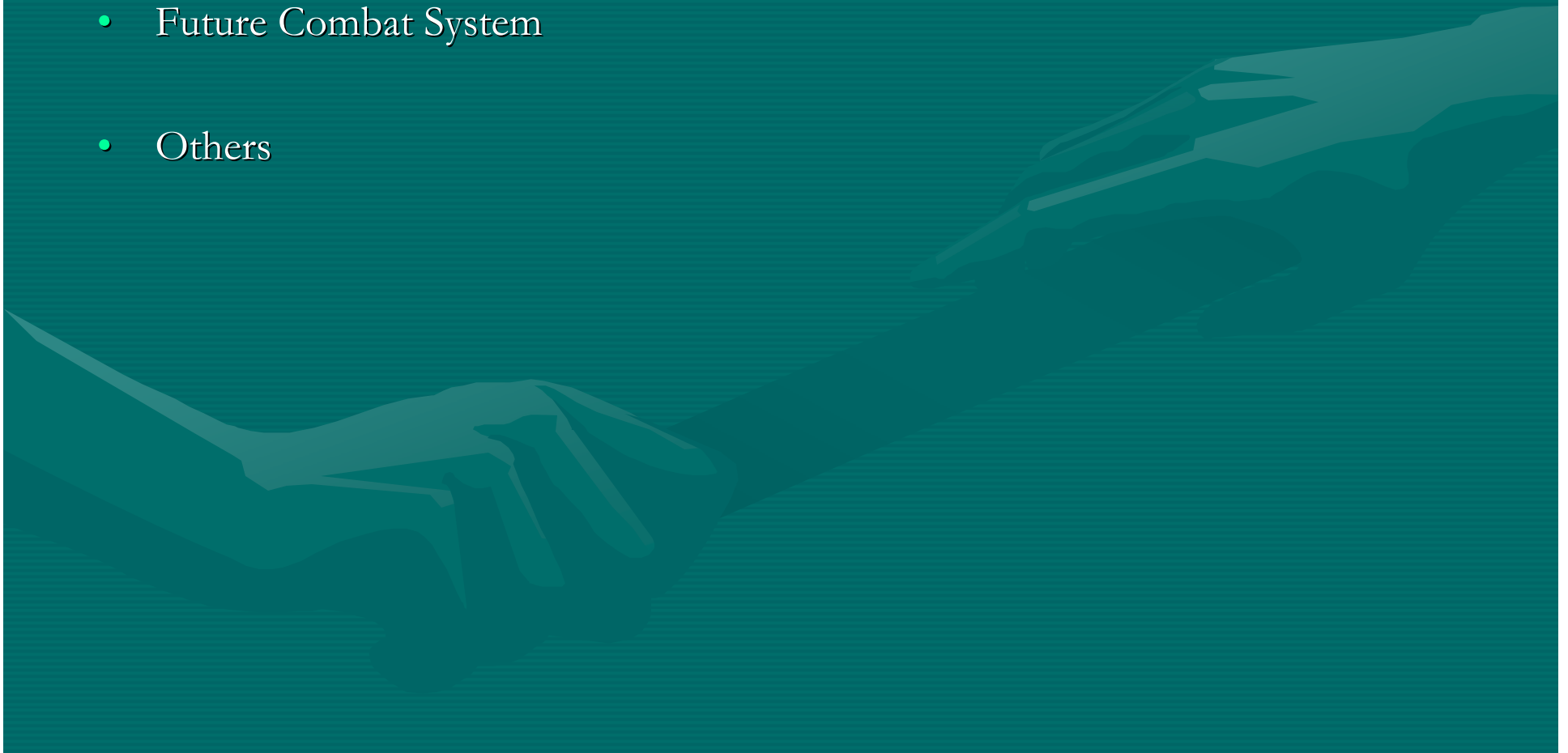


OT's and the Acquisition System

- Where do OT's fit in?
- OT's – a contracting mechanism
- Can OT's impact requirements?
- Can OT's help with the budget cycle?

Case Studies

- Arsenal Ship
- Future Combat System
- Others



Important Research Findings

- LMI Study
- IDCC Research
- Others



Recommendations

- Legislative and regulatory changes
- Leadership focus and culture change
- Education and training

