

GOVERNMENT INDUSTRY ENTERPRISE

Based on

OTHER TRANSACTIONS AGREEMENT FOR PROTOTYPE PROJECTS

And

THE NATIONAL COOPERATIVE RESEARCH AND PRODUCTION ACT

Presented at the

53rd ANNUAL FUZE CONFERENCE

MAY 20, 2009

by

DAROLD L. GRIFFIN

Engineering and Management Executives, Inc.

Alexandria, VA 22304

Telephone: (703) 212-8030

E-Mail: eme1bmt@aol.com

BACKGROUND

- **IN LATE 80s AND EARLY 90s THERE WAS A MAJOR EFFORT TO REDUCE THE COST OF DEFENSE WHILE TRYING TO MAINTAIN THE DEFENSE TECHNOLOGY BASE AND INDUSTRIAL BASE**
 - **ACQUISITION REFORM**
 - **SPECS AND STANDARDS BLUE PRINT FOR CHANGE**
 - **REVISIONS OF PARTS 12 AND 15 OF THE FAR**
 - **SECTION 845 OF THE 1994 NATIONAL DEFENSE AUTHORIZATION BILL AS AMENDED**

SECTION 845 OTHER TRANSACTIONS AGREEMENT (OTA) FOR PROTOTYPE PROJECTS

- **AUTHORIZED UNDER THE AUTHORITY OF SECTION 2371 OF TITLE 10, UNITED STATES CODE**
 - **SECTION 2371 IS PRIMARILY FOR GRANTS**

- **A MAJOR OBJECTIVE OF THE OTA FOR PROTOTYPING WAS TO:**
 - a. **CONTRIBUTE TO A BROADENING OF THE TECHNOLOGY AND INDUSTRIAL BASE AVAILABLE FOR MEETING DEPARTMENT OF DEFENSE NEEDS AND**
 - b. **FOSTER WITHIN THE TECHNOLOGY BASE NEW RELATIONSHIPS AND PRACTICES THAT SUPPORT THE NATIONAL SECURITY OF THE UNITED STATES**

- **THIS IS THE ENABLING LEGISLATION TO CONTRACT WITH CONSORTIA SUCH AS THE NATIONAL WARHEADS AND ENERGETICS CONSORTIUM AND THE NATIONAL SMALL ARMS TECHNOLOGY CONSORTIUM**

OTHER TRANSACTIONS AGREEMENT (OTA) FOR PROTOTYPE PROJECTS

- **A LEGALLY BINDING INSTRUMENT FOR:**
 - **BASIC AND APPLIED RESEARCH AND DEVELOPMENT**
 - **PROTOTYPES DIRECTLY RELEVANT TO WEAPONS OR WEAPON SYSTEMS TO BE ACQUIRED BY DOD**
 - **EARLY PRODUCTION OF ITEMS DEVELOPED UNDER PROTOTYPE CONTRACTS**
- **OTAs ARE TYPICALLY MULTI-PARTY WITH COMPANIES AND UNIVERSITIES IN PARTNERSHIPS , JOINT VENTURES OR CONSORTIA**
- **OTAs ARE EXEMPT FROM FAR AND MOST OTHER ACQUISITION LAWS AND REGULATIONS**
- **INDIVIDUAL PROJECTS MAY BE FUNDED TO \$25 MILLION UNDER LOCAL PROCUREMENT AUTHORITY**

NATIONAL COOPERATIVE RESEARCH AND PRODUCTION ACT

- **THE NATIONAL COOPERATIVE RESEARCH AND PRODUCTION ACT WAS PASSED IN 1993 TO ENCOURAGE TECHNICAL JOINT VENTURES AND CONSORTIA**
- **THE LAW:**
 - **IS INTENDED TO PROMOTE INNOVATION, FACILITATE TRADE AND STRENGTHEN COMPETITION OF THE U.S. IN WORLD MARKETS THROUGH JOINT VENTURES OR CONSORTIA**
 - **NOTIFICATION OF THE DEPARTMENT OF JUSTICE (DOJ) AND THE FEDERAL TRADE COMMISSION (FTC) AS SET FORTH IN THE LAW LIMITS CIVIL ANTI-TRUST LIABILITIES**
 - **COVERS RESEARCH THROUGH FULL SCALE PRODUCTION**

COMMON THEME OF RELATIONSHIPS WITH INDUSTRY AND ACADEMIA

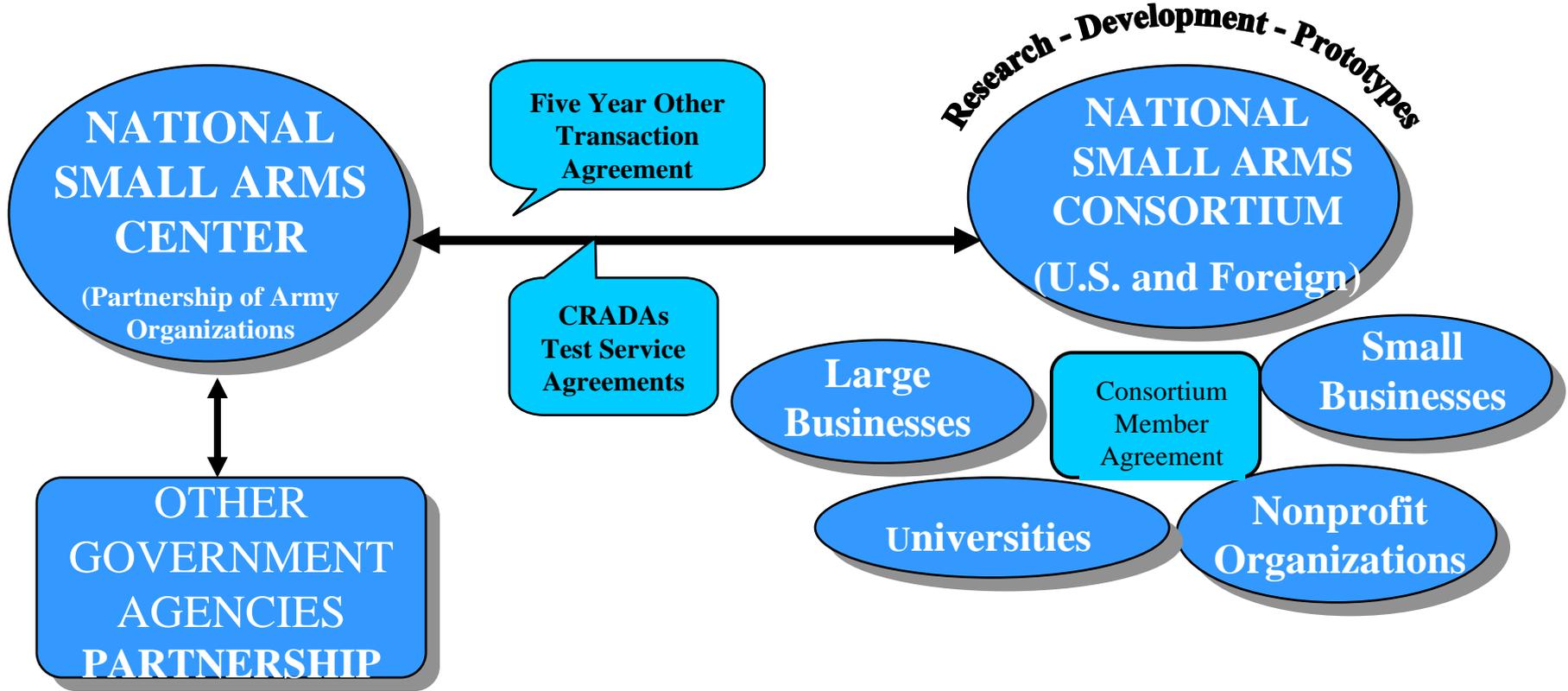
- **CREATE AND SUSTAIN A CRITICAL MASS OF SCIENTISTS AND ENGINEERS IN IMPORTANT TECHNOLOGY AREAS**
- **CREATE A FORUM FOR NATIONAL COOPERATION, COLLABORATION AND PARTNERING WITH INDUSTRY AND ACADEMIA**
- **ENHANCE TECHNOLOGY TRANSFER / INFORMATION EXCHANGE**
- **PROVIDE ACCESS TO GOVERNMENT FACILITIES AND INTELLECTUAL PROPERTY**
- **DEVELOP**
 - **A BETTER UNDERSTANDING OF REQUIREMENTS**
 - **A VEHICLE ATTRACTIVE TO DEFENSE AND NON-DEFENSE COMPANIES**
 - **LONG TERM RELATIONSHIP - AT LEAST 5 YEARS**
 - **COMMERCIAL CONTRACT TERMS**
- **PROJECT AWARDS THAT ARE PRIVATE, SIMPLE AND FREE OF FAR CLAUSES**

EXECUTION OF RELATIONSHIP CONSORTIA OF INDUSTRY AND ACADEMIA

- **DEFENSE ENCOURAGES INDUSTRY AND ACADEMIA TO FORM CONSORTIA UNDER THE NATIONAL COOPERATIVE RESEARCH AND PRODUCTION ACT (NCRPA) OF 1993, AS AMENDED**
- **EACH CONSORTIUM DEVELOPS A CONSORTIUM MEMBER AGREEMENT WITH THESE PRINCIPLES:**
 - **MEMBERSHIP IS CONTINUOUSLY OPEN TO ALL QUALIFIED APPLICANTS**
 - **CONTAINS THE BASIC AGREEMENT AMONG THE MEMBERS FOR GOVERNANCE, INTELLECTUAL PROPERTY, RISKS AND RESPONSIBILITIES AND PROTECTION OF CONFIDENTIAL INFORMATION**
 - **REQUIRES DISPUTES TO BE RESOLVED BY ARBITRATION**
- **DEFENSE CONTRACTS WITH THE CONSORTIUM MEMBERS THROUGH A MASTER OTA**

ORGANIZATIONAL CONCEPT

US ARMY NATIONAL SMALL ARMS CENTER



MANAGEMENT

- **AN EXECUTIVE COUNCIL OF INDUSTRY AND GOVERNMENT EXECUTIVES TO PROVIDE OVERSIGHT OF THE CENTER AND CONSORTIUM**
- **A RESEARCH COMMITTEE AND SUBCOMMITTEES OF GOVERNMENT AND INDUSTRY SCIENTISTS / ENGINEERS TO ESTABLISH AND PRIORITIZE THE TECHNOLOGY PROGRAM AND ASSESS PROGRESS**
- **A GOVERNMENT RESEARCH DIRECTOR TO MANAGE THE DAY-TO-DAY TECHNICAL BUSINESS OF THE CENTER AND CONSORTIUM**
- **AN EXECUTIVE DIRECTOR OF THE CONSORTIUM TO MANAGE THE CONSORTIUM'S ADMINISTRATIVE FUNCTIONS**
- **AN EFFECTIVE PROJECT MANAGEMENT STRUCTURE DEVELOPED COOPERATIVELY WITH INDUSTRY AND ACADEMIA**

THE BENEFITS

- **RAPID TECHNOLOGY DEVELOPMENT AND TRANSITIONING OF PRODUCTS TO THE FIELD**
- **PARTNERING AND TEAMING ARRANGEMENT**
- **LEVERAGING RESOURCES AND ASSETS:**
 - **PRIVATE SECTOR**
 - **GOVERNMENT**
- **TECHNOLOGY TRANSFERS BETWEEN DEFENSE AND CONSORTIUM MEMBERS AND AMONG CONSORTIUM MEMBERS**
- **QUICK AND FLEXIBLE MEANS TO AWARD AGREEMENTS (CONTRACTS)**
- **INCREASED FUNDING FOR RESEARCH, DEVELOPMENT AND PRODUCTION**

THEN COMES SECTION 803, CLARIFICATION AND EXTENSION OF AUTHORITY TO CARRY OUT CERTAIN PROTOTYPE PROJECTS

SECTION 803

- **APPROPRIATE USE OF OTA AUTHORITY**
 - **THERE MUST BE AT LEAST ONE NON-TRADITIONAL DEFENSE CONTRACTOR PARTICIPATING TO A SIGNIFICANT EXTENT IN THE PROTOTYPE CONTRACT OR**
 - **AT LEAST ONE THIRD OF THE TOTAL COST MUST BE PAID BY THE CONTRACTOR OR**
 - **A SENIOR PROCUREMENT OFFICIAL DETERMINES THAT EXCEPTIONAL CIRCUMSTANCES JUSTIFY THE USE OF THE TRANSACTION THAT PROVIDES AN INNOVATIVE BUSINESS ARRANGEMENT OR STRUCTURE**

- **DEFINED NON-TRADITIONAL CONTRACTOR**
 - **AN ENTITY THAT HAS NOT FOR A PERIOD OF AT LEAST ONE YEAR**
 - ♦ **PERFORMED A CONTRACT SUBJECT TO FULL COVERAGE UNDER THE COST ACCOUNTING STANDARDS**
 - ♦ **ANY CONTRACT IN EXCESS OF \$500,000 TO CARRY OUT A PROTOTYPE PROJECT OR PERFORMED BASIC, APPLIED OR ADVANCED RESEARCH PROJECTS FOR A FEDERAL AGENCY**

THE SECTION 803 EVOLUTION

- **USE SINGLE POINT CONTRACTING**
 - **GOVERNMENT AWARDS MASTER OTA TO CONSORTIUM AS OPPOSED TO ITS MEMBERS**
 - **CONSORTIUM MANAGEMENT SELECTS A THIRD PARTY AGENT (SUBJECT TO GOVERNMENT APPROVAL) TO NEGOTIATE, AWARD AND MANAGE THE SUBAGREEMENTS**
- **HOWEVER, GOVERNMENT PROCUREMENT AND SINGLE POINT AGENT HAVE ADOPTED A FAR-LIKE PROCESS TO NEGOTIATE AND AWARD SUBAGREEMENTS:**
 - **TIME CONSUMING**
 - **REQUIRES LOTS OF COST AND BUSINESS DETAILS**
 - **MAY JEOPARDIZE USE OF OTA FOR PROTOTYPING**
- **NOW THERE'S A BACKLASH FROM MEMBERS**

BOTTOM LINE: KEEP THE PRESSURE ON!