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Federal Construction Hot Topic Update
PLAs, OTAs, and CMMC 2.0



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Project Labor Agreements (PLAs)

- PLA Basics
- GSA's Paired-Proposal Process
- Legal Challenges

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What is a Project Labor Agreement?

- Pre-hire collective bargaining agreement
- With one or more labor organizations
- Establishes the terms and conditions of employment for a specific construction project

Executive Order 14063

- Requires use of PLAs on all large-scale direct federal construction projects ($35m)
- Carried into RFO FAR
  - Final Rule not yet issued but most agencies are using RFO FAR deviations

When PLAs Are Required

- Only Direct Federal Contracts – Applies to direct federal construction contracts—not federal aid (like transportation) contracts—including ***all*** subcontracts
- Direct federal construction contractors are contractors with prime contract with a federal agency owner, and their subcontractors
- The final rule applies to FAR-based contracts awarded by the federal government. The rule does not apply to grants or contracts awarded by states or localities with federal funding
- Only applies to covered construction projects within the United States

The FAR Contract Provisions

- FAR 52.222-33 Notice of Requirement for Project Labor Agreement
- FAR 52.222-34 Project Labor Agreement
- Government does not specify which unions should be party to PLA

Six Mandatory PLA Provisions

1. Bind all contractors and subcontractors on the construction project through the inclusion of appropriate specifications in all relevant solicitation provisions and contract documents.
2. Allow all contractors and subcontractors on the construction project to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements.
3. Include guarantees against strikes, lockouts, and similar job disruptions.
4. Set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the PLA's term.
5. Provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health.
6. Fully conform to all statutes, regulations, Executive Orders, and Presidential Memoranda.

Subcontract Flowdown

- When awarding a contract in connection with a large-scale construction project, agencies shall require use of PLAs for contractors and subcontractors engaged in project construction, unless an exception applies
- All subcontractors must agree to become a party to the PLA negotiated by the prospective offeror or prime contractor in order to participate on the project, unless an exception applies
- All subcontracts must include a flow down provision to apply to lower-tier subcontractors

PLA Exceptions

1. PLA would not promote ***economy and efficiency***
2. Based on inclusive market analysis, requiring a PLA on the project would substantially reduce the number of potential bidders so as to ***frustrate full and open competition***
3. Requiring a PLA on the project would otherwise be inconsistent with federal statutes, regulations, Executive Orders, or Presidential memoranda

Granting Exceptions

- Realistically, exceptions are only likely to be granted where agency determines that PLA requirement would result in only one proposal (negotiated procurement) or two bids (sealed bidding), or where bids are more than 10% above the government's budget
- OMB has instructed agencies that they are not permitted to apply their own interpretations to the regulations

GSA's Paired-Proposal Procedure

- Must submit PLA price proposal
- May, but not required to, submit non-PLA price proposal
  - Excludes direct effect of PLA on cost, schedule, and technical approach
- Price reasonableness
  - Evaluated price calculated by reducing PLA price by lesser of 10% or $15 million
  - Lower evaluated price is determined to be reasonable and used for evaluation

Paired-Proposal Procedure Tradeoff

Offeror	PLA Proposed	Reduction Applied	PLA Evaluated	Non-PLA Proposed	Tradeoff Price	Comment
A	$140,000,000	10% ($14,000,000)	$126,000,000	$127,000,000	PLA Price $126,000,000	Evaluated price reduced 10%. PLA price used.
B	$160,000,000	$15,000,000	$145,000,000	$155,000,000	PLA price $145,000,000	A 10% reduction would be $16 million. Reduction capped at $15 million. PLA price used.
C	$200,000,000	$15,000,000	$185,000,000	$150,000,000	$150,000,000	A 10% reduction would be $20 million. Reduction capped at $15 million. Premium for PLA is not reasonable. Non-PLA price used.
D	-	-	-	$138,000,000	Not eligible	Did not propose a PLA price.

Legal Challenges to PLAs

ABC Florida First Coast Chapter v. Clark; USDC for Middle District of FL, Jacksonville Div.

- Constitutional, statutory, and regulatory challenges
- Specific injury alleged by named industry contractors
- Seeking injunctive and declaratory relief – nationwide ban on enforcement
- Status: Denial of preliminary injunction on appeal to 11th Circuit; motions for summary judgment fully briefed since October 2024, but undecided

Paired-Proposal Award

- Contract is awarded with or without PLA requirement based on which price is used for evaluation
- Full guidance available at https://www.gsa.gov/policy-regulations/policy/acquisition-policy/acquisition-policy-library-and-resources/project-labor-agreements-playbook

Legal Challenges to PLAs

- *ABC Florida First Coast Chapter v. Clark* - seeking injunctive and declaratory relief – nationwide ban on enforcement; denial of preliminary injunction upheld by the 11th Circuit; still undecided
- U.S. Court of Federal Claims
  - Court has consistently held that PLA requirements in challenged protests violated CICA requirement for full and open competition
  - Challenge to GSA paired-proposal procedure – GSA ultimately backed down and removed PLA requirement

Legal Challenges to PLAs

Slayden Plumbing & Heating, Inc. v. General Services Administration, et al.; USDC for Alaska

- Filed by a subcontractor
- Challenges PLAs on the basis that subcontractors have no negotiating authority, and would have to effectively override employees' preference to remain non-union
- Status: Oral argument on motions for summary judgment held October 10; decision pending



Other Transaction Agreements (OTAs)

- What is an OTA?
- OTAs Are Not Procurement Contracts
- OTAs for Construction
- OTAs and Progressive Design-Build

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What Is An OTA?

- Traditionally OTAs have been used for research and prototyping
- Allows agencies to obtain research and prototype projects relevant to enhancing the mission effectiveness of personnel of the Department of Defense or improving 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
- Some allowance for prototypes to continue to production contracts without additional competition
- Not intended for construction

New Standalone Authority for Construction OTAs

- FY2026 NDAA – codified along with traditional FAR-based MILCON authority
- Permits DOD to carry out repair and construction projects for facilities, including planning, design, engineering, prototyping, piloting, and execution
- Not prototype-limited: reaches any type of facility repair and construction
- Fundable with military construction, operation and maintenance (O&M), or RDT&E funds

Construction OTA Scope and Limits

- **No express statutory dollar cap: S**ubject to traditional cost/scope-variation limits and the broader, closely overseen MILCON environment
- **14-day advance congressional notification** required before use, stating project title, description/location, estimated cost and funding source, selected contractor (if known), and the rationale for using OTA instead of traditional MILCON authority
- **Follow-on production** contract or transaction may be awarded without further competition if competitive procedures were used originally and participants completed a complete and useable facility or improvement
- **Caution for contractors:** Standard FAR-based protections do not automatically apply — award terms, risk allocation, follow-on rights, and protest strategy must be negotiated and evaluated.

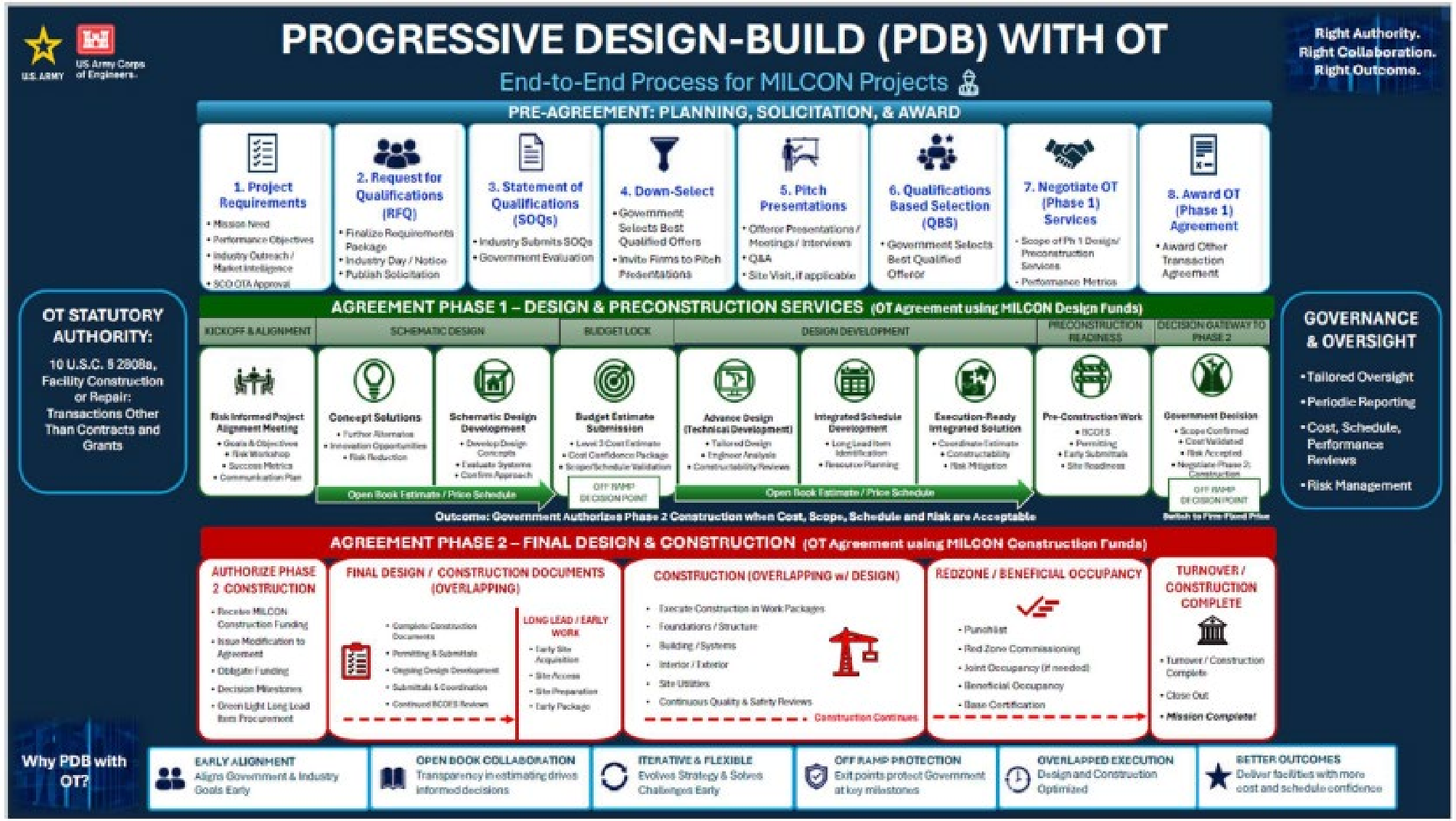
OTAs Are Not Procurement Contracts

- Because OTAs are not procurement contracts, grants, or cooperative agreements, most procurement statutes and regulations do not apply
  - FAR/DFARS
  - Competition in Contracting Act (CICA)
  - Contract Disputes Act
  - Buy American Act
  - Cost Accounting Standards, FAR cost principles
  - Truthful Cost or Pricing Data Act (formerly Truth In Negotiations Act)

OTAs Paired with Progressive Design-Build

- USACE has issued a playbook: https://media.defense.gov/2026/Jul/07/2003958350/-1/-1/1/USACE%20PLAYBOOK%20-%20EXECUTING%20PDB%20WITH%20OTA%2012%20JUNE%202026.PDF

DOD PDB OTA Overview



How USACE Sees PDB OTAs

- “Because OTAs operate entirely outside the Federal Acquisition Regulation (FAR), the negotiated Agreement becomes the sole governing document. This demands a pivot from rigid, regulatory compliance to a focus on commercial agility, problem-solving, and shared risk to deliver best-value solutions.”
- “The PDB with OTA (PDB w/OTA) model is justified for projects where traditional methods are not optimal, particularly when facing challenges of urgency, specialized expertise, and complexity. This approach fosters a true partnership between the government and the design-builder, allowing for an iterative design process, real-time problem-solving, and continuous cost modeling. The process is divided into distinct phases: a competitive, qualifications-based selection to choose a design-builder; a collaborative design phase to progressively develop the scope and establish a fixed price; and a final design and construction phase, often accelerated with fast-tracking.”

Sample PDB OTA Selection Process

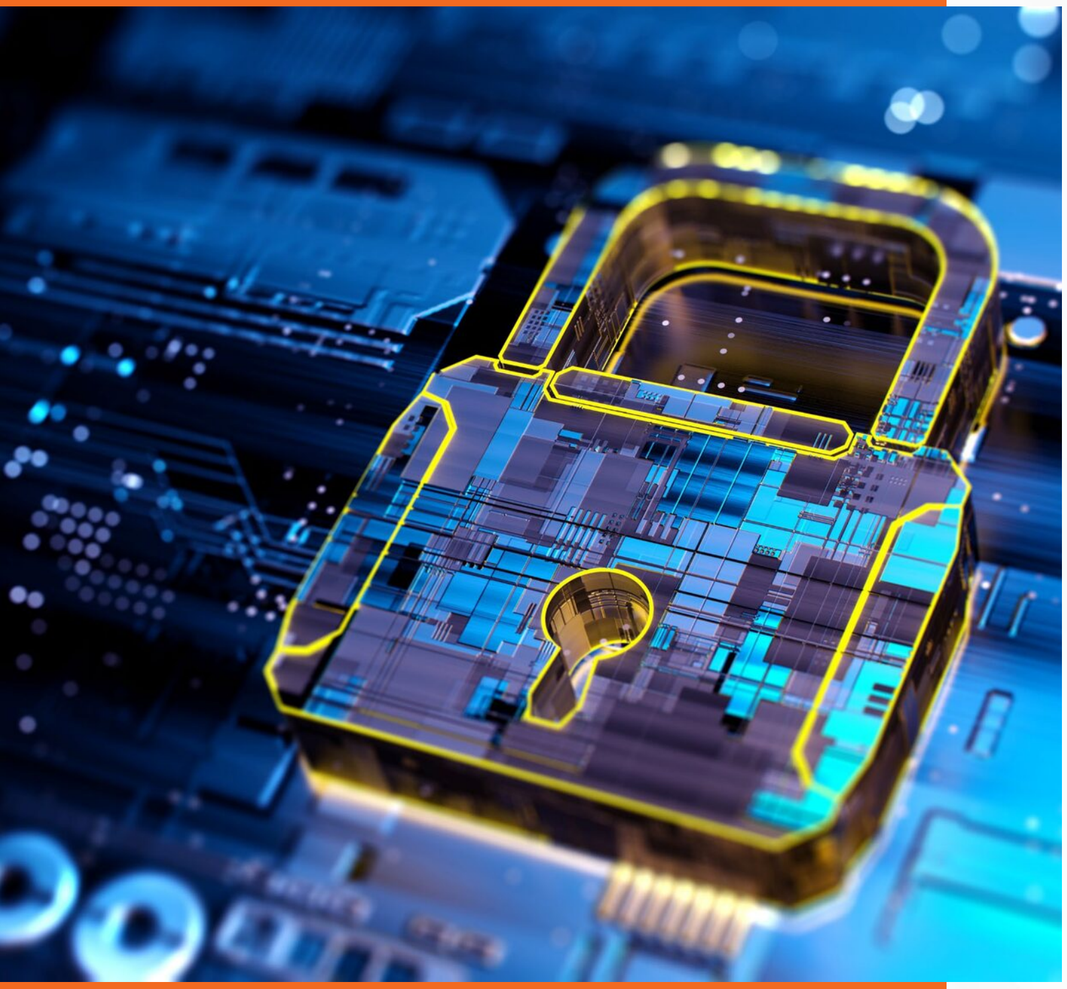
- White Paper
  - Understanding of project objectives
  - Approach to PDB collaboration (how your team builds chemistry and integrates with government stakeholders)
  - Risk identification and mitigation
  - Innovation approaches (materials, methods, delivery)
- Qualified candidates invited to pitch meeting
  - Final competitive evaluation step
  - May require additional information such as conceptual drawings

Sample PDB OTA Selection Process

- Negotiations
  - Selected design-builder submits a proposal to support negotiation of the terms of the Phase 1 OTA
  - Price not established at this stage
- Award
  - Design-builder may be awarded an OTA for Phase 1 – design and pre-construction services only
  - Award of Phase 2 for design and construction may be awarded by modification of OTA, but subject to statutory authorization, required approval, and funding; government may decline Phase 2 award

OTA Dispute and Bid Protest Jurisdiction

- **Disputes**
  - USACE OTAs provide for disputes to be decided by the Court of Federal Claims under Tucker Act jurisdiction
  - Traditional FAR/DFARS clauses still do not apply unless incorporated into the OTA
- **Bid protests**
  - Court of Federal Claims will take jurisdiction if protester can draw straight line between OTA and future proposed procurement contract
    - Otherwise US District Court may take jurisdiction
  - Challenge to the decision to use an OTA – a pre-award protest – can be brought at COFC or Government Accountability Office (GAO)
  - GAO generally declines protests of evaluation/award made under an OTA



CMMC 2.0

- Update on CMMC 2.0 Phase II Level 2 Certification Requirements

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CMMC Basics

- CMMC – Cybersecurity Maturity Model Certification
- Based on NIST 800-171 standards
- Overseen by DOD
- Cybersecurity standards for contractors and subcontractors on how to handle protected information
- Federal Contract Information (FCI) – any information related to a DOD contract except invoices
- Controlled Unclassified Information (CUI or CDI) – sensitive government information including technical drawings, blueprints, export-controlled data

Who Does CMMC 2.0 Apply To?

- Prime contractors
- Subcontractors
- Suppliers
- Does not apply to
  - Suppliers of unmodified commercial off-the-shelf (COTS) items
  - Contracts under the micro-purchase threshold (currently $15,000)
- Look for FAR 52.204-21 (FCI) or DFARS 252.204-7024 (CUI)

Phase II Third-Party Certification Requirement Suspended

- DOD has suspended November 10, 2026, deadline for independent, third-party C3PAO assessments for Level 2 CMMC compliance
- Accompanied by “a CMMC Reform Task Force to conduct a comprehensive top-to-bottom review of the certification program.”
- Level 1 and Level 2 self-certifications may still be required
- Baseline compliance with NIST SP 800-171 Rev. 2 still required

Questions?

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