

Fact Sheet on the Maloney-Turner “Other Transaction” Authority Amendment

– Ensuring Fair and Open Competition –

Background:

Rep. Carolyn Maloney and Rep. Jim Turner are offering an amendment that would reapply certain common-sense, good government procurement rules to the Other Transactions Authority section (Section 1451) of HR 1588, the Defense Authorization bill.

“Other Transactions” (OT) are not procurement contracts, grants or cooperative agreements with the Federal Government. Originally envisioned to allow the Defense Department to secure basic research that could not easily be obtained through a standard procurement contract, Other Transaction authority has been broadened beyond the needs that supported its creation. Today, the use of Other Transaction authority provides a way to bypass America’s procurement laws, regulations and procedures.

HR 1588 would grant Other Transactions authority to all of the civilian agencies of the Federal Government. The Maloney-Turner amendment would ensure that OT authority is subject to fair and open competition rules.

The Maloney-Turner Amendment:

If broad Other Transactions authority is to be accorded to all Federal civilian agencies – from the Department of Energy, to GSA to the Small Business Administration – then the use of this authority should be subject to procedures issued by OMB that govern the use of this new authority. The Maloney-Turner amendment does the following:

REQUIRES THE AGENCY TO DEMONSTRATE WHY OTHER TRANSACTION AUTHORITY IS NEEDED

- First, it would require the Federal agency proposing to use OT authority to fully demonstrate why the public purpose could not be accomplished through a procurement contract, a grant, or a cooperative agreement.

The amendment essentially creates transaction-by-transaction approval, without placing additional operational burdens on OMB.

REQUIRES EACH “OTHER TRANSACTION” AGREEMENT TO BE REPORTED

- Second, the OMB-issued procedures would require that each OT transaction be reported to the existing Federal Procurement Data Center in the same manner as procurement contracts.

(Over)

This would provide visibility regarding the use of OT authority and would make it easier for a review by GAO, OMB, or congressional committees of oversight.

ENSURES ADHERENCE TO SETTLED PUBLIC POLICY

- Third, the OMB procedures would assure that the award and administration of these transactions adhere to settled public policies, including:

Ensures Full and Open Competition

The amendment makes sure that full and open competition is used, or asks for a detailed justification of why the recipient of the OT agreement was selected on a non-competitive basis.

Calls for Prompt Payment

It assures timely payment for work performed as detailed in the Prompt Payment Act.

This not only protects the OT recipient, but those working on the project as subcontractors or suppliers, frequently small businesses. Additionally, it protects the taxpayer because payment should only be made for work performed in accordance with the requirements of the Other Transaction agreement.

Adds Small Business Act Protections

The amendment requires requiring Other Transaction agreements to be added to the agency's base for determining whether the agency has **attained its small business goals** as outlined in the Small Business Act.

The amendment urges agencies to make maximum use of small businesses as subcontractors and suppliers in performing the OT agreement.

Allows for Dispute Resolution

The amendment provides for the prompt and equitable resolution of performance disputes.

Adds Sunshine to the Process

The amendment guarantees access to records by the Comptroller General to assure necessary oversight.

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