OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

ACQUISITION
AND SUSTAINMENT

MAR 19 2019

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
ATTENTION: SERVICE ACQUISITION EXECUTIVES
COMMANDERS OF THE COMBATANT COMMANDS
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES
DIRECTOR OF THE DEFENSE INNOVATION UNIT

SUBJECT: Reporting of Department of Defense Use of Other Transactions for Prototype Projects

Reference: (a) USD(A&S) Memorandum Authority for Use of Other Transactions for Prototype Projects Under 10 U.S.C. Section 2371b, dated November 20, 2018
(b) Section 873 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232)
(c) Joint Explanatory Statement accompanying the Department of Defense Appropriations Act, 2019 (Public Law 115-245), pages 153-154

This memorandum follows the data collection and reporting requirements established in reference (a) to provide a standard reporting format. In reference (a) Senior Procurement Executives, Directors, and the relevant Commanding Officers were notified they were responsible for accurately collecting and reporting the data required in references (b) and (c).

This reporting requirement will cover the Department's use of Other Transactions (OTs) for prototype projects during fiscal year 2018. The report shall include a list of each active OT characterized by Service or Agency, major command, contracting activity, award date, award value, appropriation, budget line item, consortium, period of performance, dollars obligated, and total expenditures for the reporting period, product service code, quantities, awardee/vendor, purpose/program goal/description and status of project. Also, please include a narrative with successes, challenges and case examples. OTs that include an option for follow-on production shall be clearly annotated in the report and include a description of the scope of the follow-on production, including estimated cost, period of performance, deliverables, delivery dates, and source of funding.

The attached excel spreadsheet is provided as a template to enable standardized collection of the required information. Note that some of the data required is already available based on what your offices report to the Federal Procurement Data System (FPDS) on these actions. We have prefilled the spreadsheet for each Component based on that data reported. Please complete the additional fields and add any additional awards that have been made to the spreadsheet and ensure that they are also reported to FPDS. Going forward, our DPC Procurement Business Intelligence Service (PBIS) will have this data available in a downloadable report starting mid-March. For access to PBIS, please go to https://dodprocurementtoolbox.com/site-pages/pbis.

Please submit your information to Larry McLaury at larry.j.mclaury2.civ@mail.mil by April 18, 2019. He may be reached at 703-697-6710 with any questions. If you have any questions regarding FPDS or PBIS, please contact Lisa Romney at Janice.l.romney.civ@mail.mil or 703-697-4396.

Kim Herrington,
Acting Principal Director,
Defense Pricing and Contracting

Attachment:
As stated

THE UNDER SECRETARY OF DEFENSE
3010 DEFENSE PENTAGON
WASHINGTON, DC 20301-3010

ACQUISITION
AND SUSTAINMENT

NOV 2 0 2018

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
(ATTN: SERVICE ACQUISITION EXECUTIVES)
COMMANDERS OF THE COMBATANT COMMANDS
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES
DIRECTOR OF THE DEFENSE INNOVATION UNIT

SUBJECT: Authority for Use of Other Transactions for Prototype Projects Under 10, United States Code, Section 2371b

Reference: (a) "Authority for Use of Other Transactions for Prototype Projects Under 10 U.S.C. 2371b," dated March 10, 2016
(b) Section 873 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232)
(c) Joint Explanatory Statement accompanying the Department of Defense Appropriations Act, 2019 (Public Law 115-245), pages 153-154

The purposes of this memorandum are to (1) designate Components authorized to execute Other Transaction (OT) agreements as provided for in title 10, United States Code, section 2371b; (2) rescind reference (a) and replace it to expand approval authority and increase the dollar thresholds for use of OTs; and (3) establish additional data collection and reporting requirements.

I hereby designate the Directors of the Defense Agencies, the Directors of Field Activities with contracting authority, the Commanding Officers of Combatant Commands (CCMDs) with contracting authority and the Director of the Defense Innovation Unit as having the authority to carry out Prototype OTs and follow-on Production OTs as permitted by section 2371b. All previous designations to Defense Agencies and Field Activities are rescinded. The designation portion of this memorandum does not apply to the military departments, the Defense Advanced Research Projects Agency (DARPA), and the Missile Defense Agency (MDA), which have their own authorities prescribed in statute.

Approval authorities and dollar thresholds for Prototype and Production OTs are set forth below. These authorities are non-delegable above $100 million.

	Transaction Value		
Organization	Up to $100M	$100M to $500M	Over $500M
CCMDs with contracting authority	Commanding Officer	USD(R&E) or USD(A&S)	USD(R&E) or USD(A&S)*
DAs/FAs with contracting authority/DIU	Director	USD(R&E) or USD(A&S)	USD(R&E) or USD(A&S)*
Military Departments	Senior Procurement Executive	Senior Procurement Executive	USD(R&E) or USD(A&S)*
DARPA MDA	Director	Director	USD(R&E) or USD(A&S)*

** An Under Secretary must also make a written determination in accordance with section 2371b. Additionally, the Congress shall be notified at least 30 days before this authority is exercised. The Office of the Under Secretary making the written determination is responsible for Congressional notification.*

In determining the value of OTs for the purposes of assessing compliance with the authority levels set forth above, OTs will be measured based on the value of each transaction, rather than the total value of all OTs that might be executed in a prototype project or for follow-on production. That is, a prototype project may consist of multiple transactions to the same or different parties, each of which shall be considered separately when considering dollar thresholds. Transaction value shall include all options with prices established in the OT as awarded, as well as the amount associated with any cost-sharing borne by the contractor where the basis for the OT is subsection 2371b(d)(1)(C). Regardless of value, a separate OT approval will be required for each phase—prototype or follow-on production—and separately within a phase for each transaction.

It is essential that organizations with OT authority ensure Agreements Officers (AOs) are appropriately designated by the cognizant Head of the Contracting Activity and receive training needed to be successful. These organizations shall provide appropriate oversight and have processes in place to ensure that AOs do not bind the Government in OT agreements that exceed their warrant authority.

The Assistant Secretary of Defense for Acquisition (ASD(A)) shall establish standard reporting formats, consolidate component inputs, and transmit reports to Congress to implement data collection and reporting obligations in accordance with references (b) and (c). In the interim, components are cautioned to be mindful of the obligations set forth and take steps toward compliance with reference to any OTs executed before ASD(A) procedures are issued. Senior Procurement Executives, Directors, and the relevant Commanding Officers are responsible for ensuring data required under references (b) and (c) are accurately collected and reported in the Federal Procurement Data System-Next Generation (FPDS-NG) located at https://www.fpds.gov.

My point of contact for this memorandum is Ms. Jill Stiglich, Office of the Assistant Secretary of Defense for Acquisition, at 703-571-9013 or jill.e.stiglich.civ@mail.mil.

Ellen M. Lord

"(i) a commercially available off-the-shelf item that is 50 percent or more tungsten by weight; or

"(ii) a mill product, such as bar, billet, slab, wire, cube, sphere, block, blank, plate, or sheet, that has not been incorporated into an end item, subsystem, assembly, or component;

"(B) an electronic device, unless the Secretary of Defense, upon the recommendation of the Strategic Materials Protection Board pursuant to section 187 of this title, determines that the domestic availability of a particular electronic device is critical to national security; or

"(C) a neodymium-iron-boron magnet manufactured from recycled material if the milling of the recycled material and sintering of the final magnet takes place in the United States.

"(d) DEFINITIONS.—In this section:

"(1) COVERED MATERIAL.—The term 'covered material' means—

"(A) samarium-cobalt magnets;

"(B) neodymium-iron-boron magnets;

"(C) tungsten metal powder; and

"(D) tungsten heavy alloy or any finished or semi-finished component containing tungsten heavy alloy.

"(2) COVERED NATION.—The term 'covered nation' means—

"(A) the Democratic People's Republic of North Korea;

"(B) the People's Republic of China;

"(C) the Russian Federation; and

"(D) the Islamic Republic of Iran.

"(3) END ITEM.—The term 'end item' has the meaning given in section 2533b(m) of this title.".

(b) CLERICAL AMENDMENT.—The table of contents at the beginning of such subchapter is amended by inserting after the item relating to section 2533b the following item:

"2533c. Prohibition on acquisition of sensitive materials from non-allied foreign nations.".

SEC. 872. EXTENSION OF PROHIBITION ON PROVIDING FUNDS TO THE ENEMY.

Section 841(n) of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291; 127 Stat. 3455; 10 U.S.C. 2302 note) is amended by striking "December 31, 2019" and inserting "December 31, 2021".

SEC. 873. DATA, POLICY, AND REPORTING ON THE USE OF OTHER TRANSACTIONS.

(a) COLLECTION AND STORAGE.—The Service Acquisition Executives of the military departments shall collect data on the use of other transactions by their respective departments, and the Under Secretary of Defense for Research and Engineering and the Under Secretary of Defense for Acquisition and Sustainment shall collect data on all other use by the Department of Defense of other transactions, including use by the Defense Agencies. The data shall be stored in a manner that allows the Assistant Secretary of Defense for Acquisition and other appropriate officials access at any time.

(b) USE OF DATA.—The Assistant Secretary of Defense for Acquisition shall analyze and leverage the data collected under sub-

section (a) to update policy and guidance related to the use of other transactions.

(c) REPORT REQUIRED.—Not later than December 31, 2018, and each December 31 thereafter through December 31, 2021, the Secretary of Defense shall submit to the congressional defense committees a report covering the preceding fiscal year on the Department's use of other transaction authority. Each report shall summarize and display the data collected under subsection (a) on the nature and extent of the use of the authority, including a summary and detail showing—

(1) organizations involved, quantities, amounts of payments, and purpose, description, and status of projects; and

(2) highlights of successes and challenges using the authority, including case examples.

SEC. 874. STANDARDIZATION OF FORMATTING AND PUBLIC ACCESSIBILITY OF DEPARTMENT OF DEFENSE REPORTS TO CONGRESS.

(a) REPORT FORMATTING PLAN REQUIRED.—Not later than March 1, 2019, the Secretary of Defense shall provide a plan to the congressional defense committees on activities to standardize the formatting of unclassified Department of Defense reports required by Congress. Such plan shall include—

(1) a description of the method for ensuring that reports are created in a platform-independent, machine-readable format that can be retrieved, downloaded, indexed, and searched by commonly used web search applications; and

(2) a cost estimate and schedule for implementation of the activities under paragraph (1), with a completion date of not later than March 1, 2020.

(b) ONLINE REPOSITORY PLAN REQUIRED.—Not later than March 1, 2019, the Secretary of Defense shall provide a briefing to the congressional defense committees on the feasibility of developing a publically accessible online repository of unclassified reports of the Department of Defense issued since January 1, 2010. Such briefing shall include—

(1) protocols for inclusion of unclassified reports that, as determined by the Secretary, may not be appropriate for public release in their entirety; and

(2) a cost estimate and schedule for implementation and maintenance of the online repository.

SEC. 875. PROMOTION OF THE USE OF GOVERNMENT-WIDE AND OTHER INTERAGENCY CONTRACTS.

Section 865(b)(1) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 31 U.S.C. 1535 note) is amended—

(1) by striking "that all interagency acquisitions—" and inserting "that—";

(2) in subparagraph (A)—

(A) by inserting "all interagency assisted acquisitions" before "include"; and

(B) by inserting "and" after the semicolon;

(3) by striking subparagraph (B); and

(4) by redesignating subparagraph (C) as subparagraph (B), and in that subparagraph by inserting "all interagency assisted acquisitions" before "include".

Report on requiring access to digital technical data in future acquisitions of combat, combat service, and combat support systems (sec. 870)

The Senate amendment contained a provision (sec. 240) that would require the Secretary of Defense to prepare and submit a report regarding access to digital technical data, to include that which is necessary to support the production of three-dimensional printed parts.

The House bill contained no similar provision.

The House recedes.

The conferees direct that the study also address the potential impact upon data rights of providers, to include impacts on National Technology and Industrial Base manufacturers developing products for the Department of Defense, including contractors providing data with limited and restricted data rights.

Subtitle H—Other Matters

Prohibition on acquisition of sensitive materials from non-allied foreign nations (sec. 871)

The House bill contained a provision (sec. 873) that would prohibit the acquisition of certain sensitive materials from non-allied foreign nations.

The Senate amendment contained no similar provision.

The Senate recedes with a technical amendment.

Extension of prohibition on providing funds to the enemy (sec. 872)

The House bill contained a provision (sec. 876) that would amend section 841(n) of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291) to change from December 31, 2019, to December 31, 2021, the sunset date for the provisions of the prohibition on providing funds to the enemy.

The Senate amendment contained no similar provision.

The Senate recedes.

The conferees encourage the Office of Management and Budget to extend by two years submission of the reports specified in section 841(i) of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291) on the use of the authorities in this section in the preceding calendar year, to match the extended sunset date.

Data, policy, and reporting on the use of other transactions (sec. 873)

The House bill contained a provision (sec. 878) that would direct the Secretary of Defense to submit an annual report on the use of transactions other than contracts, cooperative agreements, and grants, known as other transaction authority, to perform projects, and to include certain information.

The Senate amendment contained a similar provision (sec. 872) that would direct the Under Secretary of Defense for Research and Engineering, the Under Secretary of Defense for Acquisition and Sustainment, and the Service Acquisition Executives of the mili-

tary departments to collect and internally share data on the use of other transactions, and use it to update policies and procedures.

The House recedes with an amendment that would combine the data collection and reporting elements of both provisions.

Standardization of formatting and public accessibility of Department of Defense reports to Congress (sec. 874)

The House bill contained a provision (sec. 879) that would direct the Secretary of Defense to provide a briefing to the House Committee on Armed Services on a plan for standardizing formatting and public accessibility of unclassified Department of Defense reports to Congress, to ensure they are usable.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would direct the Secretary of Defense to prepare plans to address standardization and sharing of reports to Congress, to include cost and schedule estimates.

Promotion of the use of Government-wide and other interagency contracts (sec. 875)

The House bill contained a provision (sec. 881) that would modify regulations relating to government-wide and other interagency contracts.

The Senate amendment contained no similar provision.

The Senate recedes.

Increasing competition at the task order level (sec. 876)

The House bill contained a provision (sec. 882) that would amend section 3306(c) of title 41, United States Code, to provide exceptions for certain indefinite delivery, indefinite quantity multiple-award contracts and certain federal supply schedule contracts for services acquired on an hourly rate.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would continue to require the disclosure to offerors of the importance of all evaluation factors other than cost or price.

Individual acquisition for commercial leasing services (sec. 877)

The House bill contained a provision (sec. 883) that would modify individual acquisition for commercial leasing services and direct the Comptroller General of the United States to conduct audits related to acquisitions for commercial leasing services.

The Senate amendment contained no similar provision.

The Senate recedes.

Procurement administrative lead time definition and plan (sec. 878)

The House bill contained a provision (sec. 884) that would direct the Administrator for Federal Procurement Policy to develop, make available for public comment, and finalize a definition of the term "procurement administrative lead time" (PALT) and produce a plan for measuring and publicly reporting data on PALT for Federal Government contracts and task orders in amounts greater than the simplified acquisition threshold.

The Senate amendment contained no similar provision.

the application of prior approval reprogramming procedures for congressional special interest items are established elsewhere in this statement.

FUNDING INCREASES

The funding increases outlined in the tables for each appropriation account shall be provided only for the specific purposes indicated in the tables.

CONGRESSIONAL SPECIAL INTEREST ITEMS

Items for which additional funds have been provided or items for which funding is specifically reduced as shown in the project level tables or in paragraphs using the phrase "only for" or "only to" are congressional special interest items for the purpose of the Base for Reprogramming (DD Form 1414). Each of these items must be carried on the DD Form 1414 at the stated amount, as specifically addressed in the explanatory statement.

CLASSIFIED ANNEX

Adjustments to classified programs are addressed in the accompanying classified annex.

OTHER TRANSACTION AUTHORITY

The conferees support the use of Other Transaction Authority (OTA) pursuant to section 2371b of title 10, United States Code for prototyping projects to enhance the mission effectiveness of the Department of Defense. However, the conferees are concerned with the lack of transparency surrounding the employment of OTA, particularly for follow-on production. Therefore, the conferees direct the Secretary of Defense to provide quarterly reports to the House and Senate Appropriations Committees not later than 30 days after the close of each fiscal quarter, detailing the Department's execution of funds for OTA prototype projects. Such reports shall be submitted beginning with the first quarter of fiscal year 2019 and shall include a classified annex, if necessary. The report shall list each active OTA agreement characterized by Service or agency, major command, contracting activity, appropriation, budget line item, minimum and maximum award value, vendor, obligations and expenditures to date, product service code, and period of performance. Other Transaction Authority agreements that include an option for follow-on production shall be clearly annotated in the report and include a description of the scope of the follow-on production, including estimated cost, period of performance, deliverables, delivery dates, and source of funding.

Further, the conferees direct the Comptroller General to review the Department's use of OTA pursuant to section 2371b of title 10, United States Code to determine whether the Department's employment of this authority conforms to applicable statutes and Departmental guidelines, to include the identification of any potential conflicts with section 1301 of title 31, United States Code. As part of this review, the Comptroller General shall also report on the extent that OTAs have been utilized since fiscal year 2016 and quantify OTA prototype agreements, including those with

options for follow-on production, by Service or agency, appropriation, and other characteristics, as appropriate. The Comptroller General shall provide the congressional defense committees the assessment not later than 180 days after the enactment of this Act.

INDIRECT FIRE PROTECTION CAPABILITY

In support of the Indirect Fire Protection Capability (IFPC) program of record, the Army's fiscal year 2019 budget includes procurement requests totaling $173,204,000 for AIM–9X interceptors, Multi-Mission Launcher (MML) components, and other ancillary costs. This request is in addition to $50,056,000 of fiscal year 2018 funding that remains unexecuted. The request also includes $208,740,000 for continued research, development, test and evaluation of the current IFPC program of record, while prior year funding also remains available due to the decision not to award the IFPC milestone B Engineering and Manufacturing Development contract.

The conferees note that following the submission of the fiscal year 2019 budget request, the Army initiated reviews of the existing IFPC program of record and alternate courses of action (COA) prior to the milestone B decision. These alternate COA include the development and integration of an alternate interceptor to the previously proposed AIM–9X interceptor with modifications to the MML, as well as the analysis of at least two other distinct weapons systems. The conferees further note that section 112 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 directs the Army to deploy two batteries of an interim, fixed site cruise missile defense capability by September 30, 2020, subject to the availability of appropriations.

The conference agreement supports the Army's pursuit of this defensive capability; however, the conferees remain concerned that the current budget request does not support any change in acquisition strategy or procurement and integration of available interim defense capabilities and is unexecutable as requested. The conferees direct the Secretary of the Army to provide a report to the congressional defense committees not later than 30 days after the enactment of this Act that details the results of the Army's internal review, revised acquisition strategy, and resulting resourcing requirements. The report shall also include an analysis and recommendations on the multiple COA under review; the supporting cost estimates for each COA across the future years defense program (FYDP); a program schedule for the selected COA; an analysis and recommendations for interim capabilities and proposed acquisition schedule; the proposed execution of prior year available balances and current IFPC resources by appropriation, budget line, and project across the FYDP for both the program of record and interim capabilities; and a plan to resource any identified shortfalls for the selected program of record COA and interim capabilities that will be pursued through the reprogramming of available resources and other means, as necessary.

CLOUD COMPUTING

The conferees believe cloud computing, if implemented properly, will have far reaching benefits for improving the efficiency of