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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

SUBJECT: Definitions and Requirements for Other Transactions Under Title 10, United States Code, Section 2371b

The purpose of this memorandum is to establish direction for the transition of prototype Other Transactions (OTs) to follow-on Production OTs. Accordingly, this memorandum does three things: (1) provides a definition of “prototype project” in the context of OTs; (2) addresses the requirement that the prototype project phase provide for the award of a follow-on production transaction; and (3) provides a definition of “successful completion,” before follow-on Production OTs may be awarded under the authority of section 2371b.

The definition of a “prototype project” in the context of an OT is as follows: a prototype project addresses a proof of concept, model, reverse engineering to address obsolescence, pilot, novel application of commercial technologies for defense purposes, agile development activity, creation, design, development, demonstration of technical or operational utility, or combinations of the foregoing. A process, including a business process, may be the subject of a prototype project.

Subsection 2371b(f) provides that a “transaction entered into under this section for a prototype project may provide for the award of a follow-on production contract or transaction to the participants in the transaction.” This statute requires that advanced consideration be given and notice be made of the potential for a follow-on OT; this is a necessary precondition for a follow-on Production OT. As such, solicitation documents and the Prototype OT agreement shall include notice that a follow-on Production OT is possible.

Those organizations seeking to use the follow-on production authority provided for in subsection 2371b(f) shall apply the following definition for “successful completion.” A transaction for a prototype project is complete upon the written determination of the appropriate approving official for the matter in question that efforts conducted under a Prototype OT: (1) met the key technical goals of a project; (2) satisfied success metrics incorporated into the Prototype OT; or (3) accomplished a particularly favorable or unexpected result that justifies the transition to production. Furthermore, successful completion can occur prior to the conclusion of a prototype project to allow the Government to transition any aspect of the prototype project determined to provide utility into production while other aspects of the prototype project have yet to be completed. Any Prototype OT shall contain a provision that sets forth the conditions under which that prototype agreement must be successfully completed.



Finally, as amended in the John S. McCain National Defense Authorization Act for FY 2019, section 2371b now expressly requires higher level approval before use of section 2371b authority for a Prototype OT or a Production OT. Regardless of value, this approval is required separately for each phase—prototype or follow-on production—and separately within a phase for each transaction.

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