The Honorable James M. Inhofe  
Chairman  
Committee on Armed Services  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

Section 873 of the John S. McCain National Defense Authorization Act for FY 2019 (Public Law 115-232), requires the Secretary of Defense to submit a report to the congressional defense committees on the use of the other transaction (OTs) by December 31, 2018 and annually thereafter through December 31, 2021. Additionally, page 153 of the Joint Explanatory Statement accompanying the Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019, (Public Law 115-245) requests the Secretary of Defense report to the House and Senate Appropriations Committees on other transaction authority beginning not later than 30 days after the first quarter of FY 2019 and quarterly thereafter.

On August 5, 2019, the Department submitted an interim report to Congress informing the committees the FY 2018 report would be submitted not later than November 30. Enclosed is a report along with a CD containing the data required or referenced by both Acts on the Department’s OTs for FY 2018.

An identical letter has been sent to the other congressional defense committees.

Sincerely,

Ellen M. Lord

Enclosure:
As stated

cc:
The Honorable Jack Reed  
Ranking Member
The Honorable Adam Smith  
Chairman  
Committee on Armed Services  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

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Ellen M. Lord

Enclosure:
As stated

cc:
The Honorable William M. “Mac” Thornberry  
Ranking Member
Dear Mr. Chairman:

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Ellen M. Lord

Enclosure:
As stated

cc:
The Honorable Patrick J. Leahy
Vice Chairman
The Honorable Nita M. Lowey  
Chairwoman  
Committee on Appropriations  
U.S. House of Representatives  
Washington, DC  20515

Dear Madam Chairwoman:

Section 873 of the John S. McCain National Defense Authorization Act for FY 2019 (Public Law 115-232), requires the Secretary of Defense to submit a report to the congressional defense committees on the use of the other transaction (OTs) by December 31, 2018 and annually thereafter through December 31, 2021. Additionally, the Joint Explanatory Statement accompanying the Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019, (Public Law 115-245) on page 153, requests the Secretary of Defense to report to the House and Senate Appropriations Committees on other transaction authority beginning not later than 30 days after the first quarter of FY 2019 and quarterly thereafter.

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Sincerely,

[Signature]

Ellen M. Lord

Enclosure:
As stated

cc:
The Honorable Kay Granger  
Ranking Member
The Honorable Richard C. Shelby  
Chairman  
Subcommittee on Defense  
Committee on Appropriations  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

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As stated

cc:
The Honorable Richard J. Durbin  
Ranking Member
The Honorable Peter J. Visclosky
Chairman
Subcommittee on Defense
Committee on Appropriations
U.S. House of Representatives
Washington, DC 20510

Dear Mr. Chairman:

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Sincerely,

Ellen M. Lord

Enclosure:
As stated

cc:
The Honorable Ken Calvert
Ranking Member
Report to Congress on the Use of Other Transactions (OT) Authority for Prototype Projects in Fiscal Year 2018

Office of the Under Secretary of Defense for Acquisition and Sustainment

November 2019
DEPARTMENT OF DEFENSE USE OF OTHER TRANSACTIONS AUTHORITY FOR PROTOTYPE PROJECTS

Introduction

Pursuant to section 873 of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Public Law 115-232), the Department of Defense (DoD) submits this report to the congressional defense committees on the use of the Other Transactions (OT) Authority for FY 2018. In addition, page 153 of the Joint Explanatory Statement (JES) accompanying the Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 (Public Law 115-245) requests that the Department report to the House and Senate Appropriations Committees on OTs on a quarterly basis beginning in FY 2019. This report includes data responsive to both of the references.

Defense Pricing and Contracting (DPC) within the Office of the Under Secretary of Defense for Acquisition and Sustainment (OUSD (A&S)) is responsible for preparing the report and promulgating policy and guidance on OTs for prototype projects (i.e., title 10 U.S.C. § 2371b). This report to Congress combines the authorization and appropriation requirements into a single annual report due to the significant resources, time, complexity, and coordination necessary to prepare the response. Collecting, consolidating, and analyzing the data required a manual data call to the DoD components with OT authority because the existing Federal Procurement Data System—Next Generation (FPDS-NG) module for OT reporting does not capture all of the data elements and information required for the report. On August 5, 2019, the Department submitted a second interim report to Congress informing the committees we were working with the Components to resolve the deficiencies and expected to complete the FY 2018 report not later than November 30th.

The Acting Principal Director of DPC obtained inputs from the military departments, defense agencies, and activities that use the title 10 U.S.C. § 2371b authority. The enclosed compact disk (CD) report includes a list of each active OT award reported in FPDS-NG for FY 2018 as of March 14, 2019, with the following data elements: military service/agency name, contracting activity, award date, award value, total obligations, appropriation, budget line item, consortium status, period of performance, product service code, awardee/vendor, purpose/program goal/description, status of project, and successes/challenges. OTs that include follow-on production are identified in the report and include the estimated cost, period of performance, deliverables, delivery dates, and source of funding.

Background

Over the past several years, Congress has provided the Department additional authority and flexibility in the use of OTs for prototypes to spur innovation and attract non-traditional and small businesses with leading edge technologies to enable more rapid acquisition of innovative technologies. Given this, the Department is pursuing innovative business practices to increase the use of OT authorities that can provide the agility and speed necessary to outpace our adversaries’ capabilities. The title 10 U.S.C. § 2371b authority offers the Department broad flexibility in terms of the award process, and virtually all terms and conditions of an OT are
negotiable between the two parties, including data rights, payment terms, and dispute processes. To facilitate this, OT for prototype project authority was expanded to all DoD components with acquisition authority in a USD(A&S) policy memorandum in November 2018. The Department also released an updated “Other Transactions Guide” in November 2018 to help educate the acquisition community on their appropriate use. As a result of Congress’ provisions and the Department’s efforts, the acquisition community is increasingly using OTs to acquire innovative products and services in support of rapidly evolving Warfighter needs.

Analysis

The Department has experienced significant growth in the use of OTs for prototype projects over the past three fiscal years as measured by the total number of OT actions and dollars obligated, set forth in the table below for FY 2016 to FY 2018.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Total Actions</th>
<th>Total Dollars</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016</td>
<td>333</td>
<td>$1,430,763,829</td>
</tr>
<tr>
<td>2017</td>
<td>523</td>
<td>$2,110,231,145</td>
</tr>
<tr>
<td>2018</td>
<td>811</td>
<td>$3,954,923,962</td>
</tr>
</tbody>
</table>

The table shows the increase in number of OTs and amount obligated for these years. The number of actions more than doubled from 333 in FY 2016 to 811 in FY 2018 and total dollars obligated increased from $1.43 billion to $3.95 billion. Over half (53 percent) of the FY 2018 obligations were competitively awarded.

Figure 1 – FY 2018 OT Obligations by Contracting Agency
Figure 1 presents the FY 2018 obligations by DoD Contracting Agencies with OT for prototype project authority. The Army spending was the largest at 74 percent of obligations followed by the Air Force at 13 percent, Defense Advanced Research Projects Agency (DARPA) at 10 percent, and Navy, USTRANSCOM, and Washington Headquarters Service (WHS) at approximately 1 percent each.

Figure 2 – FY 2018 OT Obligations by Category Management Group

Figure 2 shows the distribution of FY 2018 OT obligations by Category Management Group based on product service code descriptions. The authority under title 10 U.S.C. § 2371b is designated for carrying out OT prototype projects focused on research, development, test, and evaluation activities directly relevant to enhancing the mission effectiveness of the military. As a result, the majority (84 percent) of FY 2018 obligations are under the research and development category, with sustainment, information technology, weapons and ammunition, and miscellaneous supplies and equipment categories having much smaller percentages of the remaining obligations.
Figure 3 - FY 2018 OTs with Consortia Breakout

Figure 3 provides a breakout of how many of the FY 2018 FPDS-NG reported OT prototype project awards were to consortia (51 percent) and to other than consortia (49 percent). Each of approximately 27 consortia is made up of contractors, nonprofit organizations, and academic institutions in a specific technology area to offer the Department a pool of stakeholders that help to develop new technologies or processes that further innovation. OTs for prototype projects permit numerous types of arrangements, including awards to a consortium for performance by its members, a single company, prime-subcontractor, joint venture or partnership. Each arrangement has benefits and challenges depending on the nature of the requirement, and the consortia model is no different. In each case, the government acquisition team is expected to possess the knowledge, business acumen, and judgment necessary to determine the appropriate arrangement for the requirement.

The Department sees the benefit of the consortia model to help stimulate innovation and attract non-traditional contractors, and is also aware of the challenges of using the consortia model that include FPDS-NG reporting, the presence of competition for awards to be made by consortium managers, accountability of performance with the authorized agent, and intellectual property rights. To help the government acquisition team address and resolve these challenges, Defense Acquisition University (DAU) recently established an OT Community of Practice (OT CoP) (https://www.dau.edu/cop/ot/Pages/Default.aspx) as a resource to help practitioners appropriately use OTs under the consortia model.
Figure 4 – FY 2018 OTs by Traditional vs Non-Traditional Company

Figure 4 shows the breakout of OT prototype project obligations in FY 2018 by Traditional and Non-Traditional Defense Contractors (NDCs). In FY 2018, 84 percent of obligations went to NDCs and the other 16 percent went to traditional contractors. Congress authorized OTs for prototype projects to bolster innovation in military use, and the OT authority facilitates acquisitions with NDCs by removing some of DoD’s traditional contracting rules. The definition of an NDC (paraphrased from 10 U.S.C. 2302(9)) is a company that has not done business with DoD within the last year, or does not meet the full coverage requirements for cost accounting standards. This definition permits a large number of entities, including nearly all small business concerns, to be considered NDCs to help drive innovation.

Figure 5 - FY 2018 OTs with Follow-on Production
Figure 5 represents the breakout of OT prototype projects with follow-on production included in the prototype award. Follow-on production may only be included when the underlying prototype was competitively awarded, and the prototype project was successfully completed. In FY 2018, 39 percent of OT prototype projects included follow-on production capability while the other 61 percent did not include the production capability.

Training

In November 2018, OUSD(A&S) issued an updated OT Guide to provide practitioners advice on the planning, publicizing, soliciting, evaluating, negotiation, award, and administration of OTs, to include all three types of OT agreements: Research, Prototype, and Production. The guide offers lessons learned, best practices, and case studies to ensure the acquisition community appropriately uses OTs to help speed up the acquisition process. The update also added content for training/education and reporting requirements, along with references to the controlling statutory and policy provisions, to ensure oversight in the appropriate use of OT authorities. The OT Guide can be found at: https://www.acq.osd.mil/dpap/cpic/cp/innovation_in_contracting.html.

Components with OT authority are required to provide oversight and have processes in place to ensure OTs appropriately measure and balance the risk undertaken by all parties to an agreement. They are also required to properly designate and train their workforce on the use of OTs. To support these efforts, DAU has training modules and videos available, and continues to provide workshops and perform mission assistance to increase awareness and educate the acquisition workforce on the appropriate use of OTs. In addition, DAU created the OT CoP on the DAU public website to house a variety of OT resources and information. DAU plans to populate the website with learning assets and provide a collaborative space for OT users to ask questions, offer solutions, and share best practices and lessons learned.

In August 2019, DPC co-hosted an OT Roundtable event with DAU to provide guidance to components on the OT reporting requirements and processes. DPC addressed the specific data requirements to support a consistent reporting approach for the section 873 and Joint Explanatory Statement requirements satisfied by this report. The event included 55 attendees from the military services and the fourth estate, covered numerous case studies on the use of OTs, and highlighted existing and emerging OT issues through four panel discussions on the consortia business model, cybersecurity, industry perspective, and production OTs.

Conclusion

The authority for OTs has been in place for over 60 years, with NASA in 1958, DARPA in 1989, and expansion to the military services in 1994. The authority was made permanent in the FY 2016 NDAA, and was expanded to all DoD components in 2018. The success of OTs arises from their flexibility compared to the traditional FAR procurement process to attract non-traditional contractor participation in the DoD marketplace. The flexibility allows for innovative arrangements for prototype project design and execution, and helps to broaden the industrial base to include nontraditional contractors to increase competition. The approach can
also leverage commercial industry investment in technology development to ensure DoD requirements are incorporated into future technologies and products.

The challenge of using OTs has been their limited application in the Department, with only approximately 1 percent of our total obligations spent on OTs for prototype projects. This has led to misunderstandings and myths about their use. As noted above, the Department has taken steps to expand their use to all DoD components with acquisition authority by releasing an updated OT guide in November 2018 with lessons learned, best practices and case studies to help educate the acquisition community on their appropriate use. The OT CoP referenced earlier also contains information on the history of OTs, links to statutes, policies and guidance, access to OT training, information about upcoming OT events, and lessons learned from others in the OT community. To support training, DAU has provided modules, videos, and workshops to help educate the acquisition workforce on the appropriate use of OTs.

As noted earlier, FPDS-NG does not capture all of the data elements and information required for this report, resulting in inconsistent and incomplete reporting. DPC worked with the components to prepare the information in Appendix A, which includes a listing of all OTs for prototype projects actions reported in FPDS-NG for FY 2018 as of March 14, 2019. DPC continues to work with the components to establish standard reporting formats to improve future collection of OT data in support of the congressional authorization reporting requirements. The planned reporting format will improve transparency and accountability on the use of OTs for prototype projects by establishing an Other Transaction Identifier (OTID) numbering system for prototype projects. This system will help increase visibility and tracking of all prototype OT actions, including those issued under consortia arrangements. Collectively, these actions will support the increased use and provide proper oversight of the OTs.

Going forward, the Department plans to submit the annual reporting requirement for DoD’s Use of OTs in FY 2019 under Section 873 of the FY 2019 NDAA, and the four quarterly FY 2019 reporting requirements under the JES Appropriations Act, 2019, at the end of March 2020. The Department expects to submit the first quarter FY 2020 report at the end of March 2020, and the second quarter FY 2020 report at the end of June 2020 to provide time to verify and validate the inputs received from the Components.