



THE UNDER SECRETARY OF DEFENSE

3010 DEFENSE PENTAGON
WASHINGTON, DC 20301-3010

ACQUISITION,
TECHNOLOGY,
AND LOGISTICS

MAR 10 2016

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
SERVICE ACQUISITION EXECUTIVES
COMMANDERS OF THE COMBATANT COMMANDS
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Authority for Use of Other Transactions for Prototype Projects Under
10 U.S.C. 2371b

Reference: (a) "Authority for Use of Other Transactions for Prototype Projects,"
February 17, 2006
(b) "Other Transactions Guide for Prototype Projects," August 2002

The purpose of this memorandum is to rescind reference (a) and designate certain officials who may, under the authority of section 2371b of title 10, U.S.C., carry out prototype projects that are directly relevant to enhancing the mission effectiveness of military personnel and the supporting platforms, systems, components, or materials proposed to be acquired or developed by the Department of Defense (DoD) or to improvement of platforms, systems, components, or materials in use by the armed forces.

Previously, authority to enter into transactions other than contracts, grants, or cooperative agreements, known as "other transactions," for prototype projects was given pursuant to section 845 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 1994 (Public Law 103-160), as amended. Section 815 of the FY 2016 NDAA (Public Law 114-92), which codified section 2371b, repealed section 845. Therefore, reference (a), in which the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)) delegated section 845 authority to certain DoD organizations, is no longer in effect and is hereby rescinded.

Instead, section 2371b provides for the Secretary of Defense to designate officials, other than the Director, Defense Advanced Research Projects Agency (DARPA), and the Secretaries of the Military Departments who are already statutorily designated, to carry out prototype projects using other transactions in accordance with section 2371b. Because authority to enter into other transactions falls generally within the DoD acquisition system, I am authorized to make designations on behalf of the Secretary for other defense agencies. At this time, I designate the Director, Missile Defense Agency (MDA), and the Director, Defense Threat Reduction Agency, as officials having the authority to carry out prototype projects using other transactions pursuant to section 2371b. Designations of additional officials could be made in the future when deemed necessary.

Section 2371b provides that certain determinations be made in writing before the authority to enter into other transactions can be carried out. For ease of reference, the dollar thresholds for approval authority are set forth below:

Prototype Project Cost (Including Options)	Approval Authority for Military Departments / Select Agencies*	Approval Authority for AT&L Designees*
Over \$50 Million and Up to \$250 Million	Senior Procurement Executives Director of DARPA Director of MDA	USD(AT&L)
Over \$250 Million	USD(AT&L)	USD(AT&L)

**non-delegable*

These new thresholds provide Agreements Officers significantly more flexibility to negotiate business arrangements with companies that otherwise would not engage with DoD. As a reminder, however, when a prototype project carried out under the authority of section 2371b is part of a major defense acquisition program or a major automated information system, the requirements of DoD Instruction 5000.02 apply.

Furthermore, appropriate oversight and processes shall be in place to ensure that Agreements Officers do not bind the Government into other transaction agreements that exceed their warrant authority as Contracting Officers, and that Agreements Officers have the business acumen, training, and experience needed to enter into other transactions that do not use the Federal Acquisition Regulation (FAR) and DoD FAR Supplement standard clauses and provisions. In order to promote transparency and maintain proper visibility, Agreements Officers shall record other transactions entered into under section 2371b authority in the Federal Procurement Data System-Next Generation located at <https://www.fpds.gov>. Additional guidance updating reference (b) to conform to section 2371b is forthcoming.

Questions about DoD policy regarding use of other transactions to carry out prototype projects, as well as requests for designation to carry out prototype projects using other transactions under the authority of section 2371b and USD(AT&L) approval of written determinations, should be sent to the Director of Defense Procurement and Acquisition Policy at osd.pentagon.ousd-atl.mbx.cpic@mail.mil. My point of contact for this matter is Mr. Victor Deal at 703-614-4840.



Frank Kendall

cc:

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