

## ***Consideration of Firm Fixed Price (FFP) Contracts for Foreign Military Sales (FMS)***

DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2017 that requires a preference for FFP contracts, review and approval for certain cost-reimbursement contract types, and the use of FFP contract types for FMS unless an exception or waiver applies.

### **Details Pertaining to FMS:**

(a) A firm-fixed-price contract shall be used for FMS, unless the foreign country that is the counterparty to FMS—

- 1) *Has established in writing a preference for a different contract type; or*
- 2) *Requests in writing that a different contract type be used for a specific FMS. See PGI 217.202(2) on the use of priced options for FMS requirements.*

(b) Waiver. The requirement in paragraph (a) of this section may be waived, if the chief of the contracting office determines, on a case-by-case basis, that a different contract type is in the best interest of the United States and American taxpayers

### ***The following additional changes from the proposed rule are made in the final rule:***

- (1) The requirement to obtain head of contracting activity approval prior to awarding cost-reimbursement contracts in excess of \$50 million awarded after October 1, 2018, and before October 1, 2019, is removed from DFARS 216.301-3. This requirement applies to contracts awarded prior to the effective date of this rule.
- (2) The requirement for HCA approval of cost-reimbursement incentive or award fee contracts valued in excess of \$25 million is relocated to DFARS 216.401(d)(ii).

### **FFP Objective:**

- The objective of the final rule is to implement the statutory requirements in section 829 and 830 of the NDAA for FY 2017 to: (1) Establish a preference for the use of fixed-price contracts in the determination of contract price; and (2) accelerate the contracting and pricing process of FMS by basing price reasonableness determinations on actual cost and pricing data for purchases of the same product for DoD.

This rule does not propose to create any new DFARS clauses or amend any existing DFARS clauses.

### **References:**

- <https://www.federalregister.gov/documents/2019/11/27/2019-25658/defense-federal-acquisition-regulation-supplement-use-of-fixed-price-contracts-dfars-case-2017-d024>

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