MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY (PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY (ACQUISITION AND PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE (CONTRACTING)
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Class Deviation—Determining Contract Type for FMS Contracts


Section 830 provides requirements, exceptions, and waiver authority for the use of firm fixed-price contracts for foreign military sales. Therefore contracting officers shall—

- In accordance with section 830(a), unless one of the following exceptions or waivers apply, use firm fixed-price contracts for foreign military sales.

- In accordance with section 830(b), Exceptions, use a different contract type if the FMS customer has established in writing a preference for a different contract type or has requested in writing that a different contract type be used for a specific foreign military sale.

- In accordance with section 830(c), Waiver Authority, request a waiver on a case-by-case basis when a contract type other than firm fixed-price is in the best interests of the United States and American taxpayers. The determination of best interest must be made on a case-by-case basis. The waiver approval authority is the Chief of the Contracting Office.
The aforementioned June 28, 2018 memorandum and DFARS PGI 216.403-1(1)(ii)(B) provide additional guidance to be considered in determining whether a contract type other than firm fixed-price is in the best interest of the U.S. and the taxpayer.

This class deviation remains in effect until it is incorporated in the DFARS, or until it is otherwise rescinded. My point of contact is Ms. Gina Bova, who is available at regina.m.bova.civ@mail.mil.

Shay D. Assad,
Director, Defense Pricing/Defense Procurement and Acquisition Policy