



ACQUISITION
AND SUSTAINMENT

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

JUN 28 2018

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: Negotiations of Sole Source Major Systems for U.S. and U.S./FMS
Combined Procurements

The Department is continuing to examine its contracting practices in an effort to be more timely and effective. Accordingly, with regard to the development of acquisition and contracting strategies for sole source major systems procurements for U.S. and U.S./FMS combined requirements, we encourage program managers and Contracting Officers to use strategies that address more than a single year's procurement requirements, whenever possible, through the use of priced options.

The practice of year-over-year annual procurements is both administratively costly in terms of Procurement Administrative Lead Time (PALT) and the resources (proposal preparation and manpower) to get annual requirements under contract. Contracting Officers are encouraged to establish priced options for two years beyond the instant procurement year such that negotiations of major systems would be conducted approximately every three years. In those cases where exact quantities are subject to variation or FMS customers are not yet identified, range option pricing for both U.S. and FMS quantities should be established. This practice will allow us to avoid the routine use of undefinitized contract actions (UCAs) for U.S. and FMS requirements and it will provide more responsive availability of priced contractual instruments for emerging FMS requirements.

For economies of scale and efficiency, it is in the best interests of the taxpayers to combine U.S. and FMS requirements under the same contract whenever possible. In terms of contract type for U.S. or combined U.S. and FMS requirements, most production type requirements are typically contracted for on a fixed price basis (firm fixed price or fixed price incentive (firm target) FPIF)). It is not in the best interest of the taxpayers to concurrently use mixed contract types for the same or similar items.

With regard to contract types, it is the general rule that contracting officers should follow the guidance in PGI 216.403-1(1) (ii) (B) which states:

It is also not in the Government's best interest to use firm-fixed-price (FFP) contracts on production programs until costs have become stable. Therefore, FPIF contracts should be considered in sole source follow-on programs where actual costs on prior FFP contracts have varied by more than 3-4 percent from the costs considered negotiated. Contracting officers are reminded that actual costs on prior contracts for the same item or essentially the same item, regardless of contract type or data reporting requirements of the prior contract, are cost and pricing data on the pending contract, and must be obtained from the contractor on production programs when certified cost or pricing data are required.

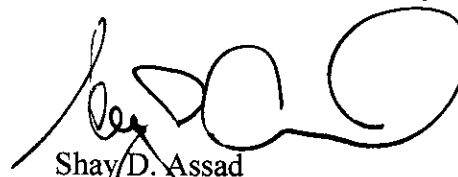
Contracting Officers should utilize FPIF contracts instead of FFP contracts unless the reasons for significant variation are well understood and actions have been taken to ensure that significant variation will not recur. In addition, because both parties will be assuming more risk in pricing multiple years of requirements, the use of more FPIF contracts is both highly recommended and encouraged.

Accordingly, in those cases when we are contracting for both U.S. and FMS requirements, Contracting Officers are reminded that they must address each procurement involving FMS requirements on a case by case basis and a request for the waiver provided for in section 830 of the National Defense Acquisition Act for Fiscal Year 2017 should be processed when the U.S. portions of these contracts alone would otherwise be FPIF.

For contracts addressing standalone FMS requirements, where no concurrent U.S. requirements are being produced, Contracting Officers shall ensure that all of those actions are consistent with section 830. DoD Class Deviation 2018-O0017, "Determining Contract Type for FMS Contracts," provides implementing guidance for section 830 until it is incorporated into the DFARS.

Before a firm fixed-price contract type, with a value greater than \$500 million, is to be used for a sole source contract for U.S. or U.S./FMS combined requirements for a major system (as defined at FAR Part 2.101) consult with the Director, DP/DPAP prior to the issuance of the solicitation for the subject procurement.

If you have any questions regarding the above, please contact the undersigned.



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