



ACQUISITION
AND SUSTAINMENT

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

In reply refer to
DARS Tracking Number: 2023-O0005

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER
COMMAND (ATTN: ACQUISITION EXECUTIVE)
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
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING)
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation—Use of Fixed-Price Contracts for Certain Major Defense
Acquisition Programs

Effective immediately, contracting officers shall ensure that no more than one low-rate initial production lot is procured via a fixed-price type contract or contract modification when—

- The milestone decision authority authorizes the use of a fixed-price type contract at the time of Milestone B approval; and
- The scope of work for the contract includes both the development and low-rate initial production of items in support of a major defense acquisition program (MDAP).

This limitation is in addition to the procedures at Defense Federal Acquisition Regulation Supplement (DFARS) 234.004(2) for the selection of contract type for MDAPs at Milestone B. This limitation may be waived by the cognizant service acquisition executive of a military department, delegable no lower than one level above the contracting officer, if a written notification of the waiver, including the associated rationale, is provided to the congressional defense committees no later than 30 days after issuance of the waiver in accordance with agency procedures.

This class deviation implements section 808 of the National Defense Authorization Act for Fiscal Year 2023 (Pub. L. 117-263). Section 808 provides that, when the milestone decision authority authorizes the use of a fixed-price type contract at the time of Milestone B approval, and the scope of the work of the contract includes both the development and low-rate initial production of items in support of an MDAP, the number of low-rate initial production lots to be procured via the fixed-price type contract or contract modification shall not be more than one.

Class Deviation 2023-O0005
Use of Fixed-Price Contracts for Certain Major Defense Acquisition Programs

As used in this deviation, “low-rate initial production” is defined in 10 U.S.C. 4231, and “Milestone B approval” is defined in 10 U.S.C. 4172.

This class deviation remains in effect until incorporated in the DFARS or until otherwise rescinded. My point of contact is Ms. Jeanette Snyder, DPC/DARS, who may be reached at jeanette.m.snyder4.civ@mail.mil.

John M. Tenaglia
Principal Director,
Defense Pricing and Contracting