



ACQUISITION
AND SUSTAINMENT

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

JUN 28 2018

In reply refer to
DARS Tracking Number: 2018-00017

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

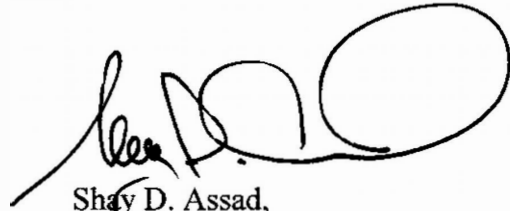
Effective immediately, when determining contract type for FMS procurements, Contracting Officers shall comply with section 830 of the NDAA for FY 2017; the policy expressed in the Director, Defense Pricing/Defense Procurement and Acquisition Policy (DPAP), memorandum dated June 28, 2018, “Negotiations of Sole Source Major Systems for U.S. and U.S./FMS Combined Procurements;” and the guidance provided at DFARS PGI 216.403-1(1)(ii)(B).

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.

A handwritten signature in black ink, appearing to read 'Shay D. Assad', written over a horizontal line.

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