DFARS Case 2021-D019

Use of Firm-Fixed-Price Contracts for Foreign Military Sales

Final Rule

PART 225—FOREIGN ACQUISITION

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**SUBPART 225.73--ACQUISITIONS FOR FOREIGN MILITARY SALES**

**225.7300 Scope of subpart.**

(a) This subpart contains policies and procedures for acquisitions for foreign military sales (FMS) under the Arms Export Control Act (22 U.S.C. Chapter 39). Section 22 of the Arms Export Control Act (22 U.S.C. 2762) authorizes DoD to enter into contracts for resale to foreign countries or international organizations.

(b) This subpart does not apply to—

(1) FMS made from inventories or stocks;

(2) Acquisitions for replenishment of inventories or stocks; or

(3) Acquisitions made under DoD cooperative logistic supply support arrangements.

**225.7301 General.**

(a) The U.S. Government sells defense articles and services to foreign governments or international organizations through FMS agreements. The agreement is documented in a Letter of Offer and Acceptance (LOA) (see the Defense Security Cooperation Agency (DSCA) Security Assistance Management Manual (DSCA 5105.38-M)).

(b) Conduct FMS acquisitions under the same acquisition and contract management procedures used for other defense acquisitions.

(c) Follow the additional procedures at [PGI 225.7301](https://www.acq.osd.mil/dpap/dars/pgi/pgi_htm/PGI225_73.htm#225.7301)(c) for preparation of solicitations and contracts that include FMS requirements.

(d) See [229.170](https://www.acq.osd.mil/dpap/dars/dfars/html/current/229_1.htm#229.170) for policy on contracts financed under U.S. assistance programs that involve payment of foreign country value added taxes or customs duties.

**225.7301-1 [Reserved] ~~Requirement to use firm-fixed-price contracts.~~**

~~(a)~~ *~~Requirement.~~* ~~In accordance with section 830 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328), 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~~](https://www.acq.osd.mil/dpap/dars/pgi/pgi_htm/current/PGI217_2.htm#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.~~

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