**DFARS Case 2023-D009**

**Use of Fixed-Price Contracts for Certain Major Defense Acquisition Programs**

**Final Rule**

**PART 207—ACQUISITION PLANNING**

**Subpart 207.1—Acquisition Plans**

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**207.106 Additional requirements for major systems.**

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(S–74) When selecting contract type **[for a major defense acquisition program]**, see 234.004 ~~(section 811 of the National Defense Authorization Act for Fiscal Year 2013 (~~[~~Pub. L. 112–239~~](https://www.govinfo.gov/link/plaw/112/public/239)~~))~~.

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**PART 234—MAJOR SYSTEM ACQUISITION**

**\* \* \* \* \***

### 234.004 Acquisition strategy.

(1) \* \* \*

(2) *Contract type.*

(i) In accordance with section 818 of the National Defense Authorization Act for Fiscal Year 2007 ([Pub. L. 109–364](https://www.govinfo.gov/link/plaw/109/public/364)), for major defense acquisition programs at Milestone B—

(A) The milestone decision authority shall select, with the advice of the contracting officer, the contract type for a development program at the time of Milestone B approval or, in the case of a space program, Key Decision Point B approval;

(B) The basis for the contract type selection shall be documented in the acquisition strategy. The documentation—

(1) Shall include an explanation of the level of program risk; and

(2) If program risk is determined to be high, shall outline the steps taken to reduce program risk and the reasons for proceeding with Milestone B approval despite the high level of program risk; and

(C) If a cost-reimbursement type contract is selected, the contract file shall include the milestone decision authority's written determination that—

(1) The program is so complex and technically challenging that it would not be practicable to reduce program risk to a level that would permit the use of a fixed-price type contract; and

(2) The complexity and technical challenge of the program is not the result of a failure to meet the requirements of [10 U.S.C. 4251](https://www.govinfo.gov/link/uscode/10/4251).

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**[(v) In accordance with section 808 of the National Defense Authorization Act for Fiscal Year 2023 (Pub. L. 117-263)—**

**(A) The contracting officer shall not procure more than one lot for low-rate initial production, as defined at 10 U.S.C. 4231, associated with a major defense acquisition program if—**

**(*1*) The milestone decision authority authorizes the use of a fixed-price type contract at the time of Milestone B approval; and**

**(*2)*  The scope of work of the fixed-price type contract includes both the development and low-rate initial production of items for such major defense acquisition program; and**

**(B) This limitation may be waived by the service acquisition executive for the department concerned, delegable to no lower than one level above the contracting officer, if—**

**(*1*) A written notification of the waiver, including associated rationale, is provided to the congressional defense committees no later than 30 days after issuance of the waiver in accordance with agency procedures; and**

**(*2*) A copy of the waiver and such congressional notification are included in the contract file.]**

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