

The Fix Is In: Cost-Reimbursable Contracts Are Out

Client Alerts

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Key Takeaways

On April 30, 2026, President Trump issued an Executive Order that fundamentally shifts the “default” posture of federal acquisitions. Under the EO, fixed-price contracts and performance-based contracts become the “default and preferred method” of federal procurement. All non-fixed-price contracts—including cost-reimbursement, time-and-materials, and labor-hour—now require written justification, and those exceeding specified dollar thresholds require formal approval (with narrow exceptions).

Citing a review of FY2024 spending—which identified approximately \$120 billion in cost-reimbursement “consulting contracts”—the Administration is moving to eliminate “bad incentives” that it claims drive up costs and weaken contractor accountability. The EO is arguably the most aggressive swing in decades of the familiar policy pendulum between fixed-price and cost-type contracting, and it fits within the broader rapid procurement reform under the Trump Administration. This EO will require close scrutiny from companies that hold government contracts. When a government contract is fixed-priced, the contractor should be vigilant in identifying changes to the defined work scope, whereas cost reimbursement contracts are often used where requirements are unclear or evolving. If this EO causes contracting officers to avoid using cost-reimbursement contracts in situations where they would have used them in the past, the result could be fixed-price contracts that must then be modified repeatedly to deal with evolving government needs. Contractors should ensure their procedures for identifying and tracking contract changes are in top shape.

Background: The Fixed-Price / Cost-Type Pendulum

The tension between fixed-price and cost-type contracting is a long-running theme in government contracting. FAR Part 16 has long recognized a preference for firm-fixed-price contracts. The DoD Better Buying Power initiatives (2010–2016) pushed for greater use of fixed-price incentive contracts. Congress got into the game with section 829 of the 2017 NDAA, which demanded a fixed-price contract preference with special approval required for high-value cost-type contracts. DoD took until 2019 to implement that formal fixed-price preference with agency-head approval

gates for cost-type contracts exceeding \$25 million. Congress then repealed the requirement in the 2022 NDAA. Arguably, the April 30, 2026 EO is the most expansive iteration yet: it applies government-wide, backs the fixed-price default with tiered approval thresholds, requires mandatory renegotiation of top ten existing contracts and semi-annual reporting, and introduces a directive for FAR amendments and workforce training—an enforcement architecture significantly more robust than anything that has come before, even as the underlying tension between cost certainty and risk allocation remains unresolved.

Overview of the Executive Order and Fact Sheet

The EO marks a significant shift in federal procurement policy by mandating that fixed-price and performance-based contracts become the “default” for all executive agencies. The President’s aim is to “ensure that Government contracts incentivize performance rather than cost inflation.” The key provisions are as follows:

Fixed-Price as the Default: All executive agencies are now directed to use fixed-price contracts or contracts that tie profit to performance-based metrics as the primary method of procurement. Cost-reimbursement contracts are now considered the “exception.” The policy goal is to protect taxpayer dollars by shifting the risk of cost overruns from the government to the contractor and ensuring that profit is tied to “demonstrable returns on investment.”

New Approval Thresholds: To use “other-than-fixed-price” contracts (such as cost-reimbursable, time-and-materials, or labor-hour), contracting officers must provide a written justification to their agency head. Higher-value non-fixed-price contracts now require explicit written approval from the agency head if they exceed:

- **\$100 Million:** Department of War.
- **\$35 Million:** NASA.
- **\$25 Million:** Department of Homeland Security.
- **\$10 Million:** All other agencies.

Mandatory Review of Top 10 Contracts: Within **90 days** (by July 29, 2026), agency heads must review their 10 largest non-fixed-price contracts and, where practicable, seek to renegotiate or restructure them into fixed-price or performance-based models.

Key Exemptions: The EO recognizes that some work is inherently unsuitable for fixed-price models. The EO provides carve-outs for specific high-risk or unpredictable categories, including contracts for:

- Research and development (R&D) or pre-production of major systems.

- Emergency response, major disasters, or contingency operations.

Reporting Requirement: Twice a year, agencies are expected to report to the Office of Management and Budget (OMB) the “number of, value of, and written justifications for, any non-fixed-price contracts.” The first report is due in **90 days**.

Implementation Timeline: OMB will issue guidance within **45 days**, and formal amendments to the Federal Acquisition Regulation (FAR) are expected within **120 days**.

Key Considerations and Open Questions for Government Contractors

Most immediately, the 90-day mandate to renegotiate large existing contracts raises significant questions. In practice, how will contracting officers seek to renegotiate these contracts? Will the government seek to unilaterally convert a cost-type contract to firm-fixed-price? And if a contractor is dissatisfied with the terms, how aggressively will that contractor pursue available remedies?

More broadly, the shift to fixed-price contracting reflects a shift in cost risk from the government to the contractor. For complex IT modernization, professional services, and systems integration work where requirements are not well defined, this could materially increase contractor exposure. Indeed, several prominent large prime contractors have recently announced that they will no longer bid for fixed-price contracts on large, complex programs, precisely because of billion-dollar cost overruns. And for those contractors who decide to bid on new FFP work that was previously cost-type, those contractors will likely need to price in risk, thereby increasing bid prices. It remains to be seen whether the fixed-price contracting preference will result in lower prices or increased competition.

Of course, contractors bidding on fixed-price contracts will need to carefully scope their services, include assumptions where appropriate, document and clearly communicate with customers about any changes or scope shift, and be prepared to pursue funding for such changes through contract clauses or, ultimately, through the claims process.

Immediate Next Steps

Contract portfolio review. Contractors should review the contract portfolio and identify all current large or complex non-fixed-price contracts (cost-reimbursement, T&M, labor-hour) and assess which are likely within each agency's “top 10 by dollar value.” The contracting workforce is already spread thin and it will benefit contractors to proactively propose restructuring that makes commercial sense and include appropriate risk premiums and performance-based incentives.

Ongoing EO implementation. Contractors should monitor forthcoming guidance expected from OMB within 45 days, which will be critical in defining the practical contours of implementation. Contractors should also monitor proposed FAR amendments and consider bid strategy in light of the evolving competitive landscape.

Increase resources to compliance and quality functions. As contractors increasingly face pressure to work within fixed-price budgets, there will also be increasing risk of cutting corners to save costs—in turn, this can lead to an increase in enforcement actions and whistleblowing. Contractors should proactively re-assess their compliance and quality mechanisms to mitigate this risk.

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