

Client Alert: Revised Guidance to Help Contractors Manage the Effects of Inflation

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By: David Robbins, Matthew L. Haws

The Office of the Under Secretary of Defense, Acquisition and Sustainment, Defense Pricing and Contracting (DPC) issued revised guidance last Friday granting DoD contracting officers increased flexibility to help contractors manage the effects of inflation—including for firm-fixed-price contracts.

The new guidance is “[b]ased on feedback from the Department’s acquisition executives about how inflation is presently affecting the Defense Industrial Base and contractors’ ability to perform under existing firm-fixed-price contracts . . .” and notes that “there may be circumstances where an accommodation can be reached by mutual agreement of the contracting parties” to address the “acute impacts on small businesses and other suppliers.” The guidance indicates schedule relief or otherwise amending contractual requirements may be appropriate as long as the government receives “adequate consideration” in return.

It also reminds acquisition staff of the ability to seek Extraordinary Contractual Relief under Public Law 85-804 in the form of an “upward adjustment to the price of an existing firm-fixed-price contract to account for current economic conditions.”

Prior guidance had provided that “under firm-fixed-price (FFP) contracts [contractors] generally must bear the risk of cost increases, including those due to inflation.” This blunt statement led some contracting officers to conclude they had limited room to adjust firm-fixed-price contracts struggling under the weight of inflation. This new guidance is a noteworthy acknowledgement of the significant burden on the defense industrial base and the need for contracting officers to have flexibility in responding to individual circumstances and meeting the government’s needs.

Jenner and Block’s Government Contracts attorneys have significant experience helping contractors negotiate schedule relief, equitable adjustments, and appropriate consideration and we stand ready to assist.

Related Attorneys



David Robbins

Partner

[drobbins@jenner.com](mailto:d Robbins@jenner.com)

+1 202 639 6040



Matthew L. Haws

Partner

mhaws@jenner.com

+1 202 639 6065

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