

June 25, 2026

MEMORANDUM FOR CHIEF ACQUISITION OFFICERS
SENIOR PROCUREMENT EXECUTIVES
DEFENSE ACQUISITION REGULATIONS COUNCIL
CIVILIAN AGENCY ACQUISITION COUNCIL

FROM: Dr. Kevin R. Rhodes,
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SUBJECT: Agency Implementation of Executive Order 14402, Promoting Efficiency, Accountability, and Performance in Federal Contracting.

The purpose of this memorandum is to provide guidance to agencies that issue contracts subject to the Federal Acquisition Regulation (FAR) to support their implementation of Executive Order (E.O.) 14402, Promoting Efficiency, Accountability, and Performance in Federal Contracting, dated April 30, 2026, (91 FR 24325, May 5, 2026). E.O. 14402 establishes fixed-price contracts as the default and preferred method of procurement.

Section 3 of E.O. 14402 directs the Director of the Office of Management and Budget (OMB) to issue guidance to agencies to ensure consistent implementation of the E.O. and to propose amendments to the FAR, consistent with the policy in section 1 of the

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E.O. in coordination with the Federal Acquisition Regulatory Council (FAR Council).

Section 2(f) of E.O. 14402 directs agencies to utilize applicable deviations from provisions of the FAR to comply with the provisions of the E.O.

Guidance

To implement sections 2(f) and 3 of the E.O., agencies should update their Revolutionary FAR Overhaul (RFO) class deviations for parts 16 and 52 by July 15, 2026.

Agencies that adopt the model deviation text provided in Attachment 1 of this guidance without change are not required to coordinate with the FAR Council. Unless an agency has existing statutory direction that requires reconciliation with this guidance, agencies must request approval from the FAR Council before adopting FAR text that differs from the FAR Council's model deviation text.

Public posting of agency-specific deviations. Agencies should provide copies of their updated RFO class deviations to the FAR Secretariat at GSARegSec@gsa.gov for public posting on the RFO website.

Agency class deviation effective dates. The FAR Council intends to conduct rulemaking pursuant to the notice and comment process at 41 U.S.C. 1707. Agencies are encouraged to make their class deviations effective until implemented in the FAR.

Definition

A covered contract or order means a contract or order that is other than fixed-price or is firm-fixed-price, level of effort term.

Policy

Unless an exception applies, an approved written justification is required for covered contracts or orders valued at or above the following thresholds:

- A. \$100 million, for DoD.
- B. \$35 million, for NASA.
- C. \$25 million, for Department of Homeland Security.
- D. \$10 million, for all other agencies.

Hybrid contracts or orders. When multiple contract types appear in the same contract or order, a justification is required when the value of the other than fixed-price or firm-fixed-price, level-of-effort term portion meets or exceeds the thresholds.

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Exceptions. Exceptions include—

- A. Multiple-award contracts, but task orders, delivery orders, and BPAs under such contracts do require a justification;
- B. Acquisitions to support a response to an emergency, major disaster, or contingency operation;
- C. Acquisitions for research and development contracts or orders; or
- D. Acquisitions for pre-production development for a major system acquisition.

Applicability

The FAR 16.104 justification requirement applies to the following:

- A. Solicitations issued on or after July 15, 2026.
- B. Solicitations issued before July 15, 2026, but resulting contracts or orders have not yet been awarded.
- C. Existing contracts or orders if the remaining period of performance (including all options) is at least 18 months as of July 15, 2026.

For assisted acquisitions, use the FAR 16.104 threshold applicable to the requesting agency (i.e., funding agency) to determine whether approval by the head of the agency is required. The servicing agency, in consultation with the requesting agency, is responsible for developing, approving, and reporting the required justification. These responsibilities may be performed by the requesting agency if mutually agreed upon by the parties in an interagency agreement.

Timing of the justification. Justifications for covered contracts or orders—

- A. Must be approved prior to the release of the solicitation, for solicitations issued on or after July 15, 2026; and
- B. Should be issued no later than July 15, 2027, for—
 - 1. Solicitations issued before July 15, 2026, but resulting contracts or orders awarded on or after July 15, 2026; and
 - 2. Existing contracts or orders, if the remaining period of performance (including options) is at least 18 months as of July 15, 2026.

For reporting of covered contract or order justifications under paragraph B, refer to the OMB guidance.

Paperwork Reduction Act

There are no information collections associated with E.O. 14402.

Severability

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If any portion (e.g., section, clause, sentence) of the resultant deviations is held to be invalid or unenforceable facially, or as applied to any entity or circumstance, it shall be severable from the remainder of the deviation, and shall not affect the remainder thereof, or its application to entities not similarly situated or to other dissimilar circumstances. The various portions of the resultant deviations are independent and serve distinct purposes. Even if one aspect were rendered invalid, the other benefits of the deviations would still be applicable.

If you have any questions or require additional information about this memorandum, please contact MBX.OMB.OFPPv2@OMB.eop.gov.

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Attachment 1

(DEVIATION JUN 2026)

Executive Order 14402, Promoting Efficiency, Accountability, and Performance in Federal Contracting, of April 30, 2026

Baseline is the Revolutionary Federal Acquisition Regulation Overhaul as posted in [Acquisition.gov](https://www.acquisition.gov) on May 6, 2026.

Changes made in the proposed rule are shown by **[additions]** and deletions.

* * * * *

Part 16-Types of Contracts

* * * * *

Subpart 16.1 - Selecting Contract Types

* * * * *

16.102 Negotiating contract type.

* * * * *

(b) **[Fixed-price contract types are the default and preferred contract types. If a fixed-price contract type is not appropriate for an entire contract, consider whether a portion of the contract can be established on a fixed-price basis.**

(c)] A firm-fixed-price contract **[(see section 16.202)]**, ~~which best uses the basic profit motive of business enterprise,~~ must be used when the risk involved is minimal or can be predicted

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with an acceptable degree of certainty. However, when a reasonable basis for firm pricing does not exist, other contract types should be considered, and negotiations should be directed toward selecting a contract type (or combination of types) that will appropriately tie profit to contractor performance.

[(d)] ~~(e)~~ In the course of an acquisition program, a series of contracts, or a single long-term contract, changing circumstances may necessitate different contract types than those used initially. Contracting officers should avoid extended use of a cost-reimbursement or time-and-materials contract after experience provides a basis for firmer pricing.

16.103 Documenting contract type.

(a) Except as identified in paragraph (b) of this section, document and explain in the acquisition plan, or in the contract file if a written acquisition plan is not required by agency procedures-

(1) Why the contract type selected must be used to meet the agency's needs[;]-

(2) The Government's risks and the burden to manage the contract type selected. As applicable, discuss-

(i) How the Government identified the risks (e.g., pre-award survey, or past performance information);

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(ii) The nature of the risks (e.g., inadequate contractor's accounting system, weaknesses in contractor's internal control, non-compliance with Cost Accounting Standards, or lack of or inadequate earned value management system); and

(iii) How the Government will manage and mitigate the risks[;]-

(3) The Government resources necessary to properly plan for, award, and administer the contract type selected (e.g., resources needed and the additional risks to the Government if adequate resources are not provided) [;]-

(4) **[Why a level-of-effort, price redetermination, or fee provision was included; and**

(5)]For other than a ~~firm~~-fixed-price contract, at a minimum include-

(i) An analysis of why the use of other than a ~~firm~~-fixed-price contract (e.g., cost reimbursement, time-and-materials, labor hour, innovative contract type) is appropriate;

(ii) Rationale that detail specific facts and circumstances (e.g., **[lack of incentive to control costs,]** complexity of the requirements, uncertain work duration, contractor's technical capability and financial responsibility, or adequacy of the contractor's accounting system), and

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associated reasoning essential to support the contract type selection;

(iii) An assessment of whether Government resources are adequate to properly plan for, award, and administer other than ~~firm-fixed-price~~ contracts; and

(iv) A discussion of planned actions to minimize the use of other than ~~firm-fixed-price~~ contracts on future acquisitions for the same requirement and to transition to ~~firm-fixed-price~~ contracts to the maximum extent practicable.

~~(5) Why a level-of-effort, price redetermination, or fee provision was included.~~

(b) Documentation of contract type is not required for the following[:]-

(1) Fixed-price acquisitions made under simplified acquisition procedures[.]÷

(2) Contracts on a firm-fixed-price basis [(see section 16.202)] other than those for major systems or research and development[.];~~and~~

~~(3) Awards on the set-aside portion of sealed bid partial set-asides for small business.~~

[16.104 Executive Order 14402 justification for covered contracts and orders.

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(a) *Definition.* As used in this section, *covered contract or order* means a contract or order that is—

- (1) Other than fixed-price;
- (2) Firm-fixed-price, level-of-effort term; or
- (3) A hybrid contract that includes one or more elements described in paragraphs (1) and (2).

(b) *Policy.* This section implements Executive Order 14402, Promoting Efficiency, Accountability, and Performance in Federal Contracting, April 30, 2026. The head of the agency must approve a written justification described in paragraph (d) of this section prior to using a covered contract or order.

(c) *Application.* (1) *Thresholds.* Unless an exception in paragraph (e) of this section applies, a justification is required for covered contracts and orders valued at or above—

- (i) \$100 million, for DoD;
- (ii) \$35 million, for NASA;
- (iii) \$25 million, for Department of Homeland Security; or
- (iv) \$10 million, for all other Federal agencies.

(2) *Hybrid contracts or orders.* A hybrid contract or order is a covered contract or order when the value of the other than

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fixed-price or firm-fixed-price, level-of-effort term portion meets or exceeds the thresholds.

(3) *Single-award indefinite-delivery contracts.* A single-award indefinite-delivery contract (IDC) is a covered contract if the estimated total value of the known and forecasted covered orders meets or exceeds the thresholds. Use the contract ceiling price if the contract only allows for covered orders.

(4) *Blanket purchase agreements.* The head of the agency decides whether the justification requirement applies when the blanket purchase agreement (BPA) is awarded, or when each order under the BPA is placed.

(5) *Duration of a justification.* An approved justification is valid for the duration of the contract or order.

(d) *Procedures.* (1) Submit to the head of the agency the required justification for approval that includes-

(i) The information in 16.103; and

(ii) Any determination and findings required for the contract type (see 16.401-2, 16.601-3).

(2) The head of the agency may only delegate the justification approval to the chief acquisition officer of the agency or another non-career official in the Senior Executive Service within the agency.

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(e) *Exceptions.* The justification requirement does not apply to-

(1) Multiple-award contracts. However, the justification requirement does apply to task orders, delivery orders, and BPAs under those contracts;

(2) Contracts in support of a response to an emergency, major disaster, or contingency operation;

(3) Research and development contracts or orders (see part 35); or

(4) Pre-production development for a major system acquisition (see part 34).]

[16.105]~~16.104~~ Solicitation provision.

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Subpart 16.2 - Fixed-Price Contracts

* * * * *

16.206 Firm-fixed-price, level-of-effort term contracts.

16.206-1 Description.

A firm-fixed-price, level-of-effort term contract requires[-]

(a) ~~the~~ **[The]** contractor to provide a specified level of effort, over a stated period of time, on work **[towards a deliverable]** that can be described ~~only~~ in general terms[;] and

(b) ~~the~~ **[The]** Government to pay the contractor a fixed dollar amount **[for the effort]**.

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16.206-3 Limitations.

This contract type may be used only when-

- (a) The work required cannot otherwise be clearly defined;
- (b) The required level of effort is identified and agreed upon in advance; ~~and~~
- (c) There is reasonable assurance that the intended result cannot be achieved by expending less than the stipulated effort-~~;~~ **and**

- (d) The agency head approves a justification if required by**

16.104.]

Subpart 16.3 - Cost-Reimbursement Contracts

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16.301 General.

* * * * *

16.301-2 Application.

~~(a)~~ The contracting officer must use cost-reimbursement contracts only when-

[(a)] ~~(1)~~ The requirements cannot be sufficiently defined to allow for a fixed-price type contract ~~(see part 7)~~; or

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[(b)] ~~(2)~~ Uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract.

~~(b) The contracting officer must document the reason for selecting the contract type in the written acquisition plan. The plan must be approved and signed at least one level above the contracting officer (see part 7 and 16.103).~~

16.301-3 Limitations.

(a) A cost-reimbursement contract may be used only when-

(1) A written acquisition plan has been approved **[at least one level above the contracting officer (see 7.102(d))]**;

(2) **[The agency head approves a justification if required by 16.104;**

(3)] The contractor's accounting system can adequately segregate, accumulate and allocate costs specifically attributed to the contract or order during contract performance; and

[(4)] Before award of the contract or order, sufficient Government resources are available to award and manage a contract other than firm-fixed-priced (see part 7). This includes designating a contracting officer's representative to monitor contractor performance and cost controls (see part 1).

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(b) The use of cost-reimbursement contracts is not allowed for the purchase of commercial products and commercial services (see parts ~~2~~ and 12).

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Subpart 16.4 - Incentive Contracts

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16.401 General.

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16.401-2 Limitations.

[(a)]A determination and findings, signed by the head of the contracting activity, must be completed for all incentive- and award-fee contracts justifying that the use of this type of contract is in the best interest of the Government. ~~This determination must be documented in the contract file.~~ The determination for award-fee contracts must address all of the suitability items in 16.402-1.

[(b) (1) For cost-reimbursement incentive contracts, the agency head must approve a justification if required by 16.104.

(2) Fixed-price incentive contracts based solely on factors other than cost, do not require a justification.]

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16.402 Award-fee.

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16.402-2 Limitations.

(a) [*Justification for other than fixed-price.* For award-fee contracts, except for fixed-price award-fee contracts based solely on factors other than cost, the agency head must approve a justification, if required by 16.104.

(b) *Award-fee plan.*]An award-fee contract must not be awarded unless an award-fee plan is completed in accordance with the requirements in paragraph (e[(d)]) of this subsection.

[(c)] ~~(b)~~ *Award-fee amount.* * * * * *

[(d)] ~~(e)~~ *Award-fee plan.* * * * * *

[(e)] ~~(d)~~ *Rollover of unearned award fee.* * * * * *

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Subpart 16.6 - Time-and-Materials, Labor-Hour, and Letter Contracts

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16.601 Time-and-materials contracts.

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16.601-3 Limitations.

A time-and-materials contract or order may be used only if-

(a) * * * * *

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(2) Approved by the head of the contracting activity prior to the execution of the base period when the base period plus any option periods exceeds three years; ~~and~~

[(b) The agency head approves a justification if required by 16.104; and]

[(c)] ~~(b)~~ The contract or order includes a ceiling price that the contractor exceeds at its own risk. See part 12 for further limitations on use of time-and-materials or labor-hour contracts for acquisition of commercial products and commercial services.

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16.603 Letter contracts.

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16.603-3 Limitations.

A letter contract may be used only after the head of the contracting activity ~~or a designee~~ determines in writing that no other contract is suitable. **[The agency head must approve a justification if required by 16.104.]** Letter contracts must not-

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Part 52-Solicitation Provisions and Contract Clauses

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Subpart 52.2 - Text of Provisions and Clauses

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52.216-1 Type of Contract.

As prescribed in ~~16.104~~ **[16.105]**, complete and insert the following provision:

Type of Contract (DEVIATION DATE)

The Government contemplates award of a _____

[Contracting Officer insert specific type of contract] contract resulting from this solicitation.

(End of provision)

Alternate I (DEVIATION DATE). As prescribed in ~~16.104~~ **[16.105]**,

Include the following as paragraph (a) of the basic provision:

Offerors may propose an alternative contract type.

* * * * *

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