

## **NO COVID ADJUSTMENT IN FIXED-PRICE CONTRACT**

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The Boards and Court of Federal Claims have been consistent in denying price adjustments in fixed price contracts. This was the situation in *Heart & Core LLC*, ASBCA No. 63403, Jan. 11, 2023.

Heart & Core was awarded an Air Force requirements contract to supply comforters, bathrobes, blankets, sweatshirts and sweatpants, each of which was for a firm-fixed price. Heart & Core submitted a Request for Equitable Adjustment (“REA”) on April 4, 2022, seeking a 30% price increase for comforters and 20% increase for bathrobes. The request was based on increased shipping, labor and labor costs, and was subsequently justified given the COVID-19 pandemic. The Board disagreed, and in a small claims, nonprecedential decision noted the following:

- Even though Heart & Core proved its costs substantially increased beyond its expectations, the Board could not grant its appeal because this is a firm-fixed price contract where the contractor bore the risk of price increases and the government is not obligated to adjust prices to account for them.
- Heart & Core contended that its costs had become commercially senseless, and implied that performance was commercial impracticable, but the Board rejected this doctrine since the magnitude of the cost increases did not justify commercial impracticability.
- Heart & Core also argued that higher costs were justified under the contract’s recital of acts of God, epidemics and quarantines as grounds to excuse contractor default. However, the Board held that that clause in FAR 52.212-4 did not apply to an unforeseen pandemic.

The Board held that the contractor bears the risk of changes in the market when it submits a fixed-price offer, and no price adjustments were appropriate in this case.