Part 243 - CONTRACT MODIFICATIONS

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Parent topic: Defense Federal Acquisition Regulation

Subpart 243.1 - GENERAL

243.107 RESERVED

243.107-70 Notification of substantial impact on employment.

The Secretary of Defense is required to notify the Secretary of Labor if a modification of a major defense contract or subcontract will have a substantial impact on employment. The clause prescribed at 249.7003 (c) requires that the contractor notify its employees, its subcontractors, and State and local officials when a contract modification will have a substantial impact on employment.

243.170 Identification of foreign military sale (FMS) requirements.

Follow the procedures at PGI 243.170 for identifying contract modifications that add FMS requirements.

243.171 Obligation or deobligation of funds.

Follow the procedures at PGI 243.171 when obligating or deobligating funds.

243.172 Application of modifications.

Follow the procedures at 204.1671 for determining the sequence for application of modifications to a contract or order.

Subpart 243.2 - CHANGE ORDERS

243.204 Administration.

Follow the procedures at PGI 243.204 for administration of change orders.

243.204-70 Definitization of change orders.

243.204-70-1 Scope.

(a) This subsection applies to unpriced change orders with an estimated value exceeding $5 million.

(b) Unpriced change orders for foreign military sales and special access programs are not subject to this subsection, but the contracting officer shall apply the policy and procedures to them to the maximum extent practicable. If the contracting officer determines that it is impracticable to adhere to the policy and procedures of this subsection for an unpriced change order for a foreign military sale or a special access program, the contracting officer shall provide prior notice, through agency channels, to the Office of the Principal Director, Defense Pricing, Contracting, and Acquisition Policy (Contract Policy) via email at osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil.

Price Ceiling.

Unpriced change orders shall include a not-to-exceed price.

243.204-70-2 Price ceiling.

Unpriced change orders shall include a not-to-exceed price.

243.204-70-3 Definitization schedule.

(a) Unpriced change orders shall contain definitization schedules that provide for definitization by the earlier of—

(1) The date that is 180 days after issuance of the change order (this date may be extended but may not exceed the date that is 180 days after the contractor submits a qualifying proposal); or

(2) The date on which the amount of funds obligated under the change order is equal to more than 50 percent of the not-to-exceed price.

(b) Submission of a qualifying proposal in accordance with the definitization schedule is a material element of the contract. If the contractor does not submit a timely qualifying proposal, the contracting officer may suspend or reduce progress payments under FAR 32.503-6, or take other appropriate action.

243.204-70-4 Limitations on obligations.

(a) The Government shall not obligate more than 50 percent of the not-to-exceed price before definitization. However, if a contractor submits a qualifying proposal before 50 percent of the not-to-exceed price has been obligated by the Government, the limitation on obligations before definitization may be increased to no more than 75 percent (see 232.102-70 for coverage on provisional delivery payments).

(b) Obligations should be consistent with the contractor's requirements for the undefinitized period.

243.204-70-5 Exceptions.

(a) The limitations in 243.204-70 -2, 243.204-70 -3, and 243.204-70 -4 do not apply to unpriced change orders for the purchase of initial spares.

(b) The limitations in 243.204-70 -4(a) do not apply to unpriced change orders for ship construction and ship repair.

(c) The head of the agency may waive the limitations in 243.204-70 -2, 243.204-70 -3, and 243.204-70 -4 for unpriced change orders if the head of the agency determines that the waiver is necessary to support—

(1) A contingency operation; or

(2) A humanitarian or peacekeeping operation.

243.204-70-6 Allowable Profit.

When the final price of an unpriced change order is negotiated after a substantial portion of the required performance has been completed, the head of the contracting activity shall ensure the profit allowed reflects—

(a) Any reduced cost risk to the contractor for costs incurred during contract performance before negotiation of the final price;

(b) Any reduced cost risk to the contractor for costs expected to be incurred during performance of the remainder of the contract; and

(c) The extent to which costs have been incurred prior to definitization of the unpriced change order (see 215.404-71 -3 (d) (2)). The risk assessment shall be documented in the price negotiation memorandum.

243.204–70–7 Plans and reports.

To provide for enhanced management and oversight of unpriced change orders, departments and agencies shall—

(a) Include in the Consolidated Undefinitized Contract Action (UCA) Management Plan required by 217.7405 , the actions planned and taken to ensure that unpriced change orders are definitized in accordance with this subsection; and

(b) Include in the Consolidated UCA Management Report required by 217.7405 , each unpriced change order with an estimated value exceeding $5 million.

243.204-71 Certification of requests for equitable adjustment.

(a) A request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold may not be paid unless the contractor certifies the request in accordance with the clause at 252.243-7002 .

(b) To determine if the dollar threshold for requiring certification is met, add together the absolute value of each cost increase and each cost decrease. See PGI 243.204 -71(b) for an example.

(c) The certification required by 10 U.S.C. 3862(a), as implemented in the clause at 252.243-7002 , is different from the certification required by 41 U.S.C. 7103, Disputes. If the contractor has certified a request for equitable adjustment in accordance with 10 U.S.C. 3862(a), and desires to convert the request to a claim under the Contract Disputes statute, the contractor shall certify the claim in accordance with FAR subpart 33.2.

243.205 Contract clauses.

243.205-70 Pricing of contract modifications.

Use the clause at 252.243-7001 , Pricing of Contract Modifications, in solicitations and contracts when anticipating and using a fixed price type contract.

243.205-71 Requests for equitable adjustment.

Use the clause at 252.243-7002 , Requests for Equitable Adjustment, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that are estimated to exceed the simplified acquisition threshold.

243.205-72 Unpriced change orders.

See the clause prescriptions at 217.7406 for all unpriced change orders with an estimated value exceeding $5 million.