Part 43 - Contract Modifications

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43.000 Scope of part.

This part prescribes policies and procedures for preparing and processing *contract modifications* for all types of contracts including *construction* and architect-engineer contracts. It does not apply to-

(a) Orders for *supplies* or services not otherwise changing the terms of contracts or agreements (*e.g., delivery orders* under indefinite-delivery contracts); or

(b) Modifications for extraordinary contractual relief (see subpart 50.1).

Subpart 43.1 - General

43.101 Definitions.

As used in this part—

Administrative change means a unilateral (see 43.103(b)) contract change, *in writing*, that does not affect the substantive rights of the parties (*e.g.*, a change in the paying office or the appropriation data).

Effective date-

(1) For a *solicitation* amendment, *change order*, or administrative change, the *effective date shall* be the issue date of the amendment, *change order*, or administrative change.

(2) For a *supplemental agreement*, the *effective date shall* be the date agreed upon by the *contracting* parties.

(3) For a modification issued as a confirming notice of termination for the convenience of the Government, the *effective date* of the confirming notice *shall* be the same as the *effective date* of the initial notice.

(4) For a modification converting a *termination for default* to a termination for the convenience of the Government, the *effective date shall* be the same as the *effective date* of the *termination for default*.

(5) For a modification confirming the termination *contracting officer*'s previous letter determination of the amount due in settlement of a contract *termination for convenience*, the *effective date shall* be the same as the *effective date* of the previous letter determination.

43.102 Policy.

(a) Only *contracting officers* acting within the scope of their authority are empowered to execute *contract modifications* on behalf of the Government. Other Government personnel *shall* not-

(1) Execute *contract modifications*;

(2) Act in such a manner as to cause the contractor to believe that they have authority to bind the Government; or

(3) Direct or encourage the contractor to perform work that *should* be the subject of a *contract modification*.

(b) *Contract modifications*, including changes that could be issued unilaterally, *shall* be priced before their execution if this can be done without adversely affecting the interest of the Government. If a significant cost increase could result from a *contract modification* and time does not permit negotiation of a price, at least a ceiling price *shall* be negotiated unless impractical.

43.103 Types of contract modifications.

Contract modifications are of the following types:

(a) *Bilateral.* A bilateral modification (*supplemental agreement*) is a *contract modification* that is signed by the contractor and the *contracting officer*. Bilateral modifications are used to-

(1) Make negotiated equitable adjustments resulting from the issuance of a *change order*;

(2) Definitize letter contracts; and

(3) Reflect other agreements of the parties modifying the terms of contracts.

(b) *Unilateral.* A unilateral modification is a *contract modification* that is signed only by the *contracting officer*. Unilateral modifications are used, for example, to-

(1) Make administrative changes;

(2) Issue *change orders*;

(3) Make changes authorized by clauses other than a changes clause (*e.g.,* Property clause, *Options* clause, or *Suspension* of Work clause); and

(4) Issue termination notices.

43.104 Notification of contract changes.

(a) When a contractor considers that the Government has effected or *may* effect a change in the contract that has not been identified as such *in writing* and signed by the *contracting officer*, it is necessary that the contractor notify the Government *in writing* as soon as possible. This will permit the Government to evaluate the alleged change and-

(1) Confirm that it is a change, direct the mode of further performance, and plan for its funding;

(2) Countermand the alleged change; or

(3) Notify the contractor that no change is considered to have occurred.

(b) The clause at 52.243-7, Notification of Changes, which is prescribed in 43.107-

(1) Incorporates the policy expressed in paragraph (a) of this section;

(2) Requires the contractor to notify the Government promptly of any Government conduct that the contractor considers a change to the contract, and

(3) Specifies the responsibilities of the contractor and the Government with respect to such notifications.

43.105 Availability of funds.

(a) The *contracting officer shall* not execute a *contract modification* that causes or will cause an increase in funds without having first obtained a certification of fund availability, except for modifications to contracts that-

(1) Are conditioned on availability of funds (see 32.703-2); or

(2) Contain a limitation of cost or funds clause (see 32.704).

(b) The certification required by paragraph (a) of this section *shall* be based on the negotiated price, except that modifications executed before agreement on price *may* be based on the best available estimate of cost.

(c) In accordance with 10 U.S.C. 983, do not provide funds by contract or *contract modification*, or make contract payments, to an institution of higher education that has a policy or practice of hindering Senior Reserve Officer Training Corps units or military recruiting on campus as described at 9.110. The prohibition in this paragraph (c) does not apply to *acquisitions* at or below the *simplified acquisition threshold* or to *acquisitions* of *commercial products*, including commercially available off-the-shelf items, and *commercial services*.

43.106 [Reserved]

43.107 Contract clause.

The *contracting officer may* insert a clause substantially the same as the clause at 52.243-7, Notification of Changes, in *solicitations* and contracts. The clause is available for use primarily in negotiated research and development or supply contracts for the *acquisition* of major weapon systems or principal subsystems. If the contract amount is expected to be less than $1,000,000, the clause *shall* not be used, unless the *contracting officer* anticipates that situations will arise that *may* result in a contractor alleging that the Government has effected changes other than those identified as such *in writing* and signed by the *contracting officer*.

Subpart 43.2 - Change Orders

43.201 General.

(a) Generally, Government contracts contain a changes clause that permits the *contracting officer* to make unilateral changes, in designated areas, within the general scope of the contract. These are accomplished by issuing written *change orders* on Standard Form 30, Amendment of *Solicitation*/Modification of Contract (SF 30), unless otherwise provided (see 43.301).

(b) The contractor *must* continue performance of the contract as changed, except that in cost-reimbursement or incrementally funded contracts the contractor is not obligated to continue performance or incur costs beyond the limits established in the Limitation of Cost or Limitation of Funds clause (see 32.706-2).

(c) The *contracting officer may* issue a *change order* by electronic means without a SF 30 under unusual or urgent circumstances, *provided* that the message contains substantially the information

required by the SF 30 and immediate action is taken to issue the SF 30.

43.202 Authority to issue change orders.

Change orders shall be issued by the *contracting officer* except when authority is delegated to an administrative *contracting officer* (see 42.202(c)).

43.203 Change order accounting procedures.

(a) Contractors' accounting systems are seldom designed to segregate the costs of performing changed work. Therefore, before prospective contractors submit *offers*, the *contracting officer should* advise them of the possible need to revise their accounting procedures to comply with the cost segregation requirements of the *Change Order* Accounting clause at 52.243-6.

(b) The following categories of *direct costs* normally are segregable and accountable under the terms of the *Change Order* Accounting clause:

(1) Nonrecurring costs (*e.g.,* engineering costs and costs of obsolete or reperformed work).

(2) Costs of added distinct work caused by the *change order* (*e.g.,* new subcontract work, new prototypes, or new retrofit or backfit kits).

(3) Costs of recurring work (*e.g.,* labor and material costs).

43.204 Administration.

(a) *Change order documentation.* When *change orders* are not forward priced, they require two documents: the *change order* and a *supplemental agreement* reflecting the resulting equitable adjustment in contract terms. If an equitable adjustment in the contract price or delivery terms or both can be agreed upon in advance, only a *supplemental agreement* need be issued, but administrative changes and changes issued pursuant to a clause giving the Government a unilateral right to make a change (*e.g.,* an *option* clause) initially require only one document.

(b) *Definitization.*

(1)

(i) *Contracting officers shall* negotiate equitable adjustments resulting from *change orders* in the shortest practicable time.

(ii) Agencies *shall*, in accordance with agency procedures, record and maintain data regarding the time required to definitize equitable adjustments associated with *change orders* for *construction*. The definitization of an equitable adjustment begins upon receipt of an adequate *change order* definitization proposal by the *contracting officer*, and ends upon the *contracting officer*'s execution of a contractual action to definitize the *change order*. The *contracting officer shall* ensure the data is recorded promptly in accordance with agency procedures. See 36.211(b).

(2) Administrative *contracting officers* negotiating equitable adjustments by delegation under

42.302(b)(1), *shall* obtain the *contracting officer*'s concurrence before adjusting the contract delivery schedule.

(3) *Contracting offices* and *contract administration offices*, as appropriate, *shall* establish suspense systems adequate to ensure accurate identification and prompt definitization of unpriced *change orders*.

(4) The *contracting officer shall* ensure that a cost analysis is made, if appropriate, under 15.404-1(c) and *shall* consider the contractor's segregable costs of the change, if available. If additional funds are required as a result of the change, the *contracting officer shall* secure the funds before making any adjustment to the contract.

(5) When the *contracting officer* requires a field *pricing* review of requests for equitable adjustment, the *contracting officer shall* provide a list of any significant contract events which *may* aid in the analysis of the request. This list *should* include-

(i) Date and dollar amount of contract award and/or modification;

(ii) Date of submission of initial contract proposal and dollar amount;

(iii) Date of alleged delays or disruptions;

(iv) Performance dates as scheduled at date of award and/or modification;

(v) Actual performance dates;

(vi) Date entitlement to an equitable adjustment was determined or *contracting officer* decision was rendered if applicable;

(vii) Date of certification of the request for adjustment if certification is required; and

(viii) Dates of any pertinent Government actions or other key events during contract performance which *may* have an impact on the contractor's request for equitable adjustment.

(c) *Complete and final equitable adjustments.* To avoid subsequent controversies that *may* result from a *supplemental agreement* containing an equitable adjustment as the result of a *change order*, the *contracting officer should-*

(1) Ensure that all elements of the equitable adjustment have been presented and resolved; and

(2) Include, in the *supplemental agreement*, a release similar to the following:

Contractor's Statement of Release

In consideration of the modification(s) agreed to herein as complete equitable adjustments for the Contractor's _____ (describe) _____ "proposal(s) for adjustment," the Contractor hereby releases the Government from any and all liability under this contract for further equitable adjustments attributable to such facts or circumstances giving rise to the "proposal(s) for adjustment" (except for _____).

43.205 Contract clauses.

(a)

(1) The *contracting officer shall* insert the clause at 52.243-1, Changes-Fixed-Price, in *solicitations* and contracts when a fixed-price contract for *supplies* is contemplated.

(2) If the requirement is for services, other than architect-engineer or other professional services, and no *supplies* are to be furnished, the *contracting officer shall* use the clause with its AlternateI.

(3) If the requirement is for services (other than *architect-engineer services*, transportation, or research and development) and *supplies* are to be furnished, the *contracting officer shall* use the clause with its AlternateII.

(4) If the requirement is for architect-engineer or other professional services, the *contracting officer shall* use the clause with its AlternateIII.

(5) If the requirement is for transportation services, the *contracting officer shall* use the clause with its AlternateIV.

(6) If it is desired to include the clause in *solicitations* and contracts when a research and development contract is contemplated, the *contracting officer shall* use the clause with its *Alternate* V.

(b)

(1) The *contracting officer shall* insert the clause at 52.243-2, Changes-Cost-Reimbursement, in *solicitations* and contracts when a cost-reimbursement contract for *supplies* is contemplated.

(2) If the requirement is for services and no *supplies* are to be furnished, the *contracting officer shall* use the clause with its AlternateI.

(3) If the requirement is for services and *supplies* are to be furnished, the *contracting officer shall* use the clause with its AlternateII.

(4) If the requirement is for *construction*, the *contracting officer shall* use the clause with its AlternateIII.

(5) [Reserved]

(6) If it is desired to include the clause in *solicitations* and contracts when a research and development contract is contemplated, the *contracting officer shall* use the clause with its *Alternate* V.

(c) Insert the clause at 52.243-3, Changes-Time-and-Materials or Labor-Hours, in *solicitations* and contracts when a time-and-materials or labor-hour contract is contemplated. The *contracting officer may* vary the 30-*day* period in paragraph (c) of the clause according to agency procedures.

(d) The *contracting officer shall* insert the clause at 52.243-4, Changes, in *solicitations* and contracts for-

(1) Dismantling, demolition, or removal of improvements; and

(2) *Construction*, when a fixed-price contract is contemplated and the contract amount is expected to exceed the *simplified acquisition threshold*.

(e) The *contracting officer shall* insert the clause at 52.243-5, Changes and Changed Conditions, in *solicitations* and contracts for *construction*, when the contract amount is not expected to exceed the *simplified acquisition threshold*.

(f) The *contracting officer may* insert a clause, substantially the same as the clause at 52.243-6, *Change Order* Accounting, in *solicitations* and contracts for supply and research and development contracts of significant technical complexity, if numerous changes are anticipated. The clause *may* be included in *solicitations* and contracts for *construction* if deemed appropriate by the *contracting officer*.

Subpart 43.3 - Forms

43.301 Use of forms.

(a)

(1) The Standard Form 30 (SF 30), Amendment of *Solicitation*/Modification of Contract, *shall* (except for the *options* stated in 43.301(a)(2) or actions processed under part 15) be used for-

(i) Any amendment to a *solicitation*;

(ii) *Change orders* issued under the Changes clause of the contract;

(iii) Any other unilateral *contract modification* issued under a *contract clause* authorizing such modification without the consent of the contractor;

(iv) Administrative changes such as the correction of typographical mistakes, changes in the paying office, and changes in accounting and appropriation data;

(v) *Supplemental agreements* (see 43.103); and

(vi) Removal, reinstatement, or addition of funds to a contract.

(2) The SF 30 *may* be used for-

(i) Modifications that change the price of contracts for the *acquisition* of petroleum as a result of economic price adjustment;

(ii) Termination notices; and

(iii) *Purchase order* modifications as specified in 13.302-3.

(3) If it is anticipated that a change will result in a price change, the estimated amount of the price change *shall* not be shown on copies of SF 30 furnished to the contractor.

(b) The Optional Form 336 (OF 336), Continuation Sheet, or a blank sheet of paper, *may* be used as a continuation sheet for a *contract modification*.