50.104-3 Special procedures for unusually hazardous or nuclear risks.

(a) Indemnification requests.

(1) Contractor requests for the indemnification clause to cover unusually hazardous or nuclear risks *should* be submitted to the *contracting officer* and *shall* include the following information:

(i) Identification of the contract for which the indemnification clause is requested.

(ii) Identification and definition of the unusually hazardous or nuclear risks for which indemnification is requested, with a statement indicating how the contractor would be exposed to them.

(iii) A statement, executed by a corporate official with binding contractual authority, of all *insurance* coverage applicable to the risks to be defined in the contract as unusually hazardous or nuclear, including-

(A) Names of *insurance* companies, policy numbers, and expiration dates;

(B) A description of the types of *insurance* provided (including the extent to which the contractor is self-insured or intends to self-insure), with emphasis on identifying the risks insured against and the coverage extended to persons or property, or both;

(C) Dollar limits per occurrence and annually, and any other limitation, for relevant *segments* of the total *insurance* coverage;

(D) Deductibles, if any, applicable to losses under the policies;

(E) Any exclusions from coverage under such policies for unusually hazardous or nuclear risks; and

(F) Applicable workers' compensation *insurance* coverage.

(iv) The controlling or limiting factors for determining the amount of financial protection the contractor is to provide and maintain, with information regarding the availability, cost, and terms of additional *insurance* or other forms of financial protection.

(v) Whether the contractor's *insurance* program has been approved or accepted by any Government agency; and whether the contractor has an indemnification agreement covering similar risks under any other Government program, and, if so, a brief description of any limitations.

(vi) If the contractor is a division or subsidiary of a parent corporation-

(A) A statement of any *insurance* coverage of the parent corporation that bears on the risks for which the contractor seeks indemnification; and

(B) A description of the precise legal relationship between parent and subsidiary or division.

(2) If the dollar value of the contractor's *insurance* coverage varies by 10 percent or more from that stated in an indemnification request submitted in accordance with paragraph (a)(1) of this

subsection, or if other significant changes in *insurance* coverage occur after submission and before approval, the contractor *shall* immediately submit to the *contracting officer* a brief description of the changes.

(b) Action on indemnification requests.

(1) The *contracting officer*, with assistance from legal counsel and cognizant program office personnel, *shall* review the indemnification request and ascertain whether it contains all required information. If the *contracting officer*, after considering the facts and evidence, denies the request, the *contracting officer shall* notify the contractor promptly of the denial and of the reasons for it. If recommending approval, the *contracting officer shall* forward the request (as modified, if necessary, by negotiation) through channels to the appropriate official specified in 50.102-1(d). The *contracting officer*'s submission *shall* include all information submitted by the contractor and-

(i) All pertinent information regarding the proposed contract or program, including the period of performance, locations, and facilities involved;

(ii) A definition of the unusually hazardous or nuclear risks involved in the proposed contract or program, with a statement that the parties have agreed to it;

(iii) A statement by responsible authority that the indemnification action would facilitate the *national defense*;

(iv) A statement that the contract will involve unusually hazardous or nuclear risks that could impose liability upon the contractor in excess of financial protection reasonably available;

(v) A statement that the contractor is complying with applicable Government safety requirements;

(vi) A statement of whether the indemnification *should* be extended to subcontractors; and

(vii) A description of any significant changes in the contractor's *insurance* coverage (see 50.104-3(a)(2)) occurring since submission of the indemnification request.

(2) Approval of a request to include the indemnification clause in a contract *shall* be by a Memorandum of Decision executed by the appropriate official specified in 50.102-1(d).

(3) When use of the indemnification clause is approved under paragraph (b)(2) of this subsection, the definition of unusually hazardous or nuclear risks (see paragraph (b)(1)(ii) of this subsection) *shall* be incorporated into the contract, along with the clause.

(4) When approval is-

(i) Authorized in the Memorandum of Decision; and

(ii) Justified by the circumstances, the *contracting officer may* approve the contractor's written request to provide for indemnification of subcontractors, using the same procedures as those required for contractors.

Parent topic: 50.104 Residual powers.