750.7107 Limitations upon exercise of authority.

(a) Executive Order 11223 does not provide authority for:

(1) The award of a cost-plus-a-percentage-of-cost contract;

(2) The payment of profit or fees in excess of applicable limitations; or

(3) The waiver of any requirement to post a bid, payment, performance, or other bond required by law.

(b)

(1) Executive Order 11223 does not authorize the issuance of a modification, unless:

(i) With respect to cases falling within Section 4 of Executive Order 11223, the approving authority determines that the action is necessary to protect the foreign policy interests of the United States; and

(ii) No other legal authority authorizes issuance of such modification.

(2) A modification under paragraph (b)(1) of this section must be within the limits of the amounts appropriated and the statutory contract authorization as referenced in FAR 50.102-3.

(c) No contract shall be modified unless the contractor submits a request prior to all obligations (including final payment) under the contract having been discharged.

(d) An informal commitment must not be formalized unless:

(1) The contractor submits a written request for payment within six months after furnishing, or arranging to furnish, supplies or services in reliance upon the commitment;

(2) USAID has received the services satisfactorily performed, or has accepted property furnished in reliance on the commitment;

(3) The USAID employee alleged to have made the informal commitment has affirmatively acknowledged responsibility for making the informal commitment in question; and

(4) USAID has taken appropriate action to prevent recurrence.

Parent topic: Subpart 750.71—Extraordinary Contractual Actions To Protect Foreign Policy Interests of the United States