

## 50.305

(a) of this section, any of the following information:

(1) A statement and evidence of the precise error made, ambiguity existing, or misunderstanding arising, showing what it consists of, how it occurred, and the intention of the parties.

(2) A statement explaining when the mistake was discovered, when the contracting officer was given notice of it, and whether this notice was given before completion of work under, or the effective termination date of, the contract.

(3) An estimate of profit or loss under the contract, with detailed supporting analysis.

(4) An estimate of the increase in cost to the Government resulting from the adjustment requested, with detailed supporting analysis.

(e) *Formalizing informal commitments.* When a request involves possible formalizing of an informal commitment (50.302-3), the contractor may be asked to furnish, in addition to the facts and evidence listed in paragraph (a) of this section, any of the following information:

(1) Copies of any written instructions or assurances (or a sworn statement of any oral instructions or assurances) given the contractor, and identification of the Government official who gave them.

(2) A statement as to when the contractor furnished or arranged to furnish the supplies or services involved, and to whom.

(3) Evidence that the contractor relied upon the instructions or assurances, with a full description of the circumstances that led to this reliance.

(4) Evidence that, when performing the work, the contractor expected to be compensated directly for it by the Government and did not anticipate recovering the costs in some other way.

(5) A cost breakdown supporting the amount claimed as fair compensation for the work performed.

(6) A statement and evidence of the impracticability of providing, in an appropriate contractual instrument, for the work performed.

[48 FR 42471, Sept. 19, 1983, as amended at 60 FR 48230, Sept. 18, 1995]

## 48 CFR Ch. 1 (10-1-02 Edition)

### 50.305 Processing cases.

(a) In response to a contractor request made in accordance with 50.303-1, the contracting officer or an authorized representative shall make a thorough investigation to establish the facts necessary to decide a given case. Facts and evidence, including signed statements of material facts within the knowledge of individuals when documentary evidence is lacking, and audits if considered necessary to establish financial or cost facts, shall be obtained from contractor and Government personnel.

(b) When a case involves matters of interest to more than one Government agency, the interested agencies should maintain liaison with each other to determine whether joint action should be taken.

(c) When additional funds are required from another agency, the contracting agency may not approve adjustment requests before receiving advice that the funds will be available. The request for this advice shall give the contractor's name, the contract number, the amount of proposed relief, a brief description of the contract, and the accounting classification or fund citation. If the other agency makes additional funds available, the agency considering the adjustment request shall be solely responsible for any action taken on the request.

(d) When essentiality to the national defense is an issue (50.302-1(a)), agencies considering requests for amendment without consideration involving another agency shall obtain advice on the issue from the other agency before making the final decision. When this advice is received, the agency considering the request for amendment without consideration shall be responsible for taking whatever action is appropriate.

[48 FR 42471, Sept. 19, 1983, as amended at 60 FR 48230, Sept. 18, 1995]

### 50.306 Disposition.

When approving or denying a contractor's request made in accordance with 50.303-1, the approving authority shall sign and date a Memorandum of Decision containing—

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(a) The contractor's name and address, the contract identification, and the nature of the request;

(b) A concise description of the supplies or services involved;

(c) The decision reached and the actual cost or estimated potential cost involved, if any;

(d) A statement of the circumstances justifying the decision;

(e) Identification of any of the foregoing information classified *Confidential* or higher (instead of being included in the memorandum, such information may be set forth in a separate classified document referenced in the memorandum); and

(f) If some adjustment is approved, a statement in substantially the following form: "I find that the action authorized herein will facilitate the national defense." The case files supporting this statement will show the derivation and rationale for the dollar amount of the award. When the dollar amount exceeds the amounts supported by audit or other independent reviews, the approving authority will further document the rationale for deviating the recommendation.

[48 FR 42471, Sept. 19, 1983, as amended at 51 FR 31426, Sept. 3, 1986; 60 FR 48230, Sept. 18, 1995]

### 50.307 Contract requirements.

(a) The Act and Executive Order require that every contract entered into, amended, or modified under this part 50 shall contain—

(1) A citation of the Act and Executive Order;

(2) A brief statement of the circumstances justifying the action; and

(3) A recital of the finding that the action will facilitate the national defense.

(b) The authority in 50.101(a) shall not be used to omit from contracts, when otherwise required, the clauses at 52.203-5, Covenant Against Contingent Fees; 52.215-2, Audit and Records—Negotiation; 52.222-4, Contract Work Hours and Safety Standards Act—Overtime Compensation; 52.222-6, Davis-Bacon Act; 52.222-10, Compliance With Copeland Act Requirements; 52.222-20, Walsh-Healey Public Contracts Act;

52.222-26, Equal Opportunity; and 52.232-23, Assignment of Claims.

[48 FR 42471, Sept. 19, 1983, as amended at 51 FR 31426, Sept. 3, 1986; 53 FR 4945, Feb. 18, 1988; 60 FR 42651, Aug. 16, 1995]

## Subpart 50.4—Residual Powers

### 50.400 Scope of subpart.

This subpart prescribes standards and procedures for exercising residual powers under the Act. The term *residual powers* includes all authority under the Act except (a) that covered by subpart 50.3 and (b) the authority to make advance payments (see subpart 32.4).

### 50.401 Standards for use.

Subject to the limitations in 50.203, residual powers may be used in accordance with the policies in 50.102 when necessary and appropriate, all circumstances considered. In authorizing the inclusion of the clause at 52.250-1, Indemnification Under Pub. L. 85-804, in a contract or subcontract, an agency head may require the indemnified contractor to provide and maintain financial protection of the type and amount determined appropriate. In deciding whether to approve use of the indemnification clause, and in determining the type and amount of financial protection the indemnified contractor is to provide and maintain, an agency head shall consider such factors as self-insurance, other proof of financial responsibility, workers' compensation insurance, and the availability, cost, and terms of private insurance. The approval and determination shall be final.

### 50.402 General.

(a) When approving or denying a proposal for the exercise of residual powers, the approving authority shall sign and date a Memorandum of Decision containing substantially the same information called for by 50.306.

(b) Every contract entered into, amended, or modified under residual powers shall comply with the requirements of 50.307.