

## 50.302

facilitate the national defense is a judgment to be made on the basis of all of the facts of the case. Although it is impossible to predict or enumerate all the types of cases in which action may be appropriate, examples are included in 50.302 below. Even if all of the factors in any of the examples are present, other considerations may warrant denying a contractor's request for contract adjustment. The examples are not intended to exclude other cases in which the approving authority determines that the circumstances warrant action.

### 50.302 Types of contract adjustment.

#### 50.302-1 Amendments without consideration.

(a) When an actual or threatened loss under a defense contract, however caused, will impair the productive ability of a contractor whose continued performance on any defense contract or whose continued operation as a source of supply is found to be essential to the national defense, the contract may be amended without consideration, but only to the extent necessary to avoid such impairment to the contractor's productive ability.

(b) When a contractor suffers a loss (not merely a decrease in anticipated profits) under a defense contract because of Government action, the character of the action will generally determine whether any adjustment in the contract will be made, and its extent. When the Government directs its action primarily at the contractor and acts in its capacity as the other contracting party, the contract may be adjusted in the interest of fairness. Thus, when Government action, while not creating any liability on the Government's part, increases performance cost and results in a loss to the contractor, fairness may make some adjustment appropriate.

#### 50.302-2 Correcting mistakes.

(a) A contract may be amended or modified to correct or mitigate the effect of a mistake. The following are examples of mistakes that may make such action appropriate:

(1) A mistake or ambiguity consisting of the failure to express, or ex-

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press clearly, in a written contract, the agreement as both parties understood it.

(2) A contractor's mistake so obvious that it was or should have been apparent to the contracting officer.

(3) A mutual mistake as to a material fact.

(b) Amending contracts to correct mistakes with the least possible delay normally will facilitate the national defense by expediting the contracting program and assuring contractors that mistakes will be corrected expeditiously and fairly.

#### 50.302-3 Formalizing informal commitments.

Under certain circumstances, informal commitments may be formalized to permit payment to persons who have taken action without a formal contract; for example, when a person, responding to an agency official's written or oral instructions and relying in good faith upon the official's apparent authority to issue them, has furnished or arranged to furnish supplies or services to the agency, or to a defense contractor or subcontractor, without formal contractual coverage. Formalizing commitments under such circumstances normally will facilitate the national defense by assuring such persons that they will be treated fairly and paid expeditiously.

### 50.303 Contract adjustment.

#### 50.303-1 Contractor requests.

A contractor seeking a contract adjustment shall submit a request in duplicate to the contracting officer or an authorized representative. The request, normally a letter, shall state as a minimum—

(a) The precise adjustment requested;

(b) The essential facts, summarized chronologically in narrative form;

(c) The contractor's conclusions based on these facts, showing, in terms of the considerations set forth in 50.301 and 50.302 above, when the contractor considers itself entitled to the adjustment; and

(d) Whether or not—

(1) All obligations under the contracts involved have been discharged;

(2) Final payment under the contracts involved has been made;

(3) Any proceeds from the request will be subject to assignment or other transfer, and to whom; and

(4) The contractor has sought the same, or a similar or related, adjustment from the General Accounting Office or any other part of the Government, or anticipates doing so.

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

#### 50.303-2 Contractor certification.

A contractor seeking a contract adjustment that exceeds the simplified acquisition threshold shall, at the time the request is submitted, submit a certification by a person authorized to certify the request on behalf of the contractor that (a) the request is made in good faith and (b) the supporting data are accurate and complete to the best of that person's knowledge and belief.

[60 FR 48230, Sept. 18, 1995]

#### 50.304 Facts and evidence.

(a) *General.* When it is appropriate, the contracting officer or other agency official shall request the contractor to support any request made under 50.303-1 with any of the following information:

(1) A brief description of the contracts involved, the dates of execution and amendments, the items being acquired, the price or prices, the delivery schedules, and any special contract provisions relevant to the request.

(2) A history of performance indicating when work under the contracts or commitments began, the progress made to date, an exact statement of the contractor's remaining obligations, and the contractor's expectations regarding completion.

(3) A statement of payments received, due, and yet to be received or to become due, including advance and progress payments; amounts withheld by the Government; and information as to any obligations of the Government yet to be performed under the contracts.

(4) A detailed analysis of the request's monetary elements, including precisely how the actual or estimated

dollar amount was determined and the effect of approval or denial on the contractor's profits before Federal income taxes.

(5) A statement of the contractor's understanding of why the request's subject matter cannot now, and could not at the time it arose, be disposed of under the contract terms.

(6) The best supporting evidence available to the contractor, including contemporaneous memorandums, correspondence, and affidavits.

(7) Relevant financial statements, cost analyses, or other such data, preferably certified by a certified public accountant, as necessary to support the request's monetary elements.

(8) A list of persons connected with the contracts who have factual knowledge of the subject matter, including, when possible, their names, offices or titles, addresses, and telephone numbers.

(9) A statement and evidence of steps taken to reduce losses and claims to a minimum.

(10) Any other relevant statements or evidence that may be required.

(b) *Amendments without consideration—essentiality a factor.* When a request involves possible amendment without consideration, and essentiality to the national defense is a factor (50.302-1(a)), 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) A statement and evidence of the contractor's original breakdown of estimated costs, including contingency allowances, and profit.

(2) A statement and evidence of the contractor's present estimate of total costs under the contracts involved if it is enabled to complete them, broken down between costs accrued to date and completion costs, and between costs paid and those owed.

(3) A statement and evidence of the contractor's estimate of the final price of the contracts, taking into account all known or contemplated escalation, changes, extras, and the like.

(4) A statement of any claims known or contemplated by the contractor against the Government involving the