

Federal Acquisition Regulation

50.101

Any assistance given to you on this contract or any acceptance by the Government of delinquent goods or services will be solely for the purpose of mitigating damages, and it is not the intention of the Government to condone any delinquency or to waive any rights the Government has under the contract.

(End of notice)

[48 FR 42447, Sept. 19, 1983, as amended at 60 FR 48250, Sept. 18, 1995]

PART 50—EXTRAORDINARY CONTRACTUAL ACTIONS

Sec.

- 50.000 Scope of part.
- 50.001 Definitions.

Subpart 50.1—General

- 50.101 Authority.
- 50.102 Policy.
- 50.103–50.104 [Reserved]
- 50.105 Records.

Subpart 50.2—Delegation of and Limitations on Exercise of Authority

- 50.201 Delegation of authority.
- 50.202 Contract adjustment boards.
- 50.203 Limitations on exercise of authority.

Subpart 50.3—Contract Adjustments

- 50.300 Scope of subpart.
- 50.301 General.
- 50.302 Types of contract adjustment.
 - 50.302-1 Amendments without consideration.
 - 50.302-2 Correcting mistakes.
 - 50.302-3 Formalizing informal commitments.
- 50.303 Contract adjustment.
 - 50.303-1 Contractor requests.
 - 50.303-2 Contractor certification.
- 50.304 Facts and evidence.
- 50.305 Processing cases.
- 50.306 Disposition.
- 50.307 Contract requirements.

Subpart 50.4—Residual Powers

- 50.400 Scope of subpart.
- 50.401 Standards for use.
- 50.402 General.
- 50.403 Special procedures for unusually hazardous or nuclear risks.
 - 50.403-1 Indemnification requests.
 - 50.403-2 Action on indemnification requests.
 - 50.403-3 Contract clause.

AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

SOURCE: 48 FR 42471, Sept. 19, 1983, unless otherwise noted.

50.000 Scope of part.

This part prescribes policies and procedures for entering into, amending, or modifying contracts in order to facilitate the national defense under the extraordinary emergency authority granted by Public Law 85-804 (50 U.S.C. 1431-1434), referred to in this part as the "Act", and Executive Order 10789, dated November 14, 1958, referred to in this part as "the Executive order". It does not cover advance payments (see subpart 32.4).

[65 FR 46073, July 26, 2000]

50.001 Definitions.

As used in this part—

Approving authority means an agency official or contract adjustment board authorized to approve actions under the Act and Executive Order.

Secretarial level means a level at or above the level of a deputy assistant agency head, or a contract adjustment board.

[48 FR 42471, Sept. 19, 1983, as amended at 66 FR 2134, Jan. 10, 2001]

Subpart 50.1—General

50.101 Authority.

(a) The Act empowers the President to authorize agencies exercising functions in connection with the national defense to enter into, amend, and modify contracts, without regard to other provisions of law related to making, performing, amending, or modifying contracts, whenever the President considers that such action would facilitate the national defense.

(b) The Executive Order authorizes the heads of the following agencies to exercise the authority conferred by the Act and to delegate it to other officials within the agency: the Government Printing Office; the Federal Emergency Management Agency; the Tennessee Valley Authority; the National Aeronautics and Space Administration; the General Services Administration; the Defense, Army, Navy, Air Force, Treasury, Interior, Agriculture, Commerce, and Transportation Departments; the Department of Energy for functions

50.102

transferred to that Department from other authorized agencies; and any other agency that may be authorized by the President.

50.102 Policy.

(a) The authority conferred by the Act may not (1) be used in a manner that encourages carelessness and laxity on the part of persons engaged in the defense effort or (2) be relied upon when other adequate legal authority exists within the agency.

(b) Actions authorized under the Act shall be accomplished as expeditiously as practicable, consistent with the care, restraint, and exercise of sound judgment appropriate to the use of such extraordinary authority.

(c) Certain kinds of relief previously available only under the Act; e.g., rescission or reformation for mutual mistake, are now available under the authority of the Contract Disputes Act of 1978. In accordance with subparagraph (a)(2) above, part 33 must be followed in preference to part 50 for such relief. In case of doubt as to whether part 33 applies, the contracting officer should seek legal advice.

50.103–50.104 [Reserved]

50.105 Records.

Agencies shall maintain complete records of all actions taken under this part 50. For each request for relief processed, these records shall include, as a minimum—

(a) The contractor's request;

(b) All relevant memorandums, correspondence, affidavits, and other pertinent documents;

(c) The Memorandum of Decision (see 50.306 and 50.402); and

(d) A copy of the contractual document implementing an approved request.

Subpart 50.2—Delegation of and Limitations on Exercise of Authority

50.201 Delegation of authority.

An agency head may delegate in writing authority under the Act and Executive Order, subject to the following limitations:

48 CFR Ch. 1 (10–1–06 Edition)

(a) Authority delegated shall be to a level high enough to ensure uniformity of action.

(b) Authority to approve requests to obligate the Government in excess of \$55,000 may not be delegated below the secretarial level.

(c) Regardless of dollar amount, authority to approve any amendment without consideration that increases the contract price or unit price may not be delegated below the secretarial level, except in extraordinary cases or classes of cases when the agency head finds that special circumstances clearly justify such delegation.

(d) Regardless of dollar amount, authority to indemnify against unusually hazardous or nuclear risks, including extension of such indemnification to subcontracts, shall be exercised only by the Secretary or Administrator of the agency concerned, the Public Printer, or the Chairman of the Board of Directors of the Tennessee Valley Authority (see 50.403).

[48 FR 42471, Sept. 19, 1983, as amended at 71 FR 57369, Sept. 28, 2006]

50.202 Contract adjustment boards.

An agency head may establish a contract adjustment board with authority to approve, authorize, and direct appropriate action under this part 50 and to make all appropriate determinations and findings. The decisions of the board shall not be subject to appeal; however, the board may reconsider and modify, correct, or reverse its previous decisions. The board shall determine its own procedures and have authority to take all action necessary or appropriate to conduct its functions.

50.203 Limitations on exercise of authority.

(a) The Act is not authority for—

(1) Using a cost-plus-a-percentage-of-cost system of contracting;

(2) Making any contract that violates existing law limiting profit or fees;

(3) Providing for other than full and open competition for award of contracts for supplies or services; or

(4) Waiving any bid bond, payment bond, performance bond, or other bond required by law.