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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:

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(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.

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(b) No contract, amendment, or modification shall be made under the Act's authority—

(1) Unless the approving authority finds that the action will facilitate the national defense;

(2) Unless other legal authority within the agency concerned is deemed to be lacking or inadequate;

(3) Except within the limits of the amounts appropriated and the statutory contract authorization (however, indemnification agreements authorized by an agency head (50.403) are not limited to amounts appropriated or to contract authorization); and

(4) That will obligate the Government for any amount over \$28.5 million, unless the Senate and the House Committees on Armed Services are notified in writing of the proposed obligation and 60 days of continuous session of Congress have passed since the transmittal of such notification. However, this paragraph (b)(4) does not apply to indemnification agreements authorized under 50.403.

(c) No contract shall be amended or modified unless the contractor submits a request before all obligations (including final payment) under the contract have been discharged. No amendment or modification shall increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder, if the contract was negotiated under 10 U.S.C. 2304(a)(15) or 41 U.S.C. 252(c)(14), or FAR 14.404-1(f).

(d) No informal commitment shall be formalized unless—

(1) The contractor submits a written request for payment within 6 months after furnishing, or arranging to furnish, supplies or services in reliance upon the commitment; and

(2) The approving authority finds that, at the time the commitment was made, it was impracticable to use normal contracting procedures.

(e) The exercise of authority by officials below the secretarial level is subject to the following additional limitations:

(1) The action shall not—

(i) Release a contractor from performance of an obligation over \$55,000;

(ii) Result in an increase in cost to the Government over \$55,000;

(iii) Deal with, or directly affect, any matter that has been submitted to the Government Accountability Office; or

(iv) Involve disposal of Government surplus property.

(2) Mistakes shall not be corrected by an action obligating the Government for over \$1,000, unless the contracting officer receives notice of the mistake before final payment.

(3) The correction of a contract because of a mistake in its making shall not increase the original contract price to an amount higher than the next lowest responsive offer of a responsible offeror.

[48 FR 42471, Sept. 19, 1983, as amended at 50 FR 1746, Jan. 1, 1985; 50 FR 52429, Dec. 23, 1985; 56 FR 67135, Dec. 27, 1991; 62 FR 51271, Sept. 30, 1997; 71 FR 57369, 57380, Sept. 28, 2006]

Subpart 50.3—Contract Adjustments

50.300 Scope of subpart.

This subpart prescribes standards and procedures for processing contractors' requests for contract adjustment under the Act and Executive Order.

50.301 General.

The fact that losses occur under a contract is not sufficient basis for exercising the authority conferred by the Act. Whether appropriate action will 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