

PART 250—EXTRAORDINARY CONTRACTUAL ACTIONS

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AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36475, July 31, 1991, unless otherwise noted.

250.001 Definitions.

As used in this part,

Secretarial level means—

(1) An official at or above the level of an Assistant Secretary (or Deputy) of Defense or of the Army, Navy, or Air Force; and

(2) A contract adjustment board established by the Secretary concerned.

Subpart 250.1—General

250.102-70 Limitations on payment.

See 10 U.S.C. 2410b for limitations on Congressionally directed payment of a request for equitable adjustment to contract terms or a request for relief under Pub. L. 85-804.

[63 FR 11541, Mar. 9, 1998]

250.104 Reports.

Prepare reports required by this section in accordance with DoDI 4105.69, Miscellaneous Procurement Report. Department and agency supplements identify officials responsible for preparing and processing the reports required by this section.

250.105 Records.

(1) Departments and agencies will—

(i) Prepare a preliminary record when a request for a contract adjustment under FAR 50.3 is filed (see 250.305-70).

(ii) Prepare a final record stating the disposition of the request (see 250.306-70).

(iii) Designate the offices or officials responsible for preparing, submitting, and receiving all records required by this part 250. Records shall be maintained by the contract adjustment boards of the Army, Navy, and Air Force, respectively, and by the headquarters of the defense agencies.

(2) A suggested format for the record is in Table 50-1, Record of Request for Adjustment. This format permits the information required for the preliminary and final records to be combined on one form.

(3) The following instructions are provided for those items which are not self-explanatory:

(i) *Extent of performance as of date of request.* State degree of completion of contract; e.g., 50 percent completed or performance not yet begun. If work is completed, state date of completion and whether final payment has been made.

(ii) *Award procedure.* State whether contract was awarded under sealed bidding or negotiated procedures. Cite specific authority for using other than full and open competition, if applicable, e.g., 10 U.S.C. 2304(c)(1).

(iii) *Type of contract.* State type of contract (see FAR part 16); e.g., FFP (firm fixed-price).

(iv) *Category of case.* State whether the request involves a modification without consideration, a mistake, or an informal commitment. If the case involves more than one category, identify both; list the most significant category first.

(v) *Amount or description of request.* If the request is expressed in dollars,

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state the amount and whether it is an increase or decrease. If the request cannot be expressed in monetary terms, provide a brief description; e.g., "Cancellation" or "Modification." Even if the adjustment is not easily expressed in terms of dollars, if the contractor has made an estimate in the request, that estimate should be stated.

(vi) *Action below Secretarial level.* State the disposition of the case, the office that took the action and the date the action was taken. The disposition should be stated as "Withdrawn," "Denied," "Approved," or "Forwarded." If the request was approved, in whole or in part, state the dollar amount or na-

ture of the action (as explained in paragraph (v) of this section). The date should correspond with the date of the memorandum of decision or of the letter forwarding the request to the contract adjustment board or other deciding body.

(vii) *Action by contract adjustment board and date.* State the disposition and date of disposition of the case by the contract adjustment board. Provide the same information as for paragraph (vi).

(viii) *Implementation and date.* State the appropriate action; e.g., "Modification," "New Contract," or "Letter of Denial."

<input type="checkbox"/> PRELIMINARY		RECORD OF		FINAL <input type="checkbox"/>	
REQUEST FOR ADJUSTMENT		PUBLIC LAW 85-804			
DATE OF REQUEST		DATE RECEIVED BY GOVERNMENT			
CONTRACTOR'S NAME AND ADDRESS					
<input type="checkbox"/> SMALL BUSINESS					
NAME AND ADDRESS OF CONTRACTOR'S REPRESENTATIVE, IF ANY					
COGNIZANT CONTRACTING OFFICER OR OFFICE			PROCURING ACTIVITY		
PROPERTY OR SERVICE INVOLVED			EXTENT OF PERFORMANCE AS OF DATE OF REQUEST		
CONTRACT NUMBER		DATE	ADVERTISED OR NEGOTIATED		TYPE OF CONTRACT
CATEGORY OF CASE			AMOUNT OR DESCRIPTION OF REQUEST		
ACTION BELOW SECRETARIAL LEVEL					DATE
ACTION BY CAB					DATE
IMPLEMENTATION					DATE
ADDITIONAL DATA OR REMARKS					
DATE THIS RECORD SIGNED				SIGNATURE	

Subpart 250.2—Delegation of and Limitations on Exercise of Authority

250.201 Delegation of authority.

(b) Authority under FAR Subpart 50.4 to approve actions obligating \$50,000 or less may not be delegated below the level of the head of the contracting activity; however, see FAR 50.201(d) for indemnification authority.

[56 FR 36475, July 31, 1991, as amended at 59 FR 27675, May 27, 1994; 63 FR 11541, Mar. 9, 1998]

250.201-70 Delegations.

(a) *Military Departments.* The Departments of the Army, Navy and Air Force will specify delegations and levels of authority for actions under the Act and the Executive Order in departmental supplements.

(b) *Defense Agencies.* Subject to the restrictions on delegations of authority in 250.201(b) and FAR 50.201, the directors of the defense agencies may exercise and redelegate the authority contained in the Act and the Executive Order. The agency supplements shall specify the delegations and levels of authority.

(1) Requests to obligate the Government in excess of \$50,000 must be submitted to the Under Secretary of Defense (Acquisition & Technology) (USDA&T) for approval.

(2) Requests for indemnification against unusually hazardous or nuclear risks must be submitted to the USD(A&T) for approval before using the indemnification clause at FAR 52.250-1, Indemnification Under Public Law 85-804.

(c) *Approvals.* The service Secretary or agency director must approve any delegations in writing.

[56 FR 36475, July 31, 1991, as amended at 56 FR 67221, Dec. 30, 1991; 60 FR 61600, Nov. 30, 1995]

250.202 Contract adjustment boards.

The Departments of the Army, Navy, and Air Force each have a contract adjustment board. The board consists of a Chair and not less than two nor more than six other members, one of whom may be designated the Vice-Chair. A majority constitutes a quorum for any

purpose and the concurring vote of a majority of the total board membership constitutes an action of the board. Alternates may be appointed to act in the absence of any member.

Subpart 250.3—Contract Adjustments

250.303 Contractor requests.

Requests should be filed with the procuring contracting officer (PCO). If a request is filed with an administrative contracting officer (ACO), the ACO shall promptly forward it to the PCO for appropriate action. If filing with the PCO is impracticable, requests may be filed with the following addresses for forwarding to the cognizant PCO:

(1) Office of the Secretary of Defense—Washington Headquarters Service, Attn: RE&F-AM.

(2) Army—Forward to the head of the contracting activity listed in Part 202 that appears to be the cognizant office for the contract or commitment involved.

(3) Navy—Assistant Secretary of the Navy (RD&A), Attn: Procurement Policy.

(4) Air Force—Deputy Assistant Secretary (Contracting), Attn: SAF/AQCX.

(5) Defense Advanced Research Projects Agency—Director, CMO.

(6) Defense Information Systems Agency—Attn: Code PA.

(7) Defense Intelligence Agency—Assistant Deputy Director for Procurement, Attn: RSQ.

(8) Defense Logistics Agency—The Commander of the Defense Supply Center involved.

(9) Defense Mapping Agency—Director, DMA, Attn: AQ.

(10) Defense Special Weapons Agency—Director, DSWA, Attn: AM.

(11) National Security Agency—Director, NSA.

(12) On-Site Inspection Agency—Director, OSIA, Attn: DSP.

(13) Ballistic Missile Defense Organization—Director, BMDO.

[56 FR 36475, July 31, 1991, as amended at 56 FR 67221, Dec. 30, 1991; 59 FR 27675, May 27, 1994; 61 FR 50455, Sept. 26, 1996]

250.305 Processing cases.**250.305-70 Record of request.**

At the time the request is filed, the activity will prepare the record described at 250.105(1)(i) and forward it to the appropriate official within 30 days after the close of the month in which the record is prepared.

250.305-71 Processing cases to contract adjustment boards.

(a) The officer or official responsible for the case shall forward to the contract adjustment board, through departmental channels, two copies of the following:

- (1) A letter stating—
 - (i) The nature of the case;
 - (ii) The basis for the board's authority to act;
 - (iii) The findings of fact essential to the case (see FAR 50.304). Arrange the findings chronologically with cross references to supporting enclosures;
 - (iv) The conclusions drawn;
 - (v) The recommended disposition; and
 - (vi) If contractual action is recommended, a statement by the signer that the action will facilitate the national defense.

- (2) The contractor's request

- (3) All evidentiary materials

- (4) All endorsements, reports and comments of cognizant Government officials

(b) A letter to the Board recommending an amendment without consideration where essentiality is a factor (see FAR 50.302-1(a)) should also provide—

- (1) The information required by FAR 50.304 (a) and (b), and

- (2) Findings as to—

- (i) The contractor's performance record, including the quality of product, rate of production, and promptness of deliveries;

- (ii) The importance to the Government, particularly to the active duty military, of the performance of the contract and the importance of the contractor to the national defense;

- (iii) The forecast of future contracts with the contractor; and

- (iv) Other available sources of supply for the supplies or services covered by the contract, and the time and cost of

having contract performance completed by such other sources.

250.305-72 Processing by the board.

Contract adjustment boards will render decisions as expeditiously as practicable. The Chair shall sign a memorandum of decision disposing of the case. The decision shall be dated and shall contain the information required by FAR 50.306. The memorandum of decision shall not contain any information classified "Confidential" or higher. The board's decision will be sent to the appropriate official for implementation.

250.306 Disposition.**250.306-70 Record of disposition.**

(a) When the request for relief is denied or approved below the Secretarial level, submit the following documents to the appropriate office within 30 days after the close of the month in which the decision is executed:

- (1) Two copies of the memorandum of decision;

- (2) Except for the Army, one copy of the contractual document implementing any decision approving contractual action; and

- (3) One copy of a final record, as described at 250.105.

(b) When a contract adjustment board decision is implemented, the activity which forwarded the case to the board shall prepare and submit to the board the documents identified in paragraphs (a) (2) and (3) of this subsection.

Subpart 250.4—Residual Powers**250.403 Special procedures for unusually hazardous or nuclear risks.****250.403-70 Indemnification under contracts involving both research and development and other work.**

When indemnification is to be provided on contracts requiring both research and development work and other work, the contracting officer shall insert an appropriate clause using the authority of both 10 U.S.C. 2354 and Public Law 85-804.

(a) The use of Public Law 85-804 is limited to work which cannot be indemnified under 10 U.S.C. 2354 and is

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subject to compliance with FAR subpart 50.4.

(b) Indemnification under 10 U.S.C. 2354 is covered by 235.070.

PART 251—USE OF GOVERNMENT SOURCES BY CONTRACTORS

Subpart 251.1—Contractor Use of Government Supply Sources

Sec.

251.102 Authorization to use Government supply sources.

251.105 Payment for shipments.

251.107 Contract clause.

Subpart 251.2—Contractor Use of Inter-agency Fleet Management System (IFMS) Vehicles

251.202 Authorization.

251.205 Contract clause.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36479, July 31, 1991, unless otherwise noted.

Subpart 251.1—Contractor Use of Government Supply Sources

251.102 Authorization to use Government supply sources.

(e) Use the format in Table 51-1, Authorization to Purchase from Government Supply Sources. Specify the terms of the purchase, including contractor acceptance of any Government materiel, payment terms, and the addresses required by paragraph (f) of the clause at 252.251-7000, Ordering from Government Supply Sources.

(3)(ii) In addition to the procedure and form authorized by FAR 51.102(e)(3)(ii), contractors may use the DD Form 1155 when requisitioning from the Department of Veterans Affairs.

(f) The authorizing agency shall also be responsible for promptly considering requests of the DoD supply source for authority to refuse to honor requisitions from a contractor which is indebted to the DoD and has failed to pay proper invoices in a timely manner.

TABLE 51-1—AUTHORIZATION TO PURCHASE FROM GOVERNMENT SUPPLY SOURCES

Subject: Authorization to Purchase from Government Supply Sources

(Contractor's Name)

(Contractor's Address)

1. You are hereby authorized to use Government sources in performing Contract No. _____ for the Department of _____, as follows: (Insert applicable purchasing authority given to the contractor.)

2.a. Purchase Orders Under Federal Supply Schedules or Personal Property Rehabilitation Price Schedules. Place orders in accordance with the terms and conditions of the attached Schedule(s) and this authorization. Attach a copy of this authorization to the order (unless a copy was previously furnished to the Federal Supply Schedule or Personal Property Rehabilitation Price Schedule contractor). Insert the following statement in the order:

This order is placed under written authorization from _____ dated _____ (1_____).

In the event of any inconsistency between the terms and conditions of this order and those of the Federal Supply Schedule or Personal Property Rehabilitation Price Schedule contract, the latter will govern.

b. Requisitioning from the General Services Administration (GSA) or the Department of Defense (DoD). Place orders in accordance with this authorization and, as appropriate, the:

(1) Federal Standard Requisitioning and Issue Procedures (FEDSTRIP) (GSFEDSTRIP Operating Guide: FPMR 101-26.2 (41 CFR 101-26.2); copies are available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402); or

(2) Military Standard Requisitioning and Issue Procedures (MILSTRIP) (DoD 4000.25-1-M; copies are available from the Defense Logistics Agency, ATTN: DLA-XPD, Bldg. 6, Dr. 21, Cameron Station, Alexandria, VA 22304-6100).

3. (3)

4. This authority is not transferable or assignable.

5. The DoD Activity Address Directory (DoDAAD) (DoD 4000.25-6-M) Activity Address Code² to which this Authorization applies is _____.

6. This Authorization expires _____.

(Contracting Officer)

¹Insert "a copy of which is attached," "a copy of which you have on file," or other suitable language, as appropriate.

²The sponsoring service assumes responsibility for monitoring and controlling all activity address codes used in the letters of authority.

³Insert other provisions, as necessary.

[56 FR 36479, July 31, 1991, as amended at 60 FR 29501, June 5, 1995]