

## Federal Acquisition Regulation

## 50.102-3

(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 Pub. L. 85-804 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 Pub. L. 85-804; *e.g.*, rescission or reformation for mutual mistake, are now available under the authority of the Contract Disputes Act of 1978. In accordance with paragraph (a)(2) of this subsection, Part 33 must be followed in preference to Subpart 50.1 for such relief. In case of doubt as to whether Part 33 applies, the contracting officer should seek legal advice.

### 50.101-3 Records.

Agencies shall maintain complete records of all actions taken under this Subpart 50.1. 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 50.103-6 and 50.104-2); and

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

### 50.102 Delegation of and limitations on exercise of authority.

#### 50.102-1 Delegation of authority.

An agency head may delegate in writing authority under Pub. L. 85-804 and E.O. 10789, subject to the following limitations:

(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 \$65,000 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 50.104-3).

[72 FR 63030, Nov. 7, 2007, as amended at 75 FR 53134, Aug. 30, 2010]

#### 50.102-2 Contract adjustment boards.

An agency head may establish a contract adjustment board with authority to approve, authorize, and direct appropriate action under this Subpart 50.1 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.

#### 50.102-3 Limitations on exercise of authority.

(a) Pub. L. 85-804 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.

(b) No contract, amendment, or modification shall be made under Pub. L. 85-804'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;