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50.205-4 Authorization of awards made presuming SAFETY Act designation or certification after contract award.

50.206 Solicitation provisions and contract clause.

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

SOURCE: 72 FR 63030, Nov. 7, 2007, unless otherwise noted.

50.000 Scope of part.

This part—

(a)(1) 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) and Executive Order 10789, dated November 14, 1958. It does not cover advance payments (see Subpart 32.4); and

(2) Implements indemnification authority granted by Pub. L. 85-804 and paragraph 1A of E.O. 10789 with respect to any matter that has been, or could be, designated by the Secretary of Homeland Security as a qualified anti-terrorism technology as defined in the Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (SAFETY Act); and

(b) Implements SAFETY Act liability protections to promote development and use of anti-terrorism technologies.

Subpart 50.1—Extraordinary Contractual Actions

50.100 Definitions.

As used in this part—

Approving authority means an agency official or contract adjustment board authorized to approve actions under Pub. L. 85-804 and E.O. 10789.

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

50.101 General.

50.101-1 Authority.

(a) Pub. L. 85-804 empowers the President to authorize agencies exercising functions in connection with the national defense to enter into, amend, and modify contracts, without regard

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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) E.O. 10789 authorizes the heads of the following agencies to exercise the authority conferred by Pub. L. 85-804 and to delegate it to other officials within the agency: the Government Printing Office; the Department of Homeland Security; 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 transferred to that Department from other authorized agencies; and any other agency that may be authorized by the President.

50.101-2 Policy.

(a) The authority conferred by Pub. L. 85-804 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 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—

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- (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;
 - (3) Except within the limits of the amounts appropriated and the statutory contract authorization (however, indemnification agreements authorized by an agency head (50.104-3) are not limited to amounts appropriated or to contract authorization); and
 - (4) That will obligate the Government for any amount over \$31.5 million, unless the Senate and 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 50.104-3.
- (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