

50.101

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 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 41 U.S.C. chapter 71, Contract Disputes. 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.

[72 FR 63030, Nov. 7, 2007, as amended at 79 FR 24214, Apr. 29, 2014]

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