

## Contract Administration

# Activity 33: Contract Modification and Adjustment

*Procedures for addressing contractor changes in the terms, price, and scope of the contract.*

**Related Flow Charts:** [Flow Chart 33](#)

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### Part A: Modifications & Equitable Adjustments

| Tasks   | FAR Reference(s)                   | Additional Information  |
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| 1. Determine whether there is a need for a government- or contractor-proposed modification. | FAR Part 43 Contract modification. | <p>Examples of contractor-proposed contract modifications include:</p> <ul style="list-style-type: none"><li>• A request for an administrative change (e.g., a change in the contractor's mailing address);</li><li>• A request to recognize a successor in interest to the contract when contractor assets are transferred;</li><li>• A request for a name change;</li><li>• A request for contracting officer confirmation of a constructive change;</li><li>• A request for an equitable adjustment in response to a unilateral contract modification by the contracting officer;</li><li>• A proposal to modify contract requirements based on a change in the acquisition situation (e.g., a required supply is no longer available);</li><li>• A proposal to definitize a letter contract; or</li><li>• A value-engineering proposal.</li></ul> <p>When making the determination:</p> <ul style="list-style-type: none"><li>• Obtain from the contractor any information needed to evaluate the need for the requested modification, for example:</li></ul> |

| Tasks | FAR Reference(s) | Additional Information  |
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|       |                  | <ul style="list-style-type: none"> <li>○ Technical information; or</li> <li>○ Information other than cost or pricing data or cost or pricing data.</li> </ul> <ul style="list-style-type: none"> <li>● When appropriate, forward the request for review, comment, and/or other action (e.g., analysis of funds availability) by other interested parties.</li> <li>● Make a determination based on available information.</li> </ul> <p>Examples of government-proposed contract modifications, include a request for:</p> <ul style="list-style-type: none"> <li>● An administrative change (e.g., a change in the paying office address);</li> <li>● Contracting officer confirmation of a constructive change; or</li> <li>● Modification of contract requirements based on a change in the acquisition situation (e.g., a change in delivery location).</li> </ul> <p>When making the determination:</p> <ul style="list-style-type: none"> <li>● Obtain any necessary documentation from the requester;</li> <li>● When appropriate, forward the request for review, comment, and/or other action (e.g., analysis of funds availability) by other interested parties; and</li> <li>● Make a determination based on available information.</li> </ul> |

| Tasks   | FAR Reference(s)                                      | Additional Information   |
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| <p>2. Determine whether to use a unilateral or bilateral modification.</p>                          | <p>FAR 43.103 Types of contract modifications.</p>    | <p>A unilateral modification (change order) can only be used to make administrative changes that do not materially affect the terms of the contract or other types of modifications specifically authorized by the contract. A unilateral modification may be used to:</p> <ul style="list-style-type: none"> <li>• Make administrative changes;</li> <li>• Issue change orders under the contract Changes clause;</li> <li>• Make changes authorized by clauses other than a changes clause (e.g., Property clause, Options clause, or Suspension of Work clause); or</li> <li>• Issue a termination notice.</li> </ul> <p>A bilateral modification must be used to:</p> <ul style="list-style-type: none"> <li>• Make a negotiated equitable adjustment resulting from the issuance of a change order;</li> <li>• Definitize a letter contract; or <ul style="list-style-type: none"> <li>○ Reflect other agreements of the parties modifying the terms of contracts.</li> </ul> </li> </ul> |
| <p>3a. If the administrative change is forward priced, issue a change order. Proceed to Task 7.</p> | <p>FAR 43.103(b) Types of contract modifications.</p> | <p>A unilateral modification is a contract modification that is signed only by the contracting officer. Unilateral modifications are used, for example, to:</p> <ul style="list-style-type: none"> <li>• Make administrative changes;</li> <li>• Issue change orders;</li> <li>• Make changes authorized by clauses other than a changes clause (e.g., Property clause, Options clause, or Suspension of Work clause); and</li> <li>• Issue termination notices.</li> </ul>  |

| Tasks   | FAR Reference(s)                       | Additional Information  |
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| <p>3(b)(i). If the proposed change is not forward priced, determine the authority for equitable adjustment.</p> | <p>See specific provisions in FAR.</p> | <p>Examples of contract clauses that provide for equitable adjustment include the:</p> <ul style="list-style-type: none"> <li>• Changes clause;</li> <li>• Government Property clause;</li> <li>• Suspension of Work clause (FAR 52.242-14);</li> <li>• Government Delay of Work clause (FAR 52.242-17); and</li> <li>• Stop-Work Order clause (FAR 52.242-15).</li> </ul> <p>Consider whether a contractor request for an equitable adjustment is timely. For example, the Stop-Work clause requires the contractor to assert its right and the adjustment within 30 days after the end of the period of work stoppage. However, if the contracting officer decides the facts justify the action, the contracting officer may receive and act upon a claim submitted at any time before final payment.</p> |

| Tasks  | FAR Reference(s)  | Additional Information   |
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| 3(b)(ii). Prepare a prenegotiation position. | FAR 15.406-1 Prenegotiation objectives [documentation]. | <p>The prenegotiation position should consider:</p> <ul style="list-style-type: none"> <li>• The contractor’s proposal (if any).</li> <li>• The Government acquisition team’s estimate of a reasonable equitable adjustment including price, delivery or performance period, and other contract requirements. <ul style="list-style-type: none"> <li>○ If the contractor proposed the equitable adjustment, this estimate should include an evaluation of the proposal and other available information.</li> <li>○ If the Government proposed the equitable adjustment, this estimate should be based on Government acquisition team’s analysis of the need for adjustment and other available information.</li> </ul> </li> <li>• Any limits on the equitable adjustment. For example, the Suspension of Work clause (FAR 52.242-14) provides for an equitable adjustment of performance cost excluding profit. Other contract clauses provide for an adjustment including profit. However, the Changes clause (FAR 52.243-1-7), Value Engineering clause (FAR 52.248-1-3); Stop-Work Order clause (FAR 52.243-15); and Differing Site Conditions clause (FAR 52.236-2) permit reasonable profit.</li> <li>• Available tradeoffs between price, delivery or performance period, and other contract requirements.</li> </ul> |
| 3(b)(iii). Negotiate with the contractor.    | FAR 15.405 Price negotiation [contract pricing].        | <p>If it can be done without adversely affecting the Government’s interests, negotiate any equitable adjustment required for a contract modification before making the contract modification. This requirement applies even when the contract change can be made unilaterally.</p> <p>If a significant cost increase could result from a contract modification and time does not permit negotiation of a price before making the modification, at least negotiate a maximum price unless that is impractical.</p>  |

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| 3(b)(iv). Prepare a supplemental agreement.   | FAR 43.204 Administration [change orders].        | <p>Clearly describe all elements of the equitable adjustment.</p> <p>To avoid subsequent controversies that may result from a supplemental agreement containing an equitable adjustment as the result of a change order:</p> <ul style="list-style-type: none"> <li>• Ensure that all elements of the equitable adjustment have been presented and resolved; and</li> <li>• Include in the supplemental agreement a release.</li> </ul> |
| 4a. If no agreement can be reached on the equitable adjustment make a unilateral adjustment. Proceed to Task 8. | FAR 43.301 Use of forms [contract modifications]. | If agreement cannot be reached on a fair and reasonable price, issue a unilateral change administratively changing the contract price to a figure that you can support as being fair and reasonable. Advise the contractor that it has the right to pursue a claim under the Disputes clause.   |

| Tasks  | FAR Reference(s)  | Additional Information  |
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| <p>4b. If agreement is reached, modify the contract using a bilateral contract modification.</p> | <p>FAR 43.103(a) Bilateral [types of contract modifications].</p> | <p>When using a bilateral modification:</p> <ul style="list-style-type: none"> <li>• Obtain a proposal from the contractor.</li> <li>• Evaluate the proposal and establish a prenegotiation position on any equitable price adjustment (including any consideration due the Government for making a modification requested by the contractor).</li> <li>• Develop negotiation objectives, strategies, and tactics.</li> <li>• Negotiate with the contractor to reach agreement on all contract elements affected by the modification, including any necessary equitable adjustment.</li> <li>• Ensure that the modification meets FAR and agency requirements.</li> <li>• Ensure that adequate funds are available for the equitable adjustment.</li> <li>• Prepare the contract modification (including Contractor’s Statement of Release).</li> <li>• Obtain signature of the contractor’s authorized representative, and the contracting officer.</li> </ul> <p>Distribute the modification. Distribution should include the parties on the contract distribution list. Additional parties (e.g., the auditor if audit support was required) may be added to the distribution list, because of their participation in modification analysis and negotiation.</p> |

| Tasks   | FAR Reference(s)                           | Additional Information  |
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| <p>5. Modify the contract using a unilateral contract modification.</p> | <p>FAR 43.201 General [change orders].</p> | <p>When using a unilateral contract modification:</p> <ul style="list-style-type: none"> <li>• Use an acceptable form. <ul style="list-style-type: none"> <li>○ Use Standard Form (SF) 30, Amendment of Solicitation/ Modification of Contract, or other agency-authorized form.</li> <li>○ A telegraphic message may be used under unusual or urgent circumstances, if: <ul style="list-style-type: none"> <li>▪ Copies of the message are furnished promptly to the same addressees that received the existing contract;</li> <li>▪ Immediate action is taken to confirm the change by issuance of a SF 30 or other agency-authorized form;</li> <li>▪ The message contains substantially the information required by the SF 30 (except the estimated change in price), including the statement, “Signed by (Name), Contracting Officer”; and</li> <li>▪ The contracting officer manually signs the original copy of the message.</li> </ul> </li> </ul> </li> <li>• For administrative changes, verify that the modification does not affect the substantive rights of the parties.</li> <li>• Ensure that any modification that could result in a significant price increase includes a maximum price for the modified contract.</li> <li>• Ensure that adequate funds are available for any anticipated equitable adjustment.</li> <li>• If the contract includes the Change Order Accounting clause (FAR 52.243-6), advise the contractor whether change order accounting will or will not be required.</li> <li>• Ensure that the modification meets other applicable FAR and agency requirements.</li> <li>• Distribute the modification to the parties on the contract distribution list.</li> </ul> |

| Tasks                          | FAR Reference(s)  | Additional Information  |
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| 6. Document the contract file. | FAR 4.803 Contents of contract files [government contract files]. | Include all significant information related to the modification.<br>When negotiations were required, include the principal elements of the negotiated agreement. The documentation (e.g., a price negotiation memorandum) must include the elements identified in FAR 15.406-3. |

### Part B: Extraordinary Contract Adjustments

| Tasks   | FAR Reference(s)   | Additional Information  |
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| 1. Identify officials with authority to grant extraordinary relief. | FAR 50.102-1 Delegation of authority [extraordinary contractual actions and the Safety Act].<br><br>FAR 50.102-2 Contract adjustment board [extraordinary contractual actions and the Safety Act]. | P.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, whenever the President considers that such action would facilitate the national defense. An agency head may delegate, in writing, authority to enter into extraordinary contract adjustments, subject to the following limitations: <ul style="list-style-type: none"> <li>• Authority delegated must be to a level high enough to ensure uniformity of action.</li> <li>• Authority to approve requests to obligate the Government in excess of \$65,000 may not be delegated below the secretarial level.</li> <li>• 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.</li> <li>• Regardless of dollar amount, authority to indemnify against unusually hazardous or nuclear risks, including extension of such indemnification to subcontracts, must 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.</li> </ul> An agency head may establish a contract adjustment board to approve, authorize, and direct appropriate action under FAR Part |

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|  |   | 50 and to make all appropriate determinations and findings. The decisions of a board are not subject to appeal. However, a board may reconsider and modify, correct, or reverse a previous decision.   |
| 2. Determine whether the requested relief is within the authority to enter into extraordinary contract actions.  | FAR 50.102-3 Limitations on exercise of authority [extraordinary contractual actions and the Safety Act]. | Pub. L. 85-804 s not authority for: <ul style="list-style-type: none"> <li>• Using a cost-plus-a-percentage-of-cost system of contracting;</li> <li>• Making any contract that violates existing law limiting profit or fees;</li> <li>• Providing for other than full and open competition for award of contracts for supplies or services; or</li> <li>• Waiving any bid bond, payment bond, performance bond, or other bond required by law.</li> </ul>   |
| 3. If the requested relief is outside the authority to enter into extraordinary contract actions, prepare a Memorandum of Decision denying the contractor's request. | FAR 50.103-3(a) Contract adjustments [extraordinary contractual actions and the Safety Act].              | When approving or denying a contractor's request made in accordance with <a href="#">50.103-3(a)</a> , the approving authority shall sign and date a Memorandum of Decision containing- <ul style="list-style-type: none"> <li>• The contractor's name and address, the contract identification, and the nature of the request;</li> <li>• A concise description of the supplies or services involved;</li> <li>• The decision reached;</li> <li>• A statement of the circumstances justifying the decision;</li> <li>• Identification of any of the foregoing information classified "Confidential" or higher (instead of being included in the memorandum, such information may be set forth in a separate classified document referenced in the memorandum).</li> </ul> |

| Tasks  | FAR Reference(s)  | Additional Information   |
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| <p>4. If the requested relief is within the limits on authority, ensure that the contractor's request for contract adjustment includes all required information.</p> | <p>FAR 50.103-3 Contract adjustments [extraordinary contractual actions and the Safety Act].</p> <p>FAR 50.103-4 Facts and evidence [extraordinary contractual actions and the Safety Act].</p> | <p>The contractor request must include documentation, normally in a letter, of the precise adjustment amount, essential facts, conclusions, and whether or not—</p> <ul style="list-style-type: none"> <li>• All obligations have been discharged;</li> <li>• Final payment under the contracts involved has been made;</li> <li>• Any proceeds from the request will be subject to assignment or other transfer, and to whom; and</li> <li>• The contractor has sought the same, or a similar or related, adjustment from the Government Accountability Office, or anticipates doing so.</li> <li>• Minimum requirements for contractor requests;</li> </ul> <p>Contractor certification is required of any request for a contract adjustment that exceeds the simplified acquisition threshold.</p> <p>The contracting officer is to request the contractor to support any request through facts and evidence appropriate for:</p> <ul style="list-style-type: none"> <li>• Every request;</li> <li>• A request for amendment without consideration when essentiality to national defense is a factor;</li> <li>• A request for amendment without consideration when essentiality to national defense is not a factor;</li> <li>• A request to correct a mistake; and</li> <li>• A request to formalize an informal commitment.</li> </ul> |

| Tasks                       | FAR Reference(s)  | Additional Information   |
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| 5. Investigate the request. | FAR 50.103-5 Processing cases [extraordinary contractual actions and the Safety Act]. | <p>In response to a contractor request for contract adjustment:</p> <ul style="list-style-type: none"> <li>• Thoroughly investigate to establish the facts necessary to make a decision. In addition to contractor facts and evidence, contact government personnel to obtain: <ul style="list-style-type: none"> <li>○ Documentary evidence;</li> <li>○ Signed statements of material facts within the knowledge of individuals when documentary evidence is lacking; and</li> <li>○ Audits, if considered necessary to establish financial or cost facts.</li> </ul> </li> <li>• When a case involves matters of interest to more than one government agency, maintain liaison with interested agencies to determine whether joint action should be taken.</li> <li>• When additional funds are required from another agency, ensure that the funds will be available before approving any request.</li> <li>• When essentiality to the national defense is a factor and a request for amendment without consideration involves another agency, obtain advice on the issue from the other agency before making the final decision on the request.</li> </ul> |

| Tasks   | FAR Reference(s)   | Additional Information  |
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| <p>6. Determine whether to request the agency head (or designee) to grant relief.</p> | <p>FAR 50.103-5 Processing cases [extraordinary contractual actions and the Safety Act].</p> | <p>Relief may be granted when it will facilitate the national defense. Examples include:</p> <ul style="list-style-type: none"> <li>• Amendment without consideration. <ul style="list-style-type: none"> <li>○ When an actual or threatened loss under a defense contract will impair the productive ability of a contractor whose continued performance is essential to the national defense, the contract may be amended without consideration, to the extent necessary to avoid such impairment.</li> <li>○ When government action, while not creating any liability on the Government's part, increases performance cost and results in a loss to the contractor, fairness may make some adjustment appropriate.</li> </ul> </li> <li>• Correcting mistakes. Amending a contract to correct a mistake with the least possible delay normally will facilitate the national defense by expediting the contracting program and assuring contractors that mistakes will be corrected expeditiously and fairly. Examples include: <ul style="list-style-type: none"> <li>○ A mistake or ambiguity consisting of the failure to express, or express clearly, in a written contract, the agreement as both parties understood it.</li> <li>○ A contractor's mistake so obvious that it was or should have been apparent to the Contracting Officer.</li> <li>○ A mutual mistake as to a material fact.</li> </ul> </li> <li>• Formalizing informal commitments, normally, will facilitate the national defense by assuring such persons that they will be treated fairly and paid expeditiously. For example, when a contractor has furnished or arranged to furnish supplies or services in response to an agency official's: <ul style="list-style-type: none"> <li>○ Written or oral instructions; and</li> <li>○ Apparent authority to issue them.</li> </ul> </li> </ul> |

| Tasks  | FAR Reference(s)  | Additional Information  |
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| <p>7. Prepare a Memorandum of Decision approving or denying the request.</p>   | <p>FAR 50.103-6 Disposition [delegation of and limitations on exercise of authority].</p>           | <p>The Memorandum of Decision for the approving authority should include:</p> <ul style="list-style-type: none"> <li>• The contractor's name and address, the contract identification, and the nature of the request;</li> <li>• A concise description of the supplies or services involved;</li> <li>• The decision and the actual cost or estimated potential cost involved (if any);</li> <li>• A statement of the circumstances justifying the decision;</li> <li>• Identification of any of the foregoing information classified "Confidential" or higher (instead of being included in the memorandum, such information may be set forth in a separate classified document referenced in the memorandum); and</li> <li>• If some adjustment is approved, a statement in substantially the following form: "I find that the action authorized herein will facilitate the national defense."</li> </ul> |
| <p>8. Prepare, execute, and issue the contract action (new contract, amendment without consideration, or contract modification).</p> | <p>Far 50.103-7 Contract requirements [delegation of and limitations on exercise of authority].</p> | <p>P.L. 85.804 and Executive Order 10789 require that every contract entered into, amended, or modified as an extraordinary contract action must contain a:</p> <ul style="list-style-type: none"> <li>• Citation of P.L. 85.804 and Executive Order 10789;</li> <li>• Brief statement of the circumstances justifying the action; and</li> <li>• Recital of the finding that the action will facilitate the national defense.</li> </ul>   |

| Tasks                 | FAR Reference(s)   | Additional Information   |
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| 9. Document the file. | <p>FAR 4.803 Contents of contract files [government contract files].</p> <p>FAR 50.103-6 Disposition [delegation of and limitations on exercise of authority].</p> | <p>The file must include, as a minimum:</p> <ul style="list-style-type: none"> <li>• The contractor's request;</li> <li>• All relevant memorandums, correspondence, affidavits, and other pertinent documents;</li> <li>• The Memorandum of Decision; and</li> <li>• A copy of the contractual document implementing an approved request.</li> </ul> <p>The case file must also include the derivation and rationale for the dollar amount of the adjustment. When the dollar amount exceeds the amounts supported by audit or other independent reviews, include the rationale for deviating from the recommendation.</p> |