

UNIT 52: CONTRACT MODIFICATION AND ADJUSTMENT

Part A: Modifications

October 2003

Tasks	Related Standards
<p>1. Determine whether there is a need for a contractor proposed modification.</p>	<p>Examples of contractor proposed contract modifications, include:</p> <ul style="list-style-type: none"> • A request for an administrative change (e.g., a change in the contractor’s mailing address); • A request to recognize a successor in interest to the contract when contractor assets are transferred; • A request for a name change; • A request for Contracting Officer confirmation of a constructive change; • A request for an equitable adjustment in response to a unilateral contract modification by the Contracting Officer; • A proposal to modify contract requirements based on a change in the acquisition situation (e.g., a required supply is no longer available); • A proposal to definitize a letter contract; or • A value-engineering proposal. <p>When making the determination:</p> <ul style="list-style-type: none"> • Obtain from the contractor any information needed to evaluate the need for the requested modification, for example: <ul style="list-style-type: none"> - Technical information; or - Information other than cost or pricing data or cost or pricing data. • When appropriate, forward the request for review, comment, and/or other action (e.g., analysis of funds availability) by other interested parties. • Make a determination based on available information.

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Tasks	Related Standards
2. Determine whether there is a need for a Government proposed modification.	<p>Examples of Government proposed contract modifications, include a request for:</p> <ul style="list-style-type: none">• An administrative change (e.g., a change in the paying office address);• Contracting Officer confirmation of a constructive change; or• Modification of contract requirements based on a change in the acquisition situation (e.g., a change in delivery location). <p>When making the determination:</p> <ul style="list-style-type: none">• Obtain any necessary documentation from the requester;• When appropriate, forward the request for review, comment, and/or other action (e.g., analysis of funds availability) by other interested parties; and• Make a determination based on available information.

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Related Standards

<p>3. Determine whether the need can be met through a contract modification.</p>	<p>Normally, a need can be met using a contract modification when the contract after modification will still be within the scope of the existing contract. If there is any question concerning the scope of the contract, contact the cognizant Government legal counsel.</p> <p>A need cannot be met using a contract modification, if the modification will result in a new contract outside the scope of the existing contract unless:</p> <ul style="list-style-type: none">• The contractor is identified in a sole source justification and approval completed in accordance with FAR 6.3;• Synopsis requirements are met in accordance with FAR 5.2, unless an exemption applies; and• Other applicable requirements are met (e.g., a new Service Contract Act wage determination when service labor requirements are affected significantly).
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Tasks	Related Standards
<p>4. Determine whether to make the contract modification.</p>	<p>If the need can be met through a contract modification, determine whether to make the proposed modification. With other members of the Government acquisition team, consider:</p> <ul style="list-style-type: none"> • The requirements of any contract clauses related to the proposed modification (e.g., a modification required by the contract under certain conditions). • The need for an equitable adjustment as a result of the modification, including any: <ul style="list-style-type: none"> - Net increase or decrease in price expected to result from the contract modification. <ul style="list-style-type: none"> ? When using price analysis, calculate the difference between the current price of the deleted item(s) and the current price of the added item(s). ? When using cost analysis, calculate the difference between the estimated cost to complete the contract before the change and estimated cost to complete the contract after the change. - Change in delivery. Delivery time may increase or decrease as a result of the modification. - Effect on technical requirements. • The affect of the modification on Government operations, including: <ul style="list-style-type: none"> - The availability of resources (e.g., funding) to accommodate the modification; and - Any other benefits or costs to the Government related to the modification (e.g., the cost of temporary shortages related to a longer delivery schedule).

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5. Determine whether to use a unilateral or bilateral modification.	<p>The signatures of the Contracting Officer and the contractor's representative on a bilateral modification indicate agreement by both parties. 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.</p> <ul style="list-style-type: none">• Use a bilateral modification to make contract modifications (including changes that could be issued unilaterally) unless the time required to reach agreement on an equitable adjustment will cause a delay that will adversely affect the Government's interest.• A bilateral modification must be used to:<ul style="list-style-type: none">- Make a negotiated equitable adjustment resulting from the issuance of a change order;- Definitize a letter contract; or- Reflect other agreements of the parties modifying the terms of contracts.• A unilateral modification may be used to:<ul style="list-style-type: none">- Make administrative changes;- Issue change orders under the contract Changes clause;- Make changes authorized by clauses other than a changes clause (e.g., Property clause, Options clause, or Suspension of Work clause); or- Issue a termination notice.

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Tasks	Related Standards
<p>6. Modify the contract using a bilateral contract modification.</p>	<p>When using a bilateral modification:</p> <ul style="list-style-type: none">• Obtain a proposal from the contractor.• With other members of the Government acquisition team, 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).• Identify any requirements mandated by the Government as a result of the modification (e.g., a new Service Contract Wage determination for an out of scope modification which significantly affects labor requirements).• Conduct any required communications with the contractor.• Develop negotiation objectives, strategies, and tactics.• Negotiate with the contractor to reach agreement on all contract elements affected by the modification, including any necessary equitable adjustment.• Assure that the modification meets FAR and agency requirements.• Assure that adequate funds are available for the equitable adjustment.• Prepare the contract modification (including Contractor's Statement of Release).• Obtain any necessary Government approvals.• Obtain signature of the contractor's authorized representative, and the Contracting Officer.• 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.

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Tasks	Related Standards
<p>7. Modify the contract using a unilateral contract modification.</p>	<p>When using a unilateral contract modification:</p> <ul style="list-style-type: none"> • Use an acceptable form. <ul style="list-style-type: none"> - Use the Amendment of Solicitation/ Modification of Contract (SF 30) or other agency-authorized form. - A telegraphic message may be used under unusual or urgent circumstances, if: <ul style="list-style-type: none"> ? Copies of the message are furnished promptly to the same addressees that received the existing contract; ? Immediate action is taken to confirm the change by issuance of a SF 30 or other agency-authorized form; ? 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 ? The Contracting Officer manually signs the original copy of the message. • For administrative changes, verify that the modification does not affect the substantive rights of the parties. • Assure that any modification that could result in a significant price increase includes a maximum price for the modified contract. • Assure that adequate funds are available for any anticipated equitable adjustment. • 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. • Assure that the modification meets other applicable FAR and agency requirements. • Distribute the modification to the parties on the contract distribution list.

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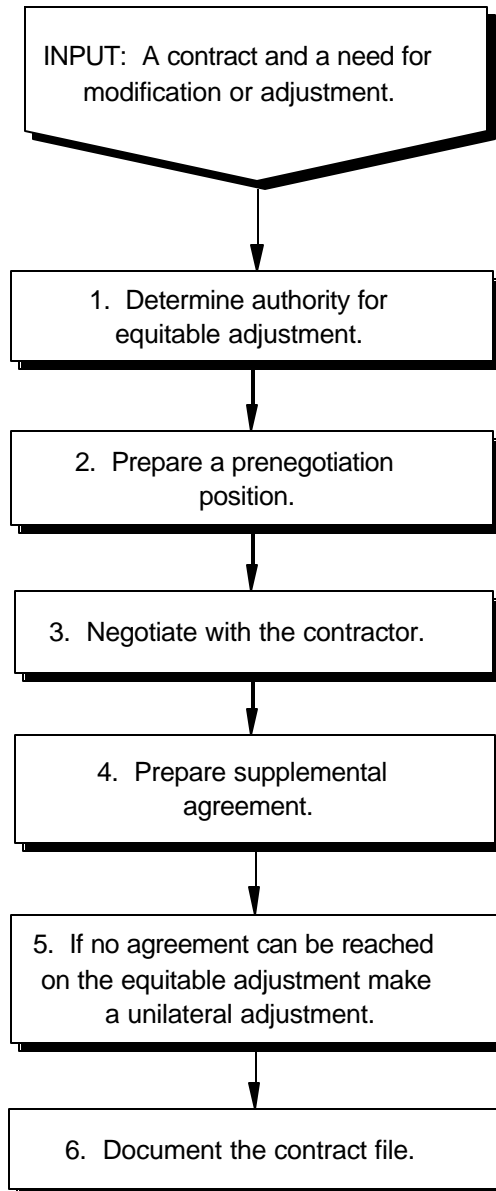
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Tasks	Related Standards
8. Document the contract file.	Include all significant information related to the modification. When negotiations were required, include the principal elements of the negotiated agreement. The documentation (e.g., a price negotiation memorandum) must include the elements identified in FAR 15.406-3.

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Part B: Equitable Adjustments

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UNIT 52: CONTRACT MODIFICATION AND ADJUSTMENT

Part B: Equitable Adjustments

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Tasks	Related Standards
<p>1. Determine authority for equitable adjustment.</p>	<p>Examples of contract clauses that provide for equitable adjustment include the:</p> <ul style="list-style-type: none">• Changes clause;• Government Property clause;• Suspension of Work clause (FAR 52.242-14);• Government Delay of Work clause (FAR 52.242-17); and• Stop-Work Order clause (FAR 52.242-15). <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> <p>An equitable adjustment may also be required if an out of scope modification is made to the contract.</p>

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Part B: Equitable Adjustments

October 2003

Tasks	Related Standards
<p>2. Prepare a prenegotiation position.</p>	<p>The prenegotiation position should consider:</p> <ul style="list-style-type: none"> • The contractor's proposal (if any). • 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"> - If the contractor proposed the equitable adjustment, this estimate should include an evaluation of the proposal and other available information. - 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. • 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. • Available tradeoffs between price, delivery or performance period, and other contract requirements.
<p>3. Negotiate with the contractor.</p>	<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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Part B: Equitable Adjustments

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Tasks	Related Standards
4. Prepare supplemental agreement.	<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"> • Ensure that all elements of the equitable adjustment have been presented and resolved; and • Include, in the supplemental agreement, a release similar to the following: <p style="padding-left: 40px;">Contractor's Statement of Release In consideration of the modification(s) agreed to herein as complete equitable adjustments for the Contractor's _____ (describe) _____ "proposal(s) for adjustment," the Contractor hereby releases the Government from any and all liability under this contract for further equitable adjustments attributable to such facts or circumstances giving rise to the "proposal(s) for adjustment" (except for _____).</p>
5. If no agreement can be reached on the equitable adjustment make a unilateral adjustment.	<p>Any unilateral adjustment will be subject to contractor appeal as provided under the Disputes clause (52.233-1).</p> <p>If the decision is to make a unilateral adjustment, also take action to collect any amount due the Government as a result of that adjustment.</p>
6. Document the contract file.	<p>Include all significant information related to the equitable adjustment, including the principal elements of any negotiated agreement. The documentation (e.g., a price negotiation memorandum) must include the elements identified in FAR 15.406-3.</p>

UNIT 52: CONTRACT MODIFICATION AND ADJUSTMENT

Part C: Extraordinary Contract Adjustments

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