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PURCHASE ORDER MODIFICATIONS

OVERSIGHT & COMPLIANCE BRANCH

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OBJECTIVE

- Define the types of contract changes
- Discuss the Contracting Officer's role & responsibility when executing modifications
- Discuss the modification types—bilateral and unilateral
- How to determine modification type when executing a contract change
- Preparation and use of SF 30
- How to select commonly-used modification authorities
- Define & obtain consideration for modifications
- Points to Remember



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DEFINITION OF CONTRACT CHANGES

Administrative change (FAR 43.103(b)) – unilateral contract change, in writing, that does not affect the substantive rights of the parties (e.g., a change in the paying office or the appropriation data).

Change order (FAR 2.101, 43.201) – a written order, signed by the Contracting Officer, directing the contractor to make a change that the Changes clause authorizes the CO to order without the contractor's consent.

Supplemental agreement (FAR 43.103(a)) – a bilateral contract change, in writing, that is accomplished by the mutual action of the parties (e.g., time extension, revised delivery schedule, negotiated within scope change, negotiated equitable adjustments resulting from issuance of change order).



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CONTRACTING OFFICER'S ROLE & RESPONSIBILITY

(FAR 43.102)

- Only Contracting Officers acting within the scope of their authority are empowered to execute modifications.
- Contracting Officers shall not execute a modification that causes an increase in funds without first obtaining a certification of funds availability. (See FAR 43.105 for exceptions.)
- Contract modifications, including changes that could be issued unilaterally, shall be priced before their execution if this can be done without adversely affecting the interest of the government.



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MODIFICATION TYPES

(FAR 43.103)

There are two types of modifications—

- 1) **Bilateral** – supplemental agreement signed by the contractor and the Contracting Officer.
- 2) **Unilateral** – signed only by the Contracting Officer.



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BILATERAL MODIFICATIONS

(FAR 43.103(a))

Bilateral modifications are used to –

- ✓ Make negotiated equitable adjustments resulting from the issuance of a change order
- ✓ Definitize letter contracts
- ✓ Reflect other agreements of the parties modifying the terms of the contract





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UNILATERAL MODIFICATIONS

(FAR 43.103(b))

Unilateral modifications are used to –

- ✓ Make administrative changes
- ✓ Issue change orders
- ✓ Make changes authorized by clauses other than a changes clause (e.g., Property clause, Options clause, Suspension of Work clause, etc.)
- ✓ Issue termination notices





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STANDARD FORM 30

Amendment of Solicitation/Modification of Contract
(APG 5.6.1)

- SAP – Field Delegates will utilize SF 30 to modify purchase orders or to cancel unilateral orders.
- The SF 30 is a self-explanatory form and when properly executed by the Contracting Officer, constitutes a legal contract modification.
- The SF 30 is a stand alone document which must accurately reflects any and all changes to the contract terms, conditions, scope of work, and/or specifications.



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PREPARATION & USE OF SF 30

(SF 30, Block 13)

Block 13 identifies—

- 1) The type of change being processed; i.e., change order, administrative change, supplemental agreement, other specified changes.
- 2) The authority being used by the Contracting Officer to execute a specified contract change.

NOTE: *The CO must select and complete one of the four fields (13A – 13D) to identify the proper modification authority/type of modification.*



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PREPARATION & USE OF SF 30

(SF 30, Block 13)

- ✓ 13A – Select when issuing a change order. Ex: Changing a place of delivery without having sufficient time to negotiate a firm price with contractor. The change order directs contractor to perform the change and dictates execution of a bilateral modification at a later date incorporating all final negotiated changes.
- ✓ 13B – Select when issuing an administrative change to the order. Ex: Changing accounting data, paying office, or vendor's address.
- ✓ 13C – Select when issuing a supplemental agreement. Ex: A mutual agreement of the contracting parties to extend period of performance absent the Extension of Services clause in the order.
- ✓ 13D – Select for all other changes that do not fall within 13A – 13C. These changes may be bilateral or unilateral, and the Contracting Officer must indicate appropriate type. Ex: Unilateral change exercising an option period.



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SF 30, BLOCK 13

COMMONLY-USED MODIFICATION AUTHORITIES > Micro

General Rule:

- Inclusion of a proper authority is mandatory for both unilateral and bilateral modifications, but is not necessary for administrative modifications.
- Cite an appropriate FAR/other clause that already exists in the order.
- Cite “mutual agreement of the parties” **ONLY** when no other authority exists.



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SF 30, BLOCK 13

COMMONLY-USED MODIFICATION AUTHORITIES > Micro

Examples:

- ✓ **13A** – Change Order – cite the FAR “Changes” clause in order
 - FAR 52.243-1 Changes—Fixed-Price (non-commercial)
 - FAR 52.212-4(c) Changes (commercial items)
- ✓ **13B** – Administrative Change (no authority required)
- ✓ **13C** – Supplemental Agreement – cite appropriate FAR/other clause in order
 - FAR 52.243-1 Changes—Fixed-Price (non-commercial items) *NOTE: SA may result from negotiated changes with contractor without execution of Change Order. These must be in-scope changes.*
- ✓ **13D** – Other (Unilateral or Bilateral mod) – cite appropriate FAR/other clause in order
 - Unilateral mod pursuant to FAR 52.217-8 Option to Extend Services
 - Unilateral mod pursuant to FAR 52.217-9 Option to Extend Term of the Contract
 - Unilateral mod pursuant to CAM 04-03, subparagraph 9.f., (USE to **de-obligate** excess funds on order)



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CONSIDERATION

(APG 9.5.2)

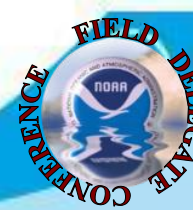
- Consideration is the benefit each party confers upon the other for the modifications; it is required to seal a new bargain.
- Consideration is **something of value** given in exchange for something else & can consist of –
 - Monetary
 - Changes in Specs or Work Statements
 - Delivery
 - Payment Terms
 - Other Contract Terms & Conditions
- Contracting Officer cannot agree to modify without consideration, if consideration is required.
- See FAR 43.102(c) & 50.103 for exceptions to consideration.





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CONSIDERATION

(APG 9.5.2)

- Example—

If contractor is entitled to time extension pursuant to a contract clause, no consideration is required; i.e., weather/excusable delays. However, if parties negotiate time extension at request of either, & the requesting party is not entitled to the extension pursuant to a clause, the parties are modifying the order by making a new deal & must exchange **new consideration**.



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POINTS TO REMEMBER



- **OCB Field Delegate audits will cover the following:**
 - 1) Was the modification entered into the Federal Procurement Data System (FPDS)?
 - 2) Was price reasonableness determined on applicable modifications?
 - 3) Did modification contain proper type/authority?
 - 4) If modification changed POP or delivery date, was the “expired on” field in C-Buy updated to reflect changed date?
- **Contact us when you have a challenging modification process as we welcome the opportunity to help each of you!**



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