

Subpart 43.1 - General

Parent topic: [Part 43 - Contract Modifications](#)

43.101 Definitions.

As used in this part-

Administrative change means a unilateral (see [43.103\(b\)](#)) 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).

Effective date-

- (1) For a solicitation amendment, change order, or administrative change, the effective date shall be the issue date of the amendment, change order, or administrative change.
- (2) For a supplemental agreement, the effective date shall be the date agreed upon by the contracting parties.
- (3) For a modification issued as a confirming notice of termination for the convenience of the Government, the effective date of the confirming notice shall be the same as the effective date of the initial notice.
- (4) For a modification converting a termination for default to a termination for the convenience of the Government, the effective date shall be the same as the effective date of the termination for default.
- (5) For a modification confirming the termination contracting officer's previous letter determination of the amount due in settlement of a contract termination for convenience, the effective date shall be the same as the effective date of the previous letter determination.

43.102 Policy.

(a) Only contracting officers acting within the scope of their authority are empowered to execute contract modifications on behalf of the Government. Other Government personnel shall not-

- (1) Execute contract modifications;
 - (2) Act in such a manner as to cause the contractor to believe that they have authority to bind the Government; or
 - (3) Direct or encourage the contractor to perform work that should be the subject of a contract modification.
- (b) 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. If a significant cost increase could result from a contract modification and time does not permit negotiation of a price, at least a ceiling price shall be negotiated unless impractical.

43.103 Types of contract modifications.

Contract modifications are of the following types:

(a) *Bilateral*. A bilateral modification (supplemental agreement) is a contract modification that is signed by the contractor and the contracting officer. Bilateral modifications are used to-

- (1) Make negotiated equitable adjustments resulting from the issuance of a change order;
- (2) Definitize letter contracts; and
- (3) Reflect other agreements of the parties modifying the terms of contracts.

(b) *Unilateral*. A unilateral modification is a contract modification that is signed only by the contracting officer. Unilateral modifications are used, for example, to-

- (1) Make administrative changes;
- (2) Issue change orders;
- (3) Make changes authorized by clauses other than a changes clause (*e.g.*, Property clause, Options clause, or Suspension of Work clause); and
- (4) Issue termination notices.

43.104 Notification of contract changes.

(a) When a contractor considers that the Government has effected or may effect a change in the contract that has not been identified as such in writing and signed by the contracting officer, it is necessary that the contractor notify the Government in writing as soon as possible. This will permit the Government to evaluate the alleged change and-

- (1) Confirm that it is a change, direct the mode of further performance, and plan for its funding;
- (2) Countermand the alleged change; or
- (3) Notify the contractor that no change is considered to have occurred.

(b) The clause at [52.243-7](#), Notification of Changes, which is prescribed in [43.107-](#)

- (1) Incorporates the policy expressed in paragraph (a) of this section;
- (2) Requires the contractor to notify the Government promptly of any Government conduct that the contractor considers a change to the contract, and
- (3) Specifies the responsibilities of the contractor and the Government with respect to such notifications.

43.105 Availability of funds.

(a) The contracting officer shall not execute a contract modification that causes or will cause an increase in funds without having first obtained a certification of fund availability, except for modifications to contracts that-

(1) Are conditioned on availability of funds (see [32.703-2](#)); or

(2) Contain a limitation of cost or funds clause (see [32.704](#)).

(b) The certification required by paragraph (a) of this section shall be based on the negotiated price, except that modifications executed before agreement on price may be based on the best available estimate of cost.

(c) In accordance with [10 U.S.C. 983](#), do not provide funds by contract or contract modification, or make contract payments, to an institution of higher education that has a policy or practice of hindering Senior Reserve Officer Training Corps units or military recruiting on campus as described at [9.110](#). The prohibition in this paragraph (c) does not apply to acquisitions at or below the simplified acquisition threshold or to acquisitions of commercial products, including commercially available off-the-shelf items, and commercial services.

43.106 [Reserved]

43.107 Contract clause.

The contracting officer may insert a clause substantially the same as the clause at [52.243-7](#), Notification of Changes, in solicitations and contracts. The clause is available for use primarily in negotiated research and development or supply contracts for the acquisition of major weapon systems or principal subsystems. If the contract amount is expected to be less than \$1,000,000, the clause shall not be used, unless the contracting officer anticipates that situations will arise that may result in a contractor alleging that the Government has effected changes other than those identified as such in writing and signed by the contracting officer.