

## 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*.