

50.102-3 Limitations on exercise of authority.

(a) Pub. L. 85-804 is not authority for-

- (1) Using a cost-plus-a-percentage-of-cost system of *contracting*;
- (2) Making any contract that violates existing law limiting profit or fees;
- (3) Providing for other than *full and open competition* for award of contracts for *supplies* or services; or
- (4) Waiving any bid bond, payment bond, performance bond, or other bond required by law.

(b) No contract, amendment, or modification *shall* be made under Pub. L. 85-804's authority-

- (1) Unless the *approving authority* finds that the action will facilitate the *national defense*;
- (2) Unless other legal authority within the agency concerned is deemed to be lacking or inadequate;
- (3) Except within the limits of the amounts appropriated and the statutory contract authorization (however, indemnification agreements authorized by an *agency head* (50.104-3) are not limited to amounts appropriated or to contract authorization); and
- (4) That will obligate the Government for any amount over \$35 million unless the Senate and House Committees on Armed Services are notified *in writing* of the proposed obligation and 60 days of continuous session of Congress have passed since the transmittal of such notification. However, this paragraph (b)(4) does not apply to indemnification agreements authorized under 50.104-3.

(c) No contract *shall* be amended or modified unless the contractor submits a request before all obligations (including final payment) under the contract have been discharged. No amendment or modification *shall* increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder, if the contract was negotiated under 14.404-1(f).

(d) No informal commitment *shall* be formalized unless-

- (1) The contractor submits a written request for payment within 6 months after furnishing, or arranging to furnish, *supplies* or services in reliance upon the commitment; and
- (2) The *approving authority* finds that, at the time the commitment was made, it was impracticable to use normal *contracting* procedures.

(e) The exercise of authority by officials below the *secretarial level* is subject to the following additional limitations:

- (1) The action *shall* not-
 - (i) Release a contractor from performance of an obligation over \$75,000;
 - (ii) Result in an increase in cost to the Government over \$75,000;
 - (iii) Deal with, or directly affect, any matter that has been submitted to the Government Accountability Office; or

(iv) Involve disposal of Government *surplus property*.

(2) Mistakes *shall* not be corrected by an action obligating the Government for over \$1,000, unless the *contracting officer* receives notice of the mistake before final payment.

(3) The correction of a contract because of a mistake in its making *shall* not increase the original contract price to an amount higher than the next lowest responsive *offer* of a responsible *offeror*.

(f) No executive department or agency *shall* exercise the indemnification authority granted under paragraph 1 A of E.O. 10789 with respect to any supply or service that has been, or could be, designated by the Secretary of Homeland Security as a qualified anti-terrorism technology unless-

(1) For the Department of Defense, the Secretary of Defense has determined that the exercise of authority under E.O. 10789 is necessary for the timely and effective conduct of the *United States* military or intelligence activities, after consideration of the authority provided under the SAFETY Act (Subtitle G of title VIII of the Homeland Security Act of 2002, [6 U.S.C. 44 1-444](#)); or

(2) For other departments and agencies that have authority under E.O. 10789-

(i) The Secretary of Homeland Security has advised whether the use of the authority under the SAFETY Act would be appropriate; and

(ii) The Director of the Office of Management and Budget has approved the exercise of authority under the Executive order.

Parent topic: [50.102 Delegation of and limitations on exercise of authority.](#)