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(1) Be used in a manner that encourages carelessness and laxity on the part of persons engaged in the defense effort; or

(2) Be relied upon when other adequate legal authority exists within the agency.

(b) Actions authorized under Pub. L. 85–804 shall be accomplished as expeditiously as practicable, consistent with the care, restraint, and exercise of sound judgment appropriate to the use of such extraordinary authority.

(c) Certain kinds of relief previously available only under Pub. L. 85–804, e.g., rescission or reformation for mutual mistake, are now available under the authority of the Contract Disputes Act of 1978. In accordance with paragraph (a)(2) of this subsection, Part 33 must be followed in preference to Subpart 50.1 for such relief. In case of doubt as to whether Part 33 applies, the contracting officer should seek legal advice.

50.101–3 Records.

Agencies shall maintain complete records of all actions taken under this Subpart 50.1. For each request for relief processed, these records shall include, as a minimum—

(a) The contractor’s request;

(b) All relevant memorandums, correspondence, affidavits, and other pertinent documents;

(c) The Memorandum of Decision (see 50.103–6 and 50.104–2); and

(d) A copy of the contractual document implementing an approved request.

50.102 Delegation of and limitations on exercise of authority.

50.102–1 Delegation of authority.

An agency head may delegate in writing authority under Pub. L. 85–804 and E.O. 10789, subject to the following limitations:

(a) Authority delegated shall be to a level high enough to ensure uniformity of action.

(b) Authority to approve requests to obligate the Government in excess of $65,000 may not be delegated below the secretarial level.

(c) Regardless of dollar amount, authority to approve any amendment without consideration that increases the contract price or unit price may not be delegated below the secretarial level, except in extraordinary cases or classes of cases when the agency head finds that special circumstances clearly justify such delegation.

(d) Regardless of dollar amount, authority to indemnify against unusually hazardous or nuclear risks, including extension of such indemnification to subcontracts, shall be exercised only by the Secretary or Administrator of the agency concerned, the Public Printer, or the Chairman of the Board of Directors of the Tennessee Valley Authority (see 50.104–3).


50.102–2 Contract adjustment boards.

An agency head may establish a contract adjustment board with authority to approve, authorize, and direct appropriate action under this Subpart 50.1 and to make all appropriate determinations and findings. The decisions of the board shall not be subject to appeal; however, the board may reconsider and modify, correct, or reverse its previous decisions. The board shall determine its own procedures and have authority to take all action necessary or appropriate to conduct its functions.

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 $31.5 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 10 U.S.C. 2304(a)(15) or 41 U.S.C. 252(c)(14), or FAR 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 $65,000;
(ii) Result in an increase in cost to the Government over $65,000;
(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 1A 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. 441–444); 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.


50.103 Contract adjustments.

This section prescribes standards and procedures for processing contractors’ requests for contract adjustment under Pub. L. 85–804 and E.O. 10789.

50.103–1 General.

The fact that losses occur under a contract is not sufficient basis for exercising the authority conferred by Pub. L. 85–804. Whether appropriate action will facilitate the national defense is a judgment to be made on the basis of all of the facts of the case. Although it is impossible to predict or enumerate all the types of cases in which action may be appropriate, examples are included in 50.103–2. Even if all of the factors in any of the examples are present, other considerations may warrant denying a