

Federal Acquisition Regulation

50.104-3

52.203-5, Covenant Against Contingent Fees; 52.215-2, Audit and Records—Negotiation; 52.222-4, Contract Work Hours and Safety Standards Act—Overtime Compensation; 52.222-6, Davis-Bacon Act; 52.222-10, Compliance With Copeland Act Requirements; 52.222-20, Walsh-Healey Public Contracts Act; 52.222-26, Equal Opportunity; and 52.232-23, Assignment of Claims.

50.104 Residual powers.

This section prescribes standards and procedures for exercising residual powers under Pub. L. 85-804. The term “residual powers” includes all authority under Pub. L. 85-804 except—

(a) That covered by section 50.103; and

(b) The authority to make advance payments (see Subpart 32.4).

50.104-1 Standards for use.

Subject to the limitations in 50.102-3, residual powers may be used in accordance with the policies in 50.101-2 when necessary and appropriate, all circumstances considered. In authorizing the inclusion of the clause at 52.250-1, Indemnification Under Public Law 85-804, in a contract or subcontract, an agency head may require the indemnified contractor to provide and maintain financial protection of the type and amount determined appropriate. In deciding whether to approve use of the indemnification clause, and in determining the type and amount of financial protection the indemnified contractor is to provide and maintain, an agency head shall consider such factors as self-insurance, other proof of financial responsibility, workers' compensation insurance, and the availability, cost, and terms of private insurance. The approval and determination shall be final.

50.104-2 General.

(a) When approving or denying a proposal for the exercise of residual powers, the approving authority shall sign and date a Memorandum of Decision containing substantially the same information called for by 50.103-6.

(b) Every contract entered into, amended, or modified under residual powers shall comply with the requirements of 50.103-7.

50.104-3 Special procedures for unusually hazardous or nuclear risks.

(a) *Indemnification requests.* (1) Contractor requests for the indemnification clause to cover unusually hazardous or nuclear risks should be submitted to the contracting officer and shall include the following information:

(i) Identification of the contract for which the indemnification clause is requested.

(ii) Identification and definition of the unusually hazardous or nuclear risks for which indemnification is requested, with a statement indicating how the contractor would be exposed to them.

(iii) A statement, executed by a corporate official with binding contractual authority, of all insurance coverage applicable to the risks to be defined in the contract as unusually hazardous or nuclear, including—

(A) Names of insurance companies, policy numbers, and expiration dates;

(B) A description of the types of insurance provided (including the extent to which the contractor is self-insured or intends to self-insure), with emphasis on identifying the risks insured against and the coverage extended to persons or property, or both;

(C) Dollar limits per occurrence and annually, and any other limitation, for relevant segments of the total insurance coverage;

(D) Deductibles, if any, applicable to losses under the policies;

(E) Any exclusions from coverage under such policies for unusually hazardous or nuclear risks; and

(F) Applicable workers' compensation insurance coverage.

(iv) The controlling or limiting factors for determining the amount of financial protection the contractor is to provide and maintain, with information regarding the availability, cost, and terms of additional insurance or other forms of financial protection.

(v) Whether the contractor's insurance program has been approved or accepted by any Government agency; and whether the contractor has an indemnification agreement covering similar risks under any other Government program, and, if so, a brief description of any limitations.

50.104-4

(vi) If the contractor is a division or subsidiary of a parent corporation—

(A) A statement of any insurance coverage of the parent corporation that bears on the risks for which the contractor seeks indemnification; and

(B) A description of the precise legal relationship between parent and subsidiary or division.

(2) If the dollar value of the contractor's insurance coverage varies by 10 percent or more from that stated in an indemnification request submitted in accordance with paragraph (a)(1) of this subsection, or if other significant changes in insurance coverage occur after submission and before approval, the contractor shall immediately submit to the contracting officer a brief description of the changes.

(b) *Action on indemnification requests.*

(1) The contracting officer, with assistance from legal counsel and cognizant program office personnel, shall review the indemnification request and ascertain whether it contains all required information. If the contracting officer, after considering the facts and evidence, denies the request, the contracting officer shall notify the contractor promptly of the denial and of the reasons for it. If recommending approval, the contracting officer shall forward the request (as modified, if necessary, by negotiation) through channels to the appropriate official specified in 50.102-1(d). The contracting officer's submission shall include all information submitted by the contractor and—

(i) All pertinent information regarding the proposed contract or program, including the period of performance, locations, and facilities involved;

(ii) A definition of the unusually hazardous or nuclear risks involved in the proposed contract or program, with a statement that the parties have agreed to it;

(iii) A statement by responsible authority that the indemnification action would facilitate the national defense;

(iv) A statement that the contract will involve unusually hazardous or nuclear risks that could impose liability upon the contractor in excess of financial protection reasonably available;

48 CFR Ch. 1 (10-1-10 Edition)

(v) A statement that the contractor is complying with applicable Government safety requirements;

(vi) A statement of whether the indemnification should be extended to subcontractors; and

(vii) A description of any significant changes in the contractor's insurance coverage (see 50.104-3(a)(2)) occurring since submission of the indemnification request.

(2) Approval of a request to include the indemnification clause in a contract shall be by a Memorandum of Decision executed by the appropriate official specified in 50.102-1(d).

(3) When use of the indemnification clause is approved under paragraph (b)(2) of this subsection, the definition of unusually hazardous or nuclear risks (see paragraph (b)(1)(ii) of this subsection) shall be incorporated into the contract, along with the clause.

(4) When approval is—

(i) Authorized in the Memorandum of Decision; and

(ii) Justified by the circumstances, the contracting officer may approve the contractor's written request to provide for indemnification of subcontractors, using the same procedures as those required for contractors.

50.104-4 Contract clause.

The contracting officer shall insert the clause at 52.250-1, Indemnification Under Public Law 85-804, in contracts whenever the approving official determines that the contractor shall be indemnified against unusually hazardous or nuclear risks (also see 50.104-3(b)(3)). In cost-reimbursement contracts, the contracting officer shall use the clause with its Alternate I.

Subpart 50.2—Support Anti-terrorism by Fostering Effective Technologies Act of 2002

50.200 Scope of subpart.

This subpart implements the Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (SAFETY Act) liability protections to promote development and use of anti-terrorism technologies.