

SUBCHAPTER G—CONTRACT MANAGEMENT

PART M843—CONTRACT MODIFICATIONS

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SUBCHAPTER G—CONTRACT MANAGEMENT

PART M843—CONTRACT MODIFICATIONS

Subpart M843.1—General

M843.101 Definitions.

As used in this part—

Consideration means something of value one party exchanges with another party, to induce the parties to form a mutual contractual commitment. It may take many forms, including monetary increases or decreases, changes in specifications or work statements, delivery schedules, payment time frames, or other contract terms and conditions.

Stop-Work Order means a suspension of work or work stoppage. When required, a stop work order should be issued immediately. Orders may take the form of either a letter or modification. Contracting officers may issue stop work orders for a period of 90 days or less. Orders greater than 90 days must be agreed to by the contractor.

M843.102 Policy.

M843.102-70 Contract scope considerations.

(a) Scope determinations are not required for administrative changes ([FAR 43.101](#)) issued as modifications that do not impact the substantive rights of the parties (e.g., a change in the paying office or the appropriation data) or unilateral modifications that are authorized by clauses other than the changes clause (e.g., Property clause, Options clause, or Suspension of Work clause ([FAR 43.103\(b\)\(3\)](#))).

(b) The contracting officer's scope determination shall be documented as a memorandum for the record (MFR). The MFR, at a minimum, shall document the following:

(1) Nature of work to be performed under the modification compared to the nature of the work performed under existing contract, delivery order or task order;

(2) Amount of effort required to perform the work required by the modification compared to the amount of effort required to perform the existing contract, delivery order or task order;

(3) Changes in quantity or quality of deliverables which exceed what offerors who proposed on the existing contract, delivery order or task order should have reasonably contemplated;

(4) Scope of the original competition and whether offerors who proposed on the existing contract, delivery order or task order should have reasonably contemplated the proposed modification;

(5) Cumulative impact of multiple changes/previous modifications; and

(6) Changes in time of performance.

(7) General Counsel written opinion, if sought, as to whether the proposed modification is within scope of the basic contract, delivery order or task order.

(8) Technical expert analysis as to whether the proposed modification is within scope of the basic contract, delivery order or task order.

(c) In-scope changes to an existing contract shall be issued in accordance with [FAR subpart 43.2](#).

(d) When a proposed change requires a modification outside of the general scope of a contract, the contracting officer must—

(1) Issue a modification in accordance with the non-competitive procedures at FAR [6.303](#), [8.405-6](#), or [16.505\(b\)\(2\)](#);

(2) Conduct market research to determine whether an award to a Vendor Information Page (VIP) verified Service-Disabled Veteran-Owned Small Business (SDVOSB) or Veteran-Owned Small Business (VOSB) firm in accordance with VAAR subpart 819.70 is feasible; and

(3) If market research reveals that two or more VIP verified SDVOSB or VOSB firms are not available, competitively solicit the requirement.

M843.102-71 Execution of modifications by VA contracting officers.

(a) General. This subsection does not apply to commercial items unless authorized at a level above the contracting officer.

(1) Bilateral modifications shall not be signed by the government prior to obtaining the contractor's signature signifying acceptance of the additional requirements. If the contractor places conditions on the modification, a written reply shall immediately be sent to the contractor stating that the government will not execute the modification as returned and will reopen negotiations.

(2) All supplemental agreements shall include the "Contractor's Statement of Release" in accordance with [FAR 43.204\(c\)\(2\)](#) unless waived by the head of the contracting activity (HCA).

(3) Approval one level above the contracting officer is required when the price of a modification will exceed the original contract price or when the sum of the modifications issued to date, together with the one proposed, exceeds the original contract price.

(4) A government estimate is not required for contract modifications less than \$150,000. However, regardless of the absence of a government estimate, a determination of price reasonableness shall still be made in accordance with [FAR 15.404-1\(c\)\(iv\)](#).

(5) All modifications must include language similar to either an adjustment of the contract completion date or to: “Extension of contract completion date is not required by reason of this modification.”

(6) When a liquidated damages clause is included in the contract, a unilateral modification shall be prepared to adjust the contract price for any liquidated damages assessed against the contractor prior to final payment and contract close-out.

(b) Service contracts.

(1) If labor requirements subject to Service Contract Labor Standards (the Service Contract Act of 1965) are affected by out-of-scope work, a new Service Contract Labor Standards wage determination must be requested and made a part of the modification.

(2) A unilateral modification shall be issued to adjust the contract price to reflect deductions taken for unperformed work.

Subpart M843.2—Change Orders

M843.201-70 Policy.

(a) It is VA policy to negotiate in advance the cost and/or time associated with all contract changes except in unusual circumstances where it is not possible as a consequence of the character of the changed work. The contracting officer is generally in a better negotiating position when the in-scope change is negotiated and the contract modified prior to the work starting.

(b) When the government and contractor cannot reach agreement on the cost and time associated with changed or additional work, an unpriced change order shall be issued to direct the contractor to proceed with the work despite the absence of an agreement on appropriate compensation. In such circumstances, the unpriced change order shall contain compensation, both in terms of time and money to the contract, in amounts or durations thought to be reasonable by the contracting officer in accordance with 843.2. Further, these amounts or durations shall be broken down in sufficient detail to clearly document the basis for the contracting officer’s determination of what was

reasonable compensation should the contractor seek additional compensation via the disputes provision of the contract and prevail in a contracting officer's final decision.

M843.202-70 VA authority to issue change orders.

Within the VA, Senior/Resident Engineers may be authorized to perform and execute limited duties and responsibilities for construction contracts when VAAR clause 852.242-70 and its Alternate I have been included in the contract terms and conditions. However, Alternate I shall not be included when the Senior/Resident Engineer has been assigned duties as the Contracting Officer Representative.

M843.204-70 Definitization of unpriced change orders.

(b) Price ceiling. The unpriced change order (UCO) will include a cost/price ceiling not to exceed 50 percent of the not-to-exceed price before definitization or 75 percent as established by VAAR 843.204-70-4. The rationale for the not-to-exceed price will be documented and retained in the Electronic Contract Management System. Examples of such supporting rationale include—

- (1) The Independent Government Cost Estimate;
- (2) Price analysis based on prior buys; and
- (3) The contractor's proposal.

(g) Allowable profit. To improve the documentation and provide guidance on determining the profit for UCOs with substantial incurred cost, contracting officers shall follow the mandatory instructions for [weighted guidelines method](#) analysis.

M843.204-71 Unpriced contract modification language.

(a) When an equitable adjustment in the contract price or delivery terms or both cannot be agreed upon in advance, an unpriced modification may be issued. Include in the unpriced change order, wording similar to the following:

“You are hereby directed to perform the work in the attached [insert either statement of work or statement of objectives] date [insert date]. The price of the work shall be performed with the “Not-to-Exceed (NTE) amount of \$[insert dollar amount].

DEFINITIZATION SCHEDULE

As agreed to between the government and the contractor, the following definitization schedule is hereby established:

Proposal Due Date:

DEPARTMENT OF VETERANS AFFAIRS ACQUISITION MANUAL

Negotiation Date:
Definitization Target Date:

The final change in the contract amount and time will be determined pursuant to negotiations and incorporated upon definitization.”

(b) Upon successful negotiation of an equitable adjustment resulting from an unpriced change order, the contracting officer shall issue a supplemental agreement. Include in the modification wording similar to the following:

“This modification hereby definitizes Modification [*insert number and, if applicable, task order number*] dated [*insert date*] issued with a Not-to-Exceed (NTE) amount of \$[*insert dollars*].

As negotiated on [*insert date*] and in accordance with the attached [*insert statement of work or statement of objectives*] dated [*insert date*], the parties hereby mutually agree to the following adjustments in the [*insert either “contract” or “task order”*] price [*and time”, insert if applicable*] as complete and equitable adjustment.

CLIN	DESCRIPTION	AMOUNT
0001	[<i>Add description of added work</i>]	\$[<i>insert dollar amount</i>]
	Less amount awarded on unpriced change order [<i>insert Mod # and, if applicable, “Task Order No.”</i>]	\$[<i>insert dollar amount</i>]
	TOTAL AWARDED THIS ACTION	\$[<i>insert balance due</i>]

As a result of the above, the total amount of the [*insert either “contract” or “task order”*] is changed from \$[*insert total value before this change*] to \$[*insert total value before this change plus the amount funded in this change*], a [*insert either “increase” or “decrease”*] of \$[*insert the difference between the values*]. [*If applicable, add “The contract completion date is changed from [insert date] to [insert date]*]. All other terms remain the same.

CONTRACTOR’S STATEMENT OF RELEASE

In consideration of the modification(s) agreed to herein as complete and equitable adjustment for the Contractor’s [*describe _____*] “proposal(s) for adjustment”, the Contractor hereby releases the Government from any and all liability under this contract for further equitable adjustments attributable to such facts or circumstances giving rise to the “proposal(s) for adjustment” [*except for _____*].”

(c) If the contractor fails to submit a proposal in accordance with the definitization schedule, the contracting officer shall either issue a settlement by determination agreement or obtain a waiver from the HCA to extend the schedule.

Subpart M843.70—VA Modification Procedures

M843.7000 Special procedures for price negotiation in construction contract modifications.

(a) In view of the erratic and often unpredictable nature of overhead rates in the construction industry, a standard or flat rate should not be used. An exception is a situation in which dollar value of the work is too low (typically less than \$500,000) to warrant the preparation of an itemized estimate of job overhead costs. In such cases, the following “Alternate” method recognized by the construction industry may be used:

(1) 10% for field overhead (FOH) on prime contractor’s work (direct cost of modification x 10%= FO cost for modification)

(2) 3% for home office overhead (HOOH) on prime contractor’s work (direct cost of modification + FOH cost for modification) x 3% = HOOH cost for modification

(3) 5% for prime contractor’s overhead on subcontracted work. Contracting officers are cautioned to use judgement in extreme situations where such compensation may be out of proportion to the contractor’s actual overhead costs. An example of this would be the purchase and installation of a very expensive piece of equipment where the installation is relatively simple and the application of standard percentages would over compensate the contractor.

(b) [FAR 15.404-4\(b\)\(1\)\(i\)](#) requires agencies to use a structured approach for determining profit or fee in acquisitions that require cost analysis. M815.404-4 encourages VA contracting officers to use the DoD Weighted Guidelines tool. Contract modifications for the same type and mix of work as the basic contract and of relatively small dollar value compared to the total contract value, may be negotiated using the basic contract profit/fee rate.

(c) Contract modification negotiations shall include all associated time extensions. Contractor proposals shall include all costs and time associated with the change. When agreement on time is at an impasse, the contracting officer shall make a determination of reasonable adjustment based on the government estimate and include a time extension in the modification. However, delays due to weather do not necessarily result in contractor entitlement to an excusable non-compensable time extension under the Default clause. Weather related time extensions are only awarded if the actual weather is in fact unusually severe (i.e., weather more severe than anticipated for the season or location involved) or adverse (i.e., atmospheric conditions at a definite time and place that are unfavorable to construction activities) and impacts the progress of activities on the longest path. It is irrelevant if the contractor is ahead of schedule or behind schedule

when unusually severe weather delays are experienced. If future weather dependent activities on the longest path are pushed into months with more anticipated adverse weather, consideration should be given to granting additional time. Conversely, if they are pushed into months with less anticipated adverse weather, consideration should be given to granting less time. See the Office of Construction and Facilities Management's [General Time Extension Analysis Procedures – Contract Change Time Delay to the Project Schedule](#) - for time extension procedures.

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