

# UNIT 52: CONTRACT MODIFICATION AND ADJUSTMENT

*October 2003*

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<b>Duty</b>	Modify or adjust a contract when needed.
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<b>Overall Conditions</b>	Given a contract and a need for modification or adjustment.
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<b>Standard</b>	Modify or adjust the contract efficiently, effectively, and fairly.
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## **Part A: Modifications**

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<b>Sub-Duty</b>	Modify a contract when needed.
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<b>Sub-Duty Standard</b>	Modify the contract using the type of contract modification that best fits the acquisition situation.
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## **Part B: Equitable Adjustments**

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<b>Sub-Duty</b>	Negotiate an equitable adjustment when necessary for the acquisition situation.
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<b>Sub-Duty Standard</b>	Establish negotiation objectives and tradeoffs based on available information. Negotiate the equitable adjustment. Prepare required contract documents and file documentation.
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## **Part C: Extraordinary Contract Adjustments**

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**Sub-Duty** Complete an extraordinary contract adjustment when necessary to facilitate the national defense.

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**Sub-Duty Standard** Negotiate extraordinary relief for contractors when necessary to facilitate the national defense. Obtain Memorandum of Decision approval from an authorized official. Prepare, execute, and issue the required contractual documents.

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## Policies

<i>FAR</i>	<i>Agency Suppl.</i>	<i>Subject</i>
4.2		Contract distribution.
4.6		Contract reporting.
4.9		Taxpayer identification number information.
5.001		Definition of contract action for synopsis does not include a modification within the scope and under the terms of the contract.
5.2		Synopsis of proposed contract actions.
6.3		Other than full and open competition.
8.716		Change of name and successor in interest procedures.
9.405-1(c)		No extension of a contract with suspended or debarred contractors.
15.406-3		Documenting the negotiation.
22.605(a)(1)		Compliance with Walsh Healy Act if total contract exceeds \$10,000.
22.1007		Requirement to submit notice (SF98/98a) pursuant to a modification.
32.702		Policy related to the Anti-Deficiency Act.
42.12		Novation and change-of-name agreements.
43		Contract modifications.
48		Value engineering.
50.1		General information on extraordinary contract actions.
50.2		Delegation of and limitations on exercise of authority for extraordinary contract actions.
50.3		Contract adjustments under extraordinary contractual actions.
52.212-4(c)		Modifying contracts for commercial items.
52.233-1		Disputes.
52.242-14		Suspension of work.
52.242-15		Stop-work order.
52.242-17		Government delay of work.
52.243-1		Changes – fixed-price.
52.243-2		Changes – cost-reimbursement.
52.243-3		Changes – time-and-materials or labor-hours.
52.243-6		Change order accounting.
52.243-7		Notification of changes.
52.245-2		Government property (fixed-price contracts).
52.245-4		Government furnished property (short form).
52.245-5		Government property (cost-reimbursement, time-and-materials, or labor-hour contracts).
52.245-7		Government property (consolidated facilities).
52.245-10		Government property (facilities acquisition).
52.245-11		Government property (facilities use).
52.248-1		Value engineering.

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## **Other KSAs**

1. Knowledge of the forms used to issue contract modifications (e.g., the Amendment of Solicitation/Modification of Contract (SF30)).
2. Knowledge of the intent and meaning of the term "scope" and criteria for determining whether a proposed change is within a contract's scope.
3. Ability to encourage communication and cooperation between the various parties affected by the contract modification.
4. Ability to analyze information and make sound decisions related to the need for a contract modification and/or the appropriate equitable adjustment (if any).
5. Ability to identify the possible need for a contract modification, determine the relevance of related information, and select the appropriate course of action.
6. Ability to make sound, well-informed, and objective decisions related to contract modifications.
7. Ability to work with others toward an agreement on an appropriate contract modification.
8. Ability to maintain the honesty and integrity of the acquisition process.

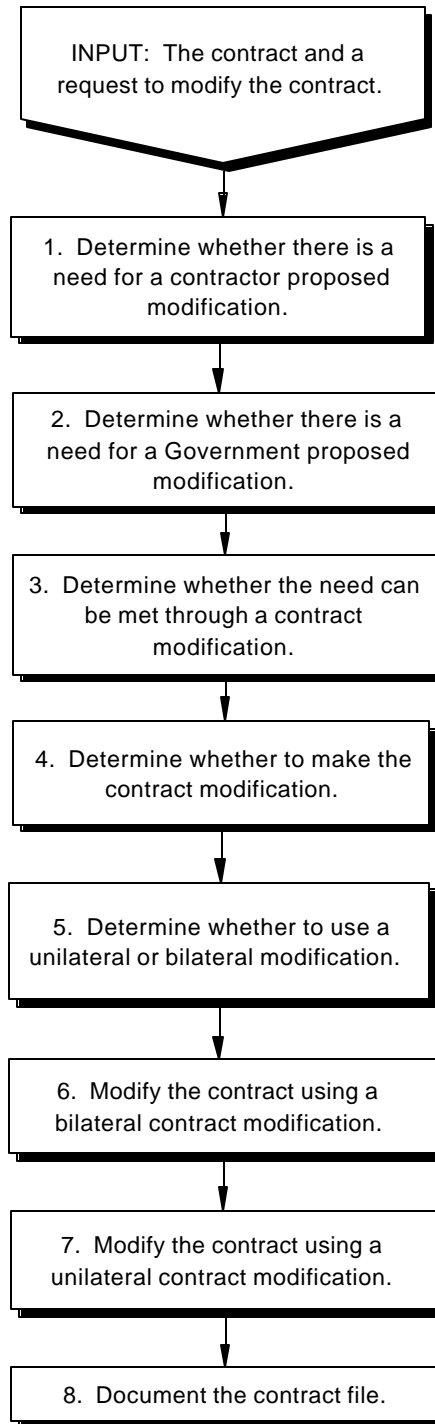
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## **Other Policies and References (Annotate As Necessary):**

# UNIT 52: CONTRACT MODIFICATION AND ADJUSTMENT

## Part A: Modifications

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# UNIT 52: CONTRACT MODIFICATION AND ADJUSTMENT

## Part A: Modifications

October 2003

Tasks	Related Standards
<p>1. Determine whether there is a need for a contractor proposed modification.</p>	<p>Examples of contractor proposed contract modifications, include:</p> <ul style="list-style-type: none"> <li>• A request for an administrative change (e.g., a change in the contractor’s mailing address);</li> <li>• A request to recognize a successor in interest to the contract when contractor assets are transferred;</li> <li>• A request for a name change;</li> <li>• A request for Contracting Officer confirmation of a constructive change;</li> <li>• A request for an equitable adjustment in response to a unilateral contract modification by the Contracting Officer;</li> <li>• A proposal to modify contract requirements based on a change in the acquisition situation (e.g., a required supply is no longer available);</li> <li>• A proposal to definitize a letter contract; or</li> <li>• A value-engineering proposal.</li> </ul> <p>When making the determination:</p> <ul style="list-style-type: none"> <li>• Obtain from the contractor any information needed to evaluate the need for the requested modification, for example:               <ul style="list-style-type: none"> <li>- Technical information; or</li> <li>- Information other than cost or pricing data or cost or pricing data.</li> </ul> </li> <li>• When appropriate, forward the request for review, comment, and/or other action (e.g., analysis of funds availability) by other interested parties.</li> <li>• Make a determination based on available information.</li> </ul>

# UNIT 52: CONTRACT MODIFICATION AND ADJUSTMENT

## Part A: Modifications

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Tasks	Related Standards
2. Determine whether there is a need for a Government proposed modification.	<p>Examples of Government proposed contract modifications, include a request for:</p> <ul style="list-style-type: none"><li>• An administrative change (e.g., a change in the paying office address);</li><li>• Contracting Officer confirmation of a constructive change; or</li><li>• Modification of contract requirements based on a change in the acquisition situation (e.g., a change in delivery location).</li></ul> <p>When making the determination:</p> <ul style="list-style-type: none"><li>• Obtain any necessary documentation from the requester;</li><li>• When appropriate, forward the request for review, comment, and/or other action (e.g., analysis of funds availability) by other interested parties; and</li><li>• Make a determination based on available information.</li></ul>

# UNIT 52: CONTRACT MODIFICATION AND ADJUSTMENT

## Part A: Modifications

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### Tasks

### Related Standards

<p>3. Determine whether the need can be met through a contract modification.</p>	<p>Normally, a need can be met using a contract modification when the contract after modification will still be within the scope of the existing contract. If there is any question concerning the scope of the contract, contact the cognizant Government legal counsel.</p> <p>A need cannot be met using a contract modification, if the modification will result in a new contract outside the scope of the existing contract unless:</p> <ul style="list-style-type: none"><li>• The contractor is identified in a sole source justification and approval completed in accordance with FAR 6.3;</li><li>• Synopsis requirements are met in accordance with FAR 5.2, unless an exemption applies; and</li><li>• Other applicable requirements are met (e.g., a new Service Contract Act wage determination when service labor requirements are affected significantly).</li></ul>
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# UNIT 52: CONTRACT MODIFICATION AND ADJUSTMENT

## Part A: Modifications

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Tasks	Related Standards
<p>4. Determine whether to make the contract modification.</p>	<p>If the need can be met through a contract modification, determine whether to make the proposed modification. With other members of the Government acquisition team, consider:</p> <ul style="list-style-type: none"> <li>• The requirements of any contract clauses related to the proposed modification (e.g., a modification required by the contract under certain conditions).</li> <li>• The need for an equitable adjustment as a result of the modification, including any:               <ul style="list-style-type: none"> <li>- Net increase or decrease in price expected to result from the contract modification.                   <ul style="list-style-type: none"> <li>? When using price analysis, calculate the difference between the current price of the deleted item(s) and the current price of the added item(s).</li> <li>? When using cost analysis, calculate the difference between the estimated cost to complete the contract before the change and estimated cost to complete the contract after the change.</li> </ul> </li> <li>- Change in delivery. Delivery time may increase or decrease as a result of the modification.</li> <li>- Effect on technical requirements.</li> </ul> </li> <li>• The affect of the modification on Government operations, including:               <ul style="list-style-type: none"> <li>- The availability of resources (e.g., funding) to accommodate the modification; and</li> <li>- Any other benefits or costs to the Government related to the modification (e.g., the cost of temporary shortages related to a longer delivery schedule).</li> </ul> </li> </ul>

# UNIT 52: CONTRACT MODIFICATION AND ADJUSTMENT

## Part A: Modifications

October 2003

Tasks	Related Standards
<p>5. Determine whether to use a unilateral or bilateral modification.</p>	<p>The signatures of the Contracting Officer and the contractor's representative on a bilateral modification indicate agreement by both parties. A unilateral modification (change order) can only be used to make administrative changes that do not materially affect the terms of the contract or other types of modifications specifically authorized by the contract.</p> <ul style="list-style-type: none"> <li>• Use a bilateral modification to make contract modifications (including changes that could be issued unilaterally) unless the time required to reach agreement on an equitable adjustment will cause a delay that will adversely affect the Government's interest.</li> <li>• A bilateral modification must be used to:               <ul style="list-style-type: none"> <li>- Make a negotiated equitable adjustment resulting from the issuance of a change order;</li> <li>- Definitize a letter contract; or</li> <li>- Reflect other agreements of the parties modifying the terms of contracts.</li> </ul> </li> <li>• A unilateral modification may be used to:               <ul style="list-style-type: none"> <li>- Make administrative changes;</li> <li>- Issue change orders under the contract Changes clause;</li> <li>- Make changes authorized by clauses other than a changes clause (e.g., Property clause, Options clause, or Suspension of Work clause); or</li> <li>- Issue a termination notice.</li> </ul> </li> </ul>

# UNIT 52: CONTRACT MODIFICATION AND ADJUSTMENT

## Part A: Modifications

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Tasks	Related Standards
<p>6. Modify the contract using a bilateral contract modification.</p>	<p>When using a bilateral modification:</p> <ul style="list-style-type: none"> <li>• Obtain a proposal from the contractor.</li> <li>• With other members of the Government acquisition team, evaluate the proposal and establish a prenegotiation position on any equitable price adjustment (including any consideration due the Government for making a modification requested by the contractor).</li> <li>• Identify any requirements mandated by the Government as a result of the modification (e.g., a new Service Contract Wage determination for an out of scope modification which significantly affects labor requirements).</li> <li>• Conduct any required communications with the contractor.</li> <li>• Develop negotiation objectives, strategies, and tactics.</li> <li>• Negotiate with the contractor to reach agreement on all contract elements affected by the modification, including any necessary equitable adjustment.</li> <li>• Assure that the modification meets FAR and agency requirements.</li> <li>• Assure that adequate funds are available for the equitable adjustment.</li> <li>• Prepare the contract modification (including Contractor’s Statement of Release).</li> <li>• Obtain any necessary Government approvals.</li> <li>• Obtain signature of the contractor’s authorized representative, and the Contracting Officer.</li> <li>• Distribute the modification. Distribution should include the parties on the contract distribution list. Additional parties (e.g., the auditor if audit support was required) may be added to the distribution list, because of their participation in modification analysis and negotiation.</li> </ul>

# UNIT 52: CONTRACT MODIFICATION AND ADJUSTMENT

## Part A: Modifications

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Tasks	Related Standards
<p>7. Modify the contract using a unilateral contract modification.</p>	<p>When using a unilateral contract modification:</p> <ul style="list-style-type: none"> <li>• Use an acceptable form.               <ul style="list-style-type: none"> <li>- Use the Amendment of Solicitation/ Modification of Contract (SF 30) or other agency-authorized form.</li> <li>- A telegraphic message may be used under unusual or urgent circumstances, if:                   <ul style="list-style-type: none"> <li>? Copies of the message are furnished promptly to the same addressees that received the existing contract;</li> <li>? Immediate action is taken to confirm the change by issuance of a SF 30 or other agency-authorized form;</li> <li>? The message contains substantially the information required by the SF 30 (except the estimated change in price), including the statement, "Signed by (Name), Contracting Officer"; and</li> <li>? The Contracting Officer manually signs the original copy of the message.</li> </ul> </li> </ul> </li> <li>• For administrative changes, verify that the modification does not affect the substantive rights of the parties.</li> <li>• Assure that any modification that could result in a significant price increase includes a maximum price for the modified contract.</li> <li>• Assure that adequate funds are available for any anticipated equitable adjustment.</li> <li>• If the contract includes the Change Order Accounting clause (FAR 52.243-6), advise the contractor whether change order accounting will or will not be required.</li> <li>• Assure that the modification meets other applicable FAR and agency requirements.</li> <li>• Distribute the modification to the parties on the contract distribution list.</li> </ul>

# UNIT 52: CONTRACT MODIFICATION AND ADJUSTMENT

## Part A: Modifications

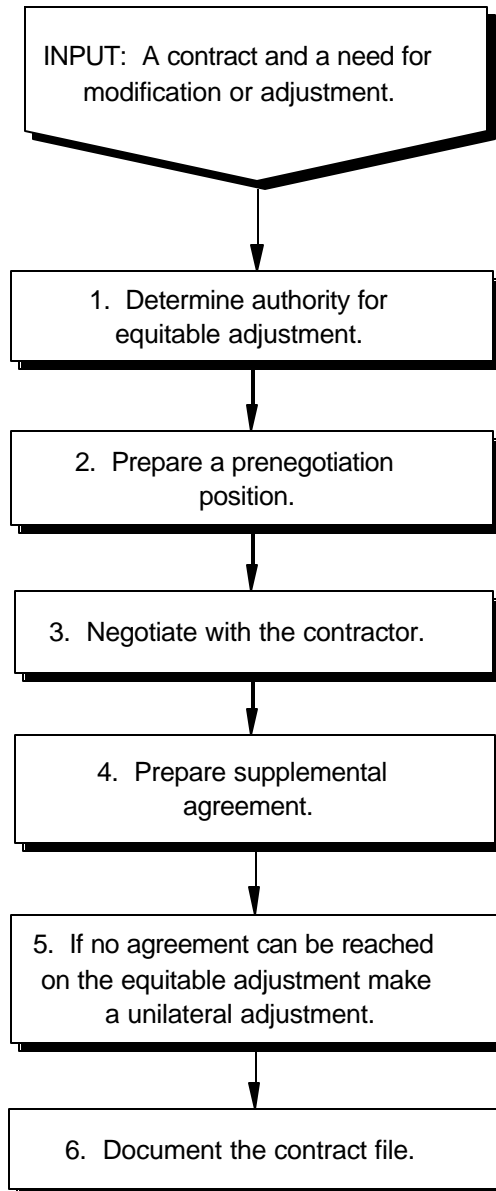
*October 2003*

Tasks	Related Standards
8. Document the contract file.	Include all significant information related to the modification.  When negotiations were required, include the principal elements of the negotiated agreement. The documentation (e.g., a price negotiation memorandum) must include the elements identified in FAR 15.406-3.

# UNIT 52: CONTRACT MODIFICATION AND ADJUSTMENT

## Part B: Equitable Adjustments

*October 2003*



# UNIT 52: CONTRACT MODIFICATION AND ADJUSTMENT

## Part B: Equitable Adjustments

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Tasks	Related Standards
<p>1. Determine authority for equitable adjustment.</p>	<p>Examples of contract clauses that provide for equitable adjustment include the:</p> <ul style="list-style-type: none"><li>• Changes clause;</li><li>• Government Property clause;</li><li>• Suspension of Work clause (FAR 52.242-14);</li><li>• Government Delay of Work clause (FAR 52.242-17); and</li><li>• Stop-Work Order clause (FAR 52.242-15).</li></ul> <p>Consider whether a contractor request for an equitable adjustment is timely. For example, the Stop-Work clause requires the Contractor to assert its right and the adjustment within 30 days after the end of the period of work stoppage. However, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a claim submitted at any time before final payment.</p> <p>An equitable adjustment may also be required if an out of scope modification is made to the contract.</p>

# UNIT 52: CONTRACT MODIFICATION AND ADJUSTMENT

## Part B: Equitable Adjustments

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Tasks	Related Standards
2. Prepare a prenegotiation position.	<p>The prenegotiation position should consider:</p> <ul style="list-style-type: none"> <li>• The contractor’s proposal (if any).</li> <li>• The Government acquisition team’s estimate of a reasonable equitable adjustment including price, delivery or performance period, and other contract requirements.               <ul style="list-style-type: none"> <li>- If the contractor proposed the equitable adjustment, this estimate should include an evaluation of the proposal and other available information.</li> <li>- If the Government proposed the equitable adjustment, this estimate should be based on Government acquisition team’s analysis of the need for adjustment and other available information.</li> </ul> </li> <li>• Any limits on the equitable adjustment. For example, the Suspension of Work clause (FAR 52.242-14) provides for an equitable adjustment of performance cost excluding profit. Other contract clauses provide for an adjustment including profit.</li> <li>• Available tradeoffs between price, delivery or performance period, and other contract requirements.</li> </ul>
3. Negotiate with the contractor.	<p>If it can be done without adversely affecting the Government’s interests, negotiate any equitable adjustment required for a contract modification before making the contract modification. This requirement applies even when the contract change can be made unilaterally.</p> <p>If a significant cost increase could result from a contract modification and time does not permit negotiation of a price before making the modification, at least negotiate a maximum price unless that is impractical.</p>



# UNIT 52: CONTRACT MODIFICATION AND ADJUSTMENT

## Part B: Equitable Adjustments

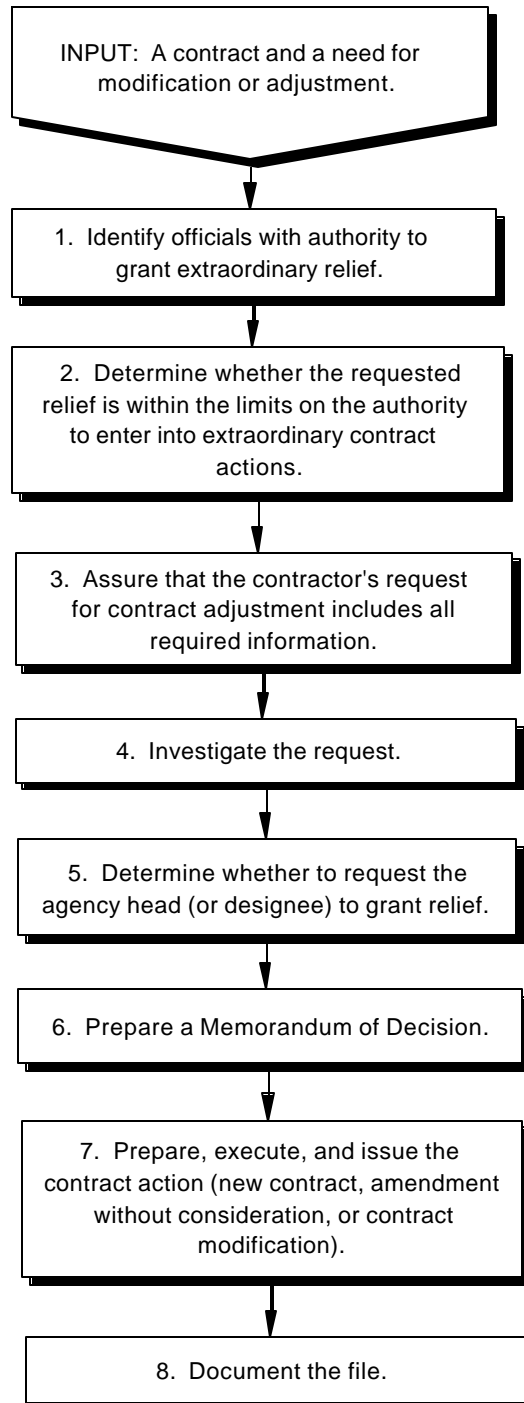
*October 2003*

Tasks	Related Standards
4. Prepare supplemental agreement.	<p>Clearly describe all elements of the equitable adjustment.</p> <p>To avoid subsequent controversies that may result from a supplemental agreement containing an equitable adjustment as the result of a change order:</p> <ul style="list-style-type: none"> <li>• Ensure that all elements of the equitable adjustment have been presented and resolved; and</li> <li>• Include, in the supplemental agreement, a release similar to the following:</li> </ul> <p style="padding-left: 40px;">Contractor's Statement of Release In consideration of the modification(s) agreed to herein as complete equitable adjustments 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 _____).</p>
5. If no agreement can be reached on the equitable adjustment make a unilateral adjustment.	<p>Any unilateral adjustment will be subject to contractor appeal as provided under the Disputes clause (52.233-1).</p> <p>If the decision is to make a unilateral adjustment, also take action to collect any amount due the Government as a result of that adjustment.</p>
6. Document the contract file.	<p>Include all significant information related to the equitable adjustment, including the principal elements of any negotiated agreement. The documentation (e.g., a price negotiation memorandum) must include the elements identified in FAR 15.406-3.</p>

# UNIT 52: CONTRACT MODIFICATION AND ADJUSTMENT

## Part C: Extraordinary Contract Adjustments

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# UNIT 52: CONTRACT MODIFICATION AND ADJUSTMENT

## Part C: Extraordinary Contract Adjustments

*October 2003*

Tasks	Related Standards
<p>1. Identify officials with authority to grant extraordinary relief.</p>	<p>P.L. 85.804 empowers the President to authorize agencies exercising functions in connection with the national defense to enter into, amend, and modify contracts, without regard to other provisions of law, whenever the President considers that such action would facilitate the national defense. An agency head may delegate, in writing, authority to enter into extraordinary contract adjustments, subject to the following limitations:</p> <ul style="list-style-type: none"> <li>• Authority delegated must be to a level high enough to ensure uniformity of action.</li> <li>• Authority to approve requests to obligate the Government in excess of \$50,000 may not be delegated below the secretarial level.</li> <li>• 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.</li> <li>• Regardless of dollar amount, authority to indemnify against unusually hazardous or nuclear risks, including extension of such indemnification to subcontracts, must 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.</li> </ul> <p>An agency head may establish a contract adjustment board to approve, authorize, and direct appropriate action under FAR Part 50 and to make all appropriate determinations and findings. The decisions of a board shall not be subject to appeal. However, a board may reconsider and modify, correct, or reverse a previous decision.</p>

# UNIT 52: CONTRACT MODIFICATION AND ADJUSTMENT

## Part C: Extraordinary Contract Adjustments

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Tasks	Related Standards
<p>2. Determine whether the requested relief is within the limits on the authority to enter into extraordinary contract actions.</p>	<p>FAR 50.203 prescribes limits on the authority to enter into extraordinary contract actions, including specific examples where each of the following would be appropriate:</p> <ul style="list-style-type: none"> <li>• Amendments without consideration;</li> <li>• Correcting mistakes; and</li> <li>• Formalizing informal commitments.</li> </ul>
<p>3. Assure that the contractor's request for contract adjustment includes all required information.</p>	<p>FAR 50.303 establishes:</p> <ul style="list-style-type: none"> <li>• Minimum requirements for contractor requests;</li> <li>• A requirement for contractor certification of any request for a contract adjustment that exceeds the simplified acquisition threshold; and</li> <li>• Requirements for facts and evidence appropriate for:               <ul style="list-style-type: none"> <li>- Every request;</li> <li>- A request for amendment without consideration when essentiality to national defense is a factor;</li> <li>- A request for amendment without consideration when essentiality to national defense is not a factor;</li> <li>- A request to correct a mistake; and</li> <li>- A request to formalize an informal commitment.</li> </ul> </li> </ul>

# UNIT 52: CONTRACT MODIFICATION AND ADJUSTMENT

## Part C: Extraordinary Contract Adjustments

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Tasks	Related Standards
4. Investigate the request.	<p>In response to a contractor request for contract adjustment:</p> <ul style="list-style-type: none"><li>• Thoroughly investigate to establish the facts necessary to make a decision. In addition to contractor facts and evidence, contact Government personnel to obtain:<ul style="list-style-type: none"><li>- Documentary evidence;</li><li>- Signed statements of material facts within the knowledge of individuals when documentary evidence is lacking; and</li><li>- Audits, if considered necessary to establish financial or cost facts.</li></ul></li><li>• When a case involves matters of interest to more than one Government agency, maintain liaison with interested agencies to determine whether joint action should be taken.</li><li>• When additional funds are required from another agency, assure that the funds will be available before approving any request.</li><li>• When essentiality to the national defense is a factor and a request for amendment without consideration involves another agency, obtain advice on the issue from the other agency before making the final decision on the request.</li></ul>

# UNIT 52: CONTRACT MODIFICATION AND ADJUSTMENT

## Part C: Extraordinary Contract Adjustments

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Tasks	Related Standards
<p>5. Determine whether to request the agency head (or designee) to grant relief.</p>	<p>Relief may be granted when it will facilitate the national defense. Examples include:</p> <ul style="list-style-type: none"> <li>• Amendment without consideration.               <ul style="list-style-type: none"> <li>- When an actual or threatened loss under a defense contract will impair the productive ability of a contractor whose continued performance is essential to the national defense, the contract may be amended without consideration, to the extent necessary to avoid such impairment.</li> <li>- When Government action, while not creating any liability on the Government's part, increases performance cost and results in a loss to the contractor, fairness may make some adjustment appropriate.</li> </ul> </li> <li>• Correcting mistakes. Amending a contract to correct a mistake with the least possible delay normally will facilitate the national defense by expediting the contracting program and assuring contractors that mistakes will be corrected expeditiously and fairly. Examples include:               <ul style="list-style-type: none"> <li>- A mistake or ambiguity consisting of the failure to express, or express clearly, in a written contract, the agreement as both parties understood it.</li> <li>- A contractor's mistake so obvious that it was or should have been apparent to the Contracting Officer.</li> <li>- A mutual mistake as to a material fact.</li> </ul> </li> <li>• Formalizing informal commitments, normally, will facilitate the national defense by assuring such persons that they will be treated fairly and paid expeditiously. For example, when a contractor has furnished or arranged to furnish supplies or services in response to an agency official's:               <ul style="list-style-type: none"> <li>- Written or oral instructions; and</li> <li>- Apparent authority to issue them.</li> </ul> </li> </ul>

# UNIT 52: CONTRACT MODIFICATION AND ADJUSTMENT

## Part C: Extraordinary Contract Adjustments

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Tasks	Related Standards
6. Prepare a Memorandum of Decision.	<p>Prepare a Memorandum of Decision for the approving authority that includes:</p> <ul style="list-style-type: none"> <li>• The contractor's name and address, the contract identification, and the nature of the request;</li> <li>• A concise description of the supplies or services involved;</li> <li>• The decision and the actual cost or estimated potential cost involved (if any);</li> <li>• A statement of the circumstances justifying the decision;</li> <li>• Identification of any of the foregoing information classified "Confidential" or higher (instead of being included in the memorandum, such information may be set forth in a separate classified document referenced in the memorandum); and</li> <li>• If some adjustment is approved, a statement in substantially the following form: "I find that the action authorized herein will facilitate the national defense."</li> </ul>
7. Prepare, execute, and issue the contract action (new contract, amendment without consideration, or contract modification).	<p>P.L. 85.804 and Executive Order 10789 require that every contract entered into, amended, or modified as an extraordinary contract action must contain a:</p> <ul style="list-style-type: none"> <li>• Citation of P.L. 85.804 and Executive Order 10789;</li> <li>• Brief statement of the circumstances justifying the action; and</li> <li>• Recital of the finding that the action will facilitate the national defense.</li> </ul>

# UNIT 52: CONTRACT MODIFICATION AND ADJUSTMENT

## Part C: Extraordinary Contract Adjustments

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Tasks	Related Standards
8. Document the file.	<p>The file must include, as a minimum:</p> <ul style="list-style-type: none"><li>• The contractor's request;</li><li>• All relevant memorandums, correspondence, affidavits, and other pertinent documents;</li><li>• The Memorandum of Decision; and</li><li>• A copy of the contractual document implementing an approved request.</li></ul> <p>The case file must also include the derivation and rationale for the dollar amount of the adjustment. When the dollar amount exceeds the amounts supported by audit or other independent reviews, include the rationale for deviating from the recommendation.</p>