

## 50.103-4 Facts and evidence.

(a) *General*. When it is appropriate, the *contracting officer* or other agency official *shall* request the contractor to support any request made under [50.103-3\(a\)](#) with any of the following information:

(1) A brief description of the contracts involved, the dates of execution and amendments, the items being acquired, the price or prices, the delivery schedules, and any special contract provisions relevant to the request.

(2) A history of performance indicating when work under the contracts or commitments began, the progress made to date, an exact statement of the contractor's remaining obligations, and the contractor's expectations regarding completion.

(3) A statement of payments received, due, and yet to be received or to become due, including advance and progress payments; amounts withheld by the Government; and information as to any obligations of the Government yet to be performed under the contracts.

(4) A detailed analysis of the request's monetary elements, including precisely how the actual or estimated dollar amount was determined and the effect of approval or denial on the contractor's profits before Federal income taxes.

(5) A statement of the contractor's understanding of why the request's subject matter cannot now, and could not at the time it arose, be disposed of under the contract terms.

(6) The best supporting evidence available to the contractor, including contemporaneous memorandums, correspondence, and affidavits.

(7) Relevant financial statements, cost analyses, or other such data, preferably certified by a certified public accountant, as necessary to support the request's monetary elements.

(8) A list of persons connected with the contracts who have factual knowledge of the subject matter, including, when possible, their names, offices or titles, addresses, and telephone numbers.

(9) A statement and evidence of steps taken to reduce losses and *claims* to a minimum.

(10) Any other relevant statements or evidence that *may* be required.

(b) *Amendments without consideration-essentiality a factor*. When a request involves possible amendment without consideration, and essentiality to the *national defense* is a factor ([50.103-2\(a\)\(1\)](#)), the contractor *may* be asked to furnish, in addition to the facts and evidence listed in paragraph (a) of this subsection, any of the following information:

(1) A statement and evidence of the contractor's original breakdown of estimated costs, including contingency allowances, and profit.

(2) A statement and evidence of the contractor's present estimate of total costs under the contracts involved if it is enabled to complete them, broken down between costs accrued to date and completion costs, and between costs paid and those owed.

(3) A statement and evidence of the contractor's estimate of the final price of the contracts, taking into account all known or contemplated escalation, changes, extras, and the like.

- (4) A statement of any *claims* known or contemplated by the contractor against the Government involving the contracts, other than those stated in response to paragraph (b)(3) of this subsection.
  - (5) An estimate of the contractor's total profit or loss under the contracts if it is enabled to complete them at the estimated final contract price, broken down between profit or loss to date and completion profit or loss.
  - (6) An estimate of the contractor's total profit or loss from other Government business and all other sources, from the date of the first contract involved to the estimated completion date of the last contract involved.
  - (7) A statement of the amount of any tax refunds to date, and an estimate of those anticipated, for the period from the date of the first contract involved to the estimated completion date of the last contract involved.
  - (8) A detailed statement of efforts the contractor has made to obtain funds from commercial sources to enable contract completion.
  - (9) A statement of the minimum amount the contractor needs as an amendment without consideration to enable contract completion, and the detailed basis for that amount.
  - (10) An estimate of the time required to complete each contract if the request is granted.
  - (11) A statement of the factors causing the loss under the contracts involved.
  - (12) A statement of the course of events anticipated if the request is denied.
  - (13) Balance sheets, preferably certified by a certified public accountant, (i) for the contractor's fiscal year immediately preceding the date of the first contract, (ii) for each subsequent fiscal year, (iii) as of the request date, and (iv) projected as of the completion date of all the contracts involved (assuming the contractor is enabled to complete them at the estimated final prices), together with income statements for annual periods subsequent to the date of the first balance sheet. Balance sheets and income statements *should* be both consolidated and broken down by *affiliates*. They *should* show all transactions between the contractor and its *affiliates*, stockholders, and partners, including loans to the contractor guaranteed by any stockholder or partner.
  - (14) A list of all salaries, bonuses, and other compensation paid or furnished to the principal officers or partners, and of all dividends and other withdrawals, and of all payments to stockholders in any form since the date of the first contract involved.
- (c) *Amendments without consideration-essentiality not a factor.* When a request involves possible amendment without consideration because of Government action, and essentiality to the *national defense* is not a factor (50.103-2(a)(2)), the contractor *may* be asked to furnish, in addition to the facts and evidence listed in paragraph (a) of this subsection, any of the following information:
- (1) A clear statement of the precise Government action that the contractor considers to have caused a loss under the contract, with evidence to support each essential fact.
  - (2) A statement and evidence of the contractor's original breakdown of estimated costs, including contingency allowances, and profit.
  - (3) The estimated total loss under the contract, with detailed supporting analysis.

(4) The estimated loss resulting specifically from the Government action, with detailed supporting analysis.

(d) *Correcting mistakes.* When a request involves possible correction of a mistake (50.103-2(b)), the contractor *may* be asked to furnish, in addition to the facts and evidence listed in paragraph (a) of this subsection, any of the following information:

(1) A statement and evidence of the precise error made, ambiguity existing, or misunderstanding arising, showing what it consists of, how it occurred, and the intention of the parties.

(2) A statement explaining when the mistake was discovered, when the *contracting officer* was given notice of it, and whether this notice was given before completion of work under, or the effective termination date of, the contract.

(3) An estimate of profit or loss under the contract, with detailed supporting analysis.

(4) An estimate of the increase in cost to the Government resulting from the adjustment requested, with detailed supporting analysis.

(e) *Formalizing informal commitments.* When a request involves possible formalizing of an informal commitment (50.103-2(c)), the contractor *may* be asked to furnish, in addition to the facts and evidence listed in paragraph (a) of this subsection, any of the following information:

(1) Copies of any written instructions or assurances (or a sworn statement of any oral instructions or assurances) given the contractor, and identification of the Government official who gave them.

(2) A statement as to when the contractor furnished or arranged to furnish the *supplies* or services involved, and to whom.

(3) Evidence that the contractor relied upon the instructions or assurances, with a full description of the circumstances that led to this reliance.

(4) Evidence that, when performing the work, the contractor expected to be compensated directly for it by the Government and did not anticipate recovering the costs in some other way.

(5) A cost breakdown supporting the amount claimed as fair compensation for the work performed.

(6) A statement and evidence of the impracticability of providing, in an appropriate contractual instrument, for the work performed.

**Parent topic:** 50.103 Contract adjustments.