

## CHAPTER 7. CONTRACT ADMINISTRATION

### SECTION 12. GUIDELINES FOR A MEMORANDUM OF FACTS

**7.12.1 General.** A Memorandum of Facts (MOF) is supporting data to the Standard Form 30 for undefinitized contract modifications. An MOF may be used in lieu of a standard Price Negotiation Memorandum format. An MOF should also be used for time extensions under the *Default Clause* when the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the contractor. Examples include acts of God or of the public enemy; acts of the Government in its sovereign or contractual capacity; acts by another contractor while performing a contract with the Government; fires; floods; epidemics; quarantine restrictions; strikes, freight embargoes; unusually severe weather; or delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the contractor and subcontractors and suppliers.

**7.12.2 Claims.** As an option, personnel may use the MOF in processing the settlement of claims. Although a price negotiation memorandum is preferred, at times it is not feasible.

**7.12.3 Guidelines.** When the MOF supports a contract price adjustment, the Resident Office will prepare it following these guidelines:

*a. Necessity for the modification.* In addition to a clear, concise description of the work to be performed or deleted, give the reason for the change. Examples of reasons or conditions which may result in a contract modification under the *Default Clause* may include, but are not limited to the following:

- (1) Design deficiencies, which if not corrected will result in unsafe conditions, inoperable facilities, etc.;
- (2) Incorrect or untimely receipt of Government-furnished items;
- (3) Additions or improvements requested by the Using Agency or others;
- (4) Revised criteria;
- (5) Field conditions;
- (6) Substitutions; and
- (7) Delays not the contractor's responsibility.

Include a reference to the letter or other document or event that began the change. If a modification became necessary as a result of a claim, it should so state.

*b. Reason for omission from original plans and specifications.* If there was no omission, say so, as in the case of a time extension for unusually severe weather. If something was left out, which is usually the case, tell why it was left out and include the appropriate cause code, e.g., A1; D/7; B/A; I/V. Some typical "reasons" are:

- (1) Design deficiency; investigation underway. (Cause Code A/I.)
- (2) Differing site condition. (Cause Code D/7.)
- (3) User or owner requested change. (Change Code B/A.)
- (4) Value engineering change. (Change Code V/8.)
- (5) Variations not readily identifiable during design. (Code I/V.)

*c. Justification of price.* When the MOF is supporting data for a claims settlement modification, or in place of the standard PNM format, state the following, where applicable, in the price justification:

- (1) Amount and date of contractor proposals, identifying if Cost or Pricing Data is required;
- (2) For changes requiring audits, identify audit number and date, addressing any questioned or unsupported costs and how resolved. If not resolved, or the contractor's data accepted, explain.
- (3) Original Government Estimate amount, if any revised amounts, and reasons therefor.
- (4) Details of negotiations in price. If you prepare a separate Resume of Negotiations, refer to that MFR for details.
- (5) Date of Certificate of Current Cost or Pricing Data.
- (6) Settlement price and date agreed.

*d. Availability of Funds.* Show the accounting or appropriation data.

*e. Justification of Time.* State amount of time requested by contractor; the amount and basis of time allowed by the Government Estimate; basis for time granted. If time is not requested or required, state the reason it is not required or included in the modification, e.g., change performed concurrently with other modifications, etc. Refer to the Resume of Negotiations and detailed discussions if the modification is for a claim settlement. If the modification is for time only, include details of negotiations and agreements, similar to the above guidelines for price justification.

*f. State contract clause under which the modification is issued.* Furnish sufficient details and documentation with the record file to permit a full understanding of the change.

**7.12.4 UCM.** See section 6 of this chapter for samples of an MOF for undefinitized contract modifications.

**7.12.5 Narrative Format.** An example of an MOF prepared in a narrative format is Exhibit 7-15\*2, in section 15 of this chapter.