

in specifications, drawings, and designs pertaining to the contract), then, the mere fact that there may be a change in the specifications regarding levels of performance or specifications regarding threats does not, thereby, automatically result in a change in scope. An increase in the number of people assigned to the project, or increased costs due to travel increases would be cost growth that would be within scope and could be funded as part of the original contract.

3. A modification of a cost type level of effort contract for a specified number of hours to be worked by personnel with a specific level of experience and training which calls for a change in the number of hours to be worked or the level of experience and training which specified in the contract, could be a change in the scope of the original contract. An increase, however, in direct or indirect rates under the contract would be cost growth that would be within scope and could be funded as part of the original contract.

E. Claims. As reflected in subparagraph 080304.C, above, claims arising out of an original undertaking, or resulting from a within-scope change, would be funded from the appropriation available at the time of the original undertaking. Claims arising out of a change-in-scope change to the original contract would be funded from the appropriation available and charged for the change-in-scope change.

F. Judgment Fund. Title 31, United States Code, section 1304 and Title 41, United States Code, section 612 provide that monetary judgments under the Contracts Disputes Act of 1978, as amended, which are awarded by the Armed Services Board of Contract Appeals (ASBCA) or the Court of Federal Claims, are paid by the Department of the Treasury from the Permanent Judgment Appropriation (Judgment Fund): Claims for Contract Disputes (Treasury Symbol 20X1743). After such payment, the affected DoD Component is required to reimburse the Department of the Treasury's Judgment Fund. The following shall be followed when reimbursing to the Judgment Fund.

1. The affected DoD Components first must determine what appropriation(s) originally funded the portion of the contract that led to the claim and subsequent judgment. Second, 63 Comp. Gen. 308 (1984) requires that the Judgment Fund be reimbursed with funds that were currently available for new obligation at the time of the judgment. Therefore, a then current year appropriation that is for the same purpose as that which originally funded the contract shall be used as the funding source. Expired appropriations that were current at the time of the judgment also may be used. If more than one appropriation is involved in the monetary judgment, then the reimbursement is prorated against those appropriations. Any proration between or among appropriations must be based on the nature of the claim and the basis of the monetary judgment in the particular case.

2. Reimbursement to the Department of the Treasury is not an antecedent liability of the original contract. Therefore, reimbursements shall not be charged back to the original appropriation unless the original appropriation was available for new obligations at the time of the judgment. Further, judgments do not subject the original appropriation to a violation of the Anti-deficiency Act.

EXHIBIT