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| A picture of a Q. The text to the right is the question. | **Do I need to do a formal Justification and Approval (J&A) to increase the quantity by 100 percent on a FSS task order?****Do I need to do a formal J&A to execute the modification OR do I just need to have a well-documented "memo to the file"?*****Scenario:*** The customer under-estimated the quantity that they need on a contract. It is in the base year. We want to increase the quantity by 100% for the base and option years. Right now, I don't know the cost associated to that but it will be more than $650K.  |
| A picture of an A. The text to the right is the answer. | **The key to the Contracting Officer's decision is: Is this change in quantity within the general scope of the contract?** **A brief look in to case law reveals the following points for the Contracting Officer to consider in making the in-scope or out-of-scope determination:** - Is this change something that could have been reasonably contemplated by the parties at the time the basic contract was entered in to [Freund v. United States, 260 U.S. 60 (1922)]? In assessing this element, the Contracting Officer should evaluate if the amount and type of work in the modified contract is significantly or materially different than the work in the basic contract, and if records from the solicitation and other pre-award meetings indicate an expectation of this type of change. It is likely the contractor would agree to this change; however, an equally important consideration is how an interested party who did not win this contract would view such a change. -- Does this change fall within the authority of the "Changes" clause on the contract? Two specific elements to consider: -- The Changes clauses for fixed price and cost reimbursement contracts do not include an increase (or decrease) in quantity as within the authority of the Changes clause. -- There is precedent that increases (and decreases) in quantity are not within the general scope of a contract [Valley Forge Flag Co., Inc., VABCA Nos. 4667, 5103, 97-2 BCA paragraph 29,256; and Liebert Corp., B-232234.5, Apr 29, 1991, 91-1 BCA paragraph 23,609. Overall, the Contracting Officer should build decision documentation that reflects an intent to operate within the Competition in Contracting Act, and avoid the perception of circumventing CICA by simply awarding a modification. In your scenario, the change appears to be significant (100%), and the reason appears to be related to an estimating error by the Government. It will be critical for the Contracting Officer to address both of these issues in the scope determination. If the Contracting Officer concludes this change is outside the general scope of the contract, this would be a "cardinal change," which would require an approved J&A (with review by your legal counsel and your activity's Competition Advocate) in advance of award, or would require a separate contract action. If the Contracting Officer concludes this change is within the general scope of the contract, a compelling "Determination and Findings" memorandum should be included in the contract file and be reviewed by JA (and perhaps your activity's Competition Advocate also) before award.  |