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Jerome S. Gabig
Christopher L. Lockwood
Robert C. Lockwood
Richard J.R. Raleigh, Jr.
<https://www.governmentcontractlawyers.net/>

The Government Contracts Practice Group of Wilmer & Lee, P.A. has been advising our federal government contractor clients that now is the time to begin protecting their businesses from the impact that the COVID-19 precautions are having on federal government contracts and federal government contractors.

Examples of possible impacts might include:

- Employees being denied access to the work site
- Government customers being inaccessible
- Travel restrictions impacting performance
- Instructions from the government impeding performance
- Subcontractors or suppliers not being able to perform
- Not being able to obtain guidance from the contracting officer
- Invoices waiting to be paid that have not been processed
- Overhead increases because of decreased corporate efficiency

Steps that clients could be taking now could make a difference regarding whether they could be able to recover some of the costs associated with the disruptive impact of the Government trying to contain the spread of COVID-19.

Below are three immediate tips for federal government contractors:

First, check your contract for potentially applicable clauses. Here are some likely candidates:

- FAR 52.242-14, "Suspension of Work"
- FAR 52.242-15, "Stop Work Order"
- FAR 52.242-17, "Government Delay of Work"
- FAR 52.243-1, "Changes—Fixed Price"
- FAR 52.243-2, "Changes—Cost Reimbursement"
- FAR 52.243-3, "Changes—Time & Materials or Labor-Hours"
- FAR 52.243-4, "Changes"
- FAR 52.232-20, "Limitation of Costs"
- FAR 52.249-14 "Excusable Delay"

There is some solace in knowing that FAR 52.249-8 Default does not allow a termination for default if the underlying cause is “epidemics” or “quarantine.”

Second, communicate abundantly with the contracting officer and the COTR. Make sure the communication is documented. Explain your dilemma and seek prompt guidance. Even if unanswered, the fact that your company sought government guidance can go a long way in prevailing at the Board of Contracts Appeal should the contracting officer later deny your claim.

Third, all too often contractors are entitled to recover on requests for equitable adjustments but never get paid because they are unable to substantiate the cost. If possible, open new charge codes and implement change order accounting. Examples of the types of costs that should be tracked are idle workers, idle facilities & equipment, severance costs, unabsorbed overhead, and delay & disruption.

Also, government contractors should take some time to acquaint themselves with FAR Part 18 “Emergency Acquisitions.” There may be opportunities to use FAR Part 18 to market for a sole source to your company.

Finally, Jerry Gabig, Chris Lockwood, and Rich Raleigh recently co-authored an article entitled, *A Contractor’s Guide To Government Shutdowns*. (Briefing Papers, Second Series, No. 19-13 (Dec. 2019 Thomson Reuters)). It is available through the Wilmer & Lee, P.A. website – www.wilmerandlee.com. Although the article was written anticipating a government shutdown that would come from the failure of the United States Congress to pass an appropriations act, much of the guidance in the article relates to identifying steps that contractors should take to protect themselves when the federal government ceases to operate as normal, and is therefore relevant to our current circumstances.

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