EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
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DEPUTY DIRECTOR
FOR MANAGEMENT

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MEMORANDUM TO THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Margaret M. Weichert
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SUBJECT: Managing Federal Contract Performance Issues Associated with the Novel Coronavirus (COVID-19)

Federal contractors play a vital role in helping agencies meet the needs of our citizens, including the critical response efforts to COVID-19. The health and safety of all Americans, including our Federal contractors, remains the top priority. This memorandum identifies steps to help ensure this safety while maintaining continued contract performance in support of agency missions, wherever possible and consistent with the precautions issued by the Centers for Disease Control and Prevention (CDC). Achieving these important goals – and maintaining the resilience of our Federal contracting base – requires continued communication by agencies with their contractors, both small and large, and effective leveraging of flexibilities and authorities to help minimize work disruption.

As the impact of COVID-19 continues to evolve, many Federal government contractors that ordinarily work side-by-side with the Federal workforce may currently be unable to access their Federal work sites as a result of building closures, quarantines or implementation of social distancing practices. Agencies are urged to work with their contractors, if they haven't already, to evaluate and maximize telework for contractor employees, wherever possible. Telework is an important tool for enabling continued contract performance in a manner that can meet health and safety guidelines from the CDC and State and local public health authorities.

Equally important, agencies should be flexible in providing extensions to performance dates if telework or other flexible work solutions, such as virtual work environments, are not possible, or if a contractor is unable to perform in a timely manner due to quarantining, social distancing, or other COVID-19 related interruptions. Agencies should take into consideration whether it is beneficial to keep skilled professionals or key personnel in a mobile ready state for activities the agency deems critical to national security or other high priorities. Additionally, agencies should also consider whether contracts that possess capabilities for addressing impending requirements such as security, logistics, or other function, may be retooled for pandemic response consistent with the scope of the contract.

Finally, agencies are encouraged to leverage the special emergency procurement authorities authorized in connection with the President's emergency declaration under section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5207 (the "Stafford Act"). These flexibilities include increases to the micro-purchase threshold, the simplified acquisition threshold, and the threshold for using simplified procedures for certain commercial items, all of which are designed to reduce friction for contractors, especially small businesses, and the government and enable more rapid response to the many pressing demands agencies face. The availability of these flexibilities does not mean they will always be suitable, and agencies should exercise sound fiscal prudence to maximize value for each taxpayer dollar spent. At the same time, the acquisition workforce should feel fully empowered to use the acquisition flexibilities, as needed, consistent with good business judgment in response to this national emergency.

The attached set of "frequently asked questions" is intended to provide additional guidance and further assist the acquisition workforce as it addresses impacts due to COVID-19. Additional acquisition-related questions should be directed to the Office of Federal Procurement Policy at MBX.OMB.OFPPv2@OMB.eop.gov. OMB will continue to provide updates and additional information as needed to support the resiliency of the acquisition community.

Attachment

Attachment

Managing Contract Performance Issues Due to COVID-19
Frequently Asked Questions

Teleworking

1. **Should agencies be directing their Federal contractors to follow the lead of the Federal Government in their use of telework for their contract employees as described in OMB Memoranda M-20-13 and M-20-15, which discuss the use of telework in connection with COVID-19?**

   The Federal Government's telework law and recent announcements cover only Federal managers and employees, not contractors or their employees. Federal contractors are responsible for managing their workforces, including how telework is used by their employees, consistent with their own telework policies and the contract terms they have negotiated with Federal agencies. However, in the spirit of OMB's guidance, which seeks to maximize the use of telework, and FAR § 7.108, which instructs agencies not to discourage contractor use of telework when consistent with contractual requirements, agencies are strongly encouraged to work with their contractors to evaluate and maximize telework for their contractor employees, wherever possible, as a way to enable continued contract performance consistent with the health and safety of their contractor and government personnel. This includes modifying contracts that do not currently allow for telework. If a contract does not lend itself to telework, for example, because it must be performed at a government facility, agencies should consider being flexible on delivery schedule contract completion dates.

Mitigating the impact of COVID-19 on contractors

2. **If contractor personnel must be quarantined due to exposure to the virus, whether or not related to performance of the contract, and this action results in a slip in the contract schedule, may contracts be extended or otherwise altered?**

   Yes. Government contracts provide for excusable delays, which may extend to quarantine restrictions due to exposure to COVID-19. For example, see FAR clauses 52.249-14, 52.212-4(f), and 52.211-13. In determining the best course of action, the contracting officer should discuss the situation with the contractor to determine if other options are available (*e.g.*, ability of employee to telework or to find a substitute employee). If other options with the existing contractor aren't feasible, it may be appropriate to re-procure elsewhere if possible. Such actions should be taken for the convenience of the government (*e.g.*, through use of the relevant convenience termination clause or a no-cost settlement) and without negatively impacting the contractor's performance rating. Excusable delays that result in adjustments to the contractor's delivery schedule should not negatively impact a contractor's performance ratings.

   Agencies are encouraged to be as flexible as possible in finding solutions.

3. **How should agencies address requests for equitable adjustment associated with costs related to safety measures taken by contractors to protect their employees from COVID-19, including costs associated with performance disruptions caused by the government (*e.g.*, closure of an office building) when performance doesn't allow for telework (*e.g.*, work requires access to secure location, or involves building maintenance)?**

   Requests for equitable adjustment should be considered on a case-by-case basis in accordance with existing agency practices, taking into account, among other factors, whether the requested costs would be allowable and reasonable to protect the health and safety of contract employees as part of the performance of the contract. The standard for what is "reasonable," according to FAR § 31.201-3, is what a prudent person would do under the circumstances prevailing at the time the decision was made to incur the cost (*e.g.*, did the contractor take actions consistent with CDC guidance; did the contractor reach out to the contracting officer or the contracting officer representative to discuss appropriate actions).

   Agencies may take into consideration whether it is beneficial to keep skilled professionals or key personnel in a mobile ready state for activities the agency deems critical to national security or other high priorities (*e.g.*, national security professionals, skilled scientists). Agencies should also consider whether contracts that possess capabilities for addressing impending requirements such as security, logistics, or other function may be retooled for pandemic response consistent with the scope of the contract. A number of contract clauses may be helpful in managing COVID-19 issues as they arise. The government may make changes to the contract using the appropriate changes clause that applies to the contract (see FAR clauses 52.243-1 through 52.243-3 or clause 52.212-4(c)). If necessary, generally after considering other alternatives, they may suspend or stop performance through clause 52.242-14, Suspension of Work, and clause 52.242-15, Stop Work Order.

4. **If a Federal building, such as a museum, is closed to the general public in order to further the practice of social distancing, should repair work to the building be halted until the building is reopened?**

   Whether work is continued or stopped should be addressed on a case-by-case basis, taking into consideration the health and safety of government and contractor employees. These discussions should include consideration of guidance from CDC and local public health officials to determine if there is a risk-based reason to stop work and, if work continues, steps that might need to be taken to address the health and safety of workers.

5. **Should agencies postpone or virtually conduct acquisition-related activities that are typically performed face-to-face, such as industry days, contractor debriefings, or inspections?**

   Agencies should evaluate, on a case-by-case basis, whether to proceed with in-person activities, taking into account guidance from the CDC and advice or direction from state and local public health authorities. Consistent with CDC recommendations, agencies should consider steps such as practicing appropriate social distancing and following other guidance if in-person or face-to-face interaction is essential. The CDC has provided additional interim guidance for businesses, and agencies should consider virtual activities, such as online industry conferences, video proposals, and other innovative steps in planning their acquisitions. Sample use cases and examples can be reviewed at https://www.fai.gov/periodic-table/, and brief how-to applications of these proven flexible business practices can be accessed at https://www.fai.gov/media-library/item/procurement-innovation-lab-pil-primer.

6. **How can agencies enhance communications with their industry partners?**

   Clear and timely communication between agencies and their industry partners is critical to supporting the government's response to COVID-19 and to meeting other mission needs during this highly dynamic situation. In addition to promoting this engagement between contracting officers and contractors, agencies can augment their communications efforts by coordinating timely outreach activities with their industry liaisons (for contact information, go to https://hallways.cap.gsa.gov/app/#/gateway/acquisition-innovation/42767/agency-industry-liaisons-directory), offices of small and disadvantaged business utilization, acquisition innovation advocates (for contact information, go to https://hallways.cap.gsa.gov/app/#/gateway/ acquisition-innovation/7822/acquisition-innovation-advocates-aia-directory), and other agency resources.

7. **In light of the pandemic, will any relief be offered regarding re-registration in the System for Award Management?**

   Yes. Current registrants in SAM with active registrations expiring before May 17, 2020 will be afforded a one-time extension of 60 days.

Procurement flexibilities

8. **Are the special emergency procurement flexibilities of FAR § 18.202 available for use in addressing requirements connected to COVID-19?**

   Yes. The President has declared a national emergency concerning the novel coronavirus disease under the Stafford Act. As a result of this emergency declaration, the flexibilities identified in FAR § 18.202, "Defense or recovery from certain events," are available for use in supporting response efforts to COVID-19. These flexibilities include increases to

the micro-purchase threshold, the simplified acquisition threshold, and the threshold for using simplified procedures for certain commercial items. Specifically—

(1) The micro-purchase threshold is raised from $10,000[1] to $20,000 for domestic purchases and to $30,000 for purchases outside the U.S.;
(2) The simplified acquisition threshold is raised from $250,000[2] to $750,000 for domestic purchases and $1.5 million for purchases outside the U.S.; and
(3) Agencies may use simplified acquisition procedures up to $13 million for purchases of commercial item buys.

In conducting acquisitions to support response efforts, agencies are expected to use sound fiscal prudence to maximize value for each taxpayer dollar spent. The availability of the flexibility does not mean it must be used, but agencies should feel fully empowered to use the acquisition flexibilities, as needed, consistent with good business judgment in response to the national emergency.

9. **How can agencies leverage existing category management solutions and expertise across government?**

A number of category management resources and tools are available to help agencies quickly determine where existing contract solutions for common goods and services may meet the many pressing requirements in connection with the COVID-19 response. They include the following:

- Category Manager Points of Contact: https://hallways.cap.gsa.gov/app/#/gateway/category-management/45771/cms-and-pms-contact-list
- Tools and dashboards: https://d2d.gsa.gov/report/government-wide-category-management-category-reports
- How to use category management tools to find existing solutions (searchable by PSC/NAICS, vendors, solutions, etc.): https://hallways.cap.gsa.gov/app/#/gateway/category-management/21999/acquisition-playbooks

10. **How should agencies address preferences and set-asides for local firms set forth under the Stafford Act?**

When an emergency declaration is made under the Stafford Act, contracting officers are typically expected, to the extent feasible and practicable, to give preference to local firms in the area designated in the declaration. However, in this case, the declaration makes clear that the emergency created by the pandemic exists nationwide. As a result, there is

[1] Sections 805 and 806 of the National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, increased the micro-purchase threshold to $10,000 (formerly $3,500) and the simplified acquisition threshold (SAT) to $250,000 (formerly $150,000). The FAR Council is in the process of finalizing changes to the FAR to update these thresholds.
[2] See previous footnote.

no specific locally affected area, and therefore no current action required from the acquisition workforce to create preferences for local firms. This issue will continue to be reviewed in light of ongoing response efforts, and agencies are encouraged to confer with OMB regarding potential circumstances where application of local set asides may make sense, especially for small business contractors.

Tracking activities

11. **What steps should the acquisition workforce be taking to facilitate tracking of contract spend related to COVID-19 using emergency procurement authorities?**

    The General Services Administration (GSA) has added a new National Interest Action (NIA) Code to the NIA field in the Federal Procurement Data System (FPDS) as a means of tracking acquisition costs of the multiple Federal agencies involved in the response to COVID-19, an incident of great national interest.

    The NIA Code will be used strictly for reporting purposes related to COVID-19 and involves the exercise of the emergency authorities identified in FAR § 18.2. (See question 12 above.) FPDS system details for this NIA Code are as follows:

    - NIA Value Name: COVID-19 2020
      - Web Portal/Graphical User Interface (GUI) service users may select the value "COVID-19 2020" in the NIA drop-down field.
      - Contract Writing Systems (CWS) shall use the code of "P20C" when creating or updating documents associated with the COVID-19 response through Business Services.
    - NIA Start Date: 03/13/2020
    - NIA End Date: 07/01/2020

    Agencies should consult their internal policy offices regarding compliance with this and related FPDS requirements.

12. **What, if any, steps should agencies take to facilitate tracking of contract spending related to COVID-19 that are not conducted using emergency procurement authorities?**

    Contracting officials are encouraged to use "COVID-19" or "Coronavirus" in their solicitation and related documentation to support easy key word searching for sharing buys when possible and recording contracts once awarded.