



MEMORANDUM

Date of Issuance: March 14, 2020

TO: Heads of Contracting Activity

FROM: David R. Dasher //s//
Deputy Assistant Secretary for the Office of Acquisitions
Senior Procurement Executive

SUBJECT: Preparation for Potential COVID-19 Impact on Contract and Contractor Performance

Effective Date: Immediately

Purpose: This Memorandum provides guidance on managing potential contract administration issues related to Coronavirus Disease 2019 (COVID-19).

Applicability: HHS continues to prepare for eventualities that may result as COVID-19 continues to affect communities across the United States. The health and safety of the HHS federal and contractor workforce remains a priority as the department works to meet its mission to enhance and protect the health and well-being of all Americans.

The following guidance is provided to highlight the existing need for flexibility in responding to potential challenges and to point to some of the available tools.

Until or unless your management team advises you otherwise, direct your contractors to reach out to your contracting officers.

Roles and Responsibilities: The spread of COVID-19 may affect government contractors in several ways. Therefore, communication with contractors is critical during this period of uncertainty. Contracting officers should proactively engage with contractors and the program office to address potential service delivery issues before they arise. Although government contractors should have preparedness plans in place, and should be continuing contract performance, there may be factors outside their control, which result in interruptions or delays. Other potential impacts, requiring unique solutions, include the possible quarantine of federal and contractor employees; mandated building closures; shut down of global supply chains; non-availability of federal employees to review and accept deliverables; cancellation of conferences and training activities; and domestic and international travel concerns. Contracting officers should consider all options available that are in the government's best interest. For

example, explore the means necessary for an employee to have the ability to work remotely and successfully accomplish required tasks accordingly. Consider and plan for the impact a possible quarantine, cancellation or closure would have on contract deliverables. Discuss alternatives and the ability of Project Managers and Contracting Officer Representatives to oversee contractor performance.

Federal contracts provide for excusable delays. If this solution meets mission needs, establishing new due dates may be the simplest solution. If it does not, it may be appropriate to re-procure elsewhere if possible, without negative consequence to the contractor. If an interruption or service gap occurs outside of an excusable delay, contracting officers are encouraged to be flexible in finding a solution.

All available options should be considered including telework for contract employees or contract modifications that are in the government's best interest.

Guidance:

Contracts Lending Themselves to Telework

In accordance with FAR 7.108, clearly states, "an agency shall generally not discourage a contractor from allowing its employees to telecommute in the performance of government contracts." If a contract already permits contractors to telework, it may be advantageous to work with the contractor's program manager to permit additional telework.

Many federal contracts can be performed without contractor personnel working at the government or contractor's site. In order to limit person-to-person contact and to mitigate possible transmission of COVID-19, it may be in the best interest of the government to permit contractor employees to work from home rather than the government or contractor site. If a contract does not currently permit contractor employees to telework, but it has been determined that the work can be performed remotely, it may be advantageous to work with the contractor's program manager to permit contractor employees to telework on a case-by-case basis for an agreed upon amount of time. If a contract does permit contractor employees to telework, it may be advantageous to work with the contractor's program manager to increase the amount of telework allowed.

Contracts Not Lending Themselves to Telework

If your contract requires services which must be performed at a Government facility, consider being flexible on contract completion dates.

Government contracts include clauses to aid in managing unforeseen circumstances including the potential impact of COVID-19. The government may choose to suspend or stop performance, on selected contracts, through the use of FAR 52.242-14, Suspension of Work and/or FAR 52.242-15, Stop-Work Order. Additionally, the government may choose to modify a contract by using the applicable changes clause, FAR 52.243-1 through 52.243-4 or FAR 52.212-4(c), Contract Terms and Conditions – commercial Items. Each of the clauses provides certain rights, responsibilities and obligations of the contracting parties.

Conclusion: In discussions with contractors and program offices, the acquisition workforce is encouraged to engage in proactive communication and collaboration. Carefully consider all of the acquisition tools and resources available while embracing legally sufficient innovative and efficient solutions. Regardless of the issues and the solutions, communication and flexibility are critical to our response to COVID-19 and our continuous ability to perform HHS's mission.

As HHS learns more about these challenges, Frequently Asked Questions and other tools will be distributed as they become available.

Thank you for your support and dedication

Additional Resources:

United States Office of Personnel Management Memorandum entitled, "***Preliminary Guidance to Agencies during Coronavirus Disease 2019 (COVID-19)***": <https://www.chcoc.gov/content/preliminary-guidance-agencies-during-coronavirus-disease-2019-covid-19>

United States Office of Personnel Management Memorandum entitled, "***Coronavirus Disease 2019 (COVID-19): Additional Guidance***": <https://chcoc.gov/content/coronavirus-disease-2019-covid-19-additional-guidance>

Please see ***FAR Part 18 - Emergency Acquisitions*** for additional guidance and information: <https://www.acquisition.gov/content/part-18-emergency-acquisitions>

Virtual Acquisition Office (VAO) resources: ***VAO Emergency Contracting Toolkit; Tips for Agencies During a Major Disaster or Emergency (June 2019); Understanding and Responding to Emergencies: A CO's Guide to Emergency Contracting, Version 10.0 (June 2019)***

Centers for Disease Control and Prevention: ***Coronavirus Disease 2019 (COVID-19):*** <https://www.cdc.gov/coronavirus/2019-ncov/index.html>; ***Keeping the Workplace Safe:*** <https://www.cdc.gov/coronavirus/2019-ncov/downloads/workplace-school-and-home-guidance.pdf>; ***Interim Guidance for Businesses and Employers:*** https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fspecific-groups%2Fguidance-business-response.html

Please contact the HHS Office of Acquisition Policy with any questions at OAP@hhs.gov.