GSA Provides COVID-19 Guidance to Contractors

The General Services Administration has issued an FAQ for contractors that provides guidance on contract performance during the COVID-19 crisis. The guidance and recommendations apply to existing contracts and new acquisitions. For existing contracts, GSA advises contractors to reach out to the contracting officer to discuss any challenges they may be facing or expect to face due to the ongoing emergency. In addition, contractors should contact subcontractors and suppliers to identify potential alternate sources of supply or substitute products to mitigate disruptions.

Contract Administration Flexibilities

Existing contracts have clauses that can help manage COVID-19 issues. The government may make changes to the contract by using the applicable Changes clause, FAR 52.243-1 through FAR 52.243-4, or the comparable provision for commercial items contracts, FAR 52.212-4(c). The government may also delay acceptance of deliverables through either the FAR 52.249-14 or FAR 52.212-4(f) excusable delays clause, which lists “epidemics" and “quarantine restrictions" among the excusable delays. In accordance with FAR 52.249-14(b), if a prime contractor cannot perform because of the failure of a subcontractor, the contractor will not be at fault unless it could have obtained the subcontracted services from other sources. In addition, the government may suspend or stop performance by using the FAR 52.242-14 or FAR 52.242-15 clause. Further, the government may provide for time extensions of construction contracts using the appropriate time extension clause (FAR 52.211-13 or GSAR 552.211-13). Finally, the government may implement a clause at FAR 52.249-1 through FAR 52.249-7, or FAR 52.212-4(l), to terminate all or any part of a contract for convenience if the work is no longer needed due to COVID-19 concerns.

Place of Performance

If the place of contract performance is a government facility that is closed due to this public health emergency, contractors should ask the CO to change the place of performance to allow for work to be completed virtually. FAR 7.108 states that agencies must “generally not discourage a contractor from allowing its employees to telecommute in the performance of [g]overnment contracts." If there are no government personnel available at the place of performance or designated delivery point to accept a contract deliverable, contractors should request a change to the delivery date, location, or method to allow for inspection and acceptance of the deliverable. If the government cannot inspect and accept the deliverable, the contractor may store and retain ownership of the deliverable, and the contractor may be entitled to an equitable adjustment. Extended inspection and acceptance periods beyond the terms of the contract do not relieve the government of its prompt pay responsibilities (see FAR Subpart 32.9, Prompt Payment). If the work can be completed without travel, COs may issue a bilateral modification to cancel the travel requirement using the applicable Changes clause (FAR 52.243-1 through FAR 52.243-4, or FAR 52.212-4(c)).
New Acquisitions

The Federal Acquisition Regulation includes a number of emergency acquisition flexibilities (defined at FAR 18.001) that are available to COs under certain conditions and do not require an emergency declaration under the Stafford Disaster Relief and Emergency Assistance Act. FAR Subpart 18.1 addresses the available emergency acquisition flexibilities, including:

- Exemption for System for Award Management registration: FAR 18.102 (see FAR 4.1102(a));
- Exception to full and open competition for urgent requirements: FAR 18.104 (see FAR 6.302-2);
- Waiver for AbilityOne advance notice requirement: FAR 18.107 (see FAR 8.712(d));
- Nonenforcement of qualification list requirements: FAR 18.108 (see FAR 9.206-1(b));
- Retroactive overtime approvals: FAR 18.118 (see FAR 22.103-4(i));
- Waiver of authorization requirement for use of patent technology: FAR (see FAR 27.204-1); and
- Exemption from electronic funds transfer requirements: FAR 18.124 (see FAR 32.1103(e)).

For additional guidance regarding the impact of the COVID-19 crisis on federal acquisitions, COs and contractors should consult the memorandum Managing Federal Contract Performance Issues Associated with the Novel Coronavirus (COVID-19), issued by the Office of Management and Budget. Acquisition-related questions should be directed to the Office of Federal Procurement Policy at MBX.OMB.OFPPv2@OMB.eop.gov.