

## Practical advice during uncertain times --- Surviving COVID-19

*Special thanks to the WA PTAC for allowing us to share information to assist our businesses working with the government.*

Your ND Procurement Technical Assistance Centers (ND PTAC) located in Bismarck and Fargo are beginning to receive requests for assistance from contractors with government contracts as a direct result of the novel coronavirus (COVID-19). The presence of COVID-19 is changing everything we know to be true on a daily, if not hourly, basis. We are seeing impacts with contracts changed or cancelled including the following:

- General Services Administration (GSA) cancelling events for a multitude of agencies through the GSA Schedule Contracts resulting in contractors being left with upfront costs to recover including pre-paid hotel fees, labor hours, and supplies.
- Contractors with Veteran Administration (VA) Contracts being directed to work from home and not report to the VA site for work. Contractors are scrambling to find locations, computers, and security measures prior to being able to continue work off site.
- Contractors need to be prepared for the possibility of COVID-19 related base closures and what that will mean for your work.
- Supply chains interrupted without access to multiple materials and product.

There will be ripple effects due to shut down of suppliers, shortage of supplies, increased costs, lay offs in transportation, flight restrictions, shortage of personnel due to sickness or quarantine, etc., It is near impossible to determine how this current situation will affect the owners, contractors, subcontractors, and employees.

### What steps can you as a government contractor take to protect your business during this uncertain time?

(1) Read your contract!! It is time to pull it out and review all those clauses that you hoped you would never have to deal with. Here are a few of the clauses to review:

- [FAR52.249-8](#) Fixed Price Supply and Service Contract Defaults
- [FAR 52.249.10](#) Fixed Price Construction Contracts Defaults
- [FAR 52.249-14](#) Cost Reimbursement Contract Excusable Delays
- [FAR 52.212-4\(f\)](#) Commercial Contract Excusable Delays

All the FAR Clauses above excuse a contractor's failure to perform if the performance failure is not the fault of the contractor and beyond the contractor's control. A great example is when the supply chains are at a standstill due to the virus. Understand your rights and remedies and which clauses cover time and which ones cover costs. Default clauses allow for an extension of time but do not cover costs. Check your contract for the clauses on:

- Termination for Convenience of the Government
- Suspensions (covers cost – without profit – but not time)
- Changes

Agencies and contracts vary immensely with the clauses and contract wording. Remember one of your resources is the PTAC. We would be happy to help you review your contract and discuss the impact of the clauses.

(2) Review your recordkeeping processes. You will need a process to track any additional impacts that result from government action from the coronavirus. You will need to tell your story and it's so much easier to do in a real time situation rather than months after the situation takes place.

- Keep track of, and detail, impacts to your contract schedule.
- Contact your Contracting Officer in writing immediately if your scope of work changes or if you are given verbal direction that differs from your scope of work.
- Establish separate cost codes or records to support changes in prices, labor, etc.
- Establish procedures for your suppliers and subcontractors how to track and report their impacts.

(3) Notify the owner as soon as practical. The Government knows impacts are coming. We know the impacts are coming. The world knows the impacts are coming. But timely, formal communication is the key to getting through this time. Until this issue is no longer a threat, things will change. Just don't wait until the end to provide notice of the impact.

(4) Be prepared. Given the measures being directed by the Government, your shipment or even access to the base could be suspended with little or no warning. You could be locked out. Develop a plan to make sure your material or site is safe and secure. Be prepared to not have access to the site. Identify what activities will have to be identified to the owner (tag outs, outages, etc.). How will you provide notice to your subcontractors and vendors? Who is available for recall or notices?

Your PTAC advisors are working virtually and will respond to your emails.

Other Resources:

- [How the Coronavirus Will Affect Government Contractors](#)
- [Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 \(COVID-19\)](#) (SBA Economic Injury Disaster Loan (EIDL) program)
- Koprince Law Client Alert <https://www.koprince.com/so/04N3LCQES?cid=8d475532-20dc-47df-9dd7-0c313f7f8213#/main>
- North Dakota Small Business Resources [https://ndsfdc.org/business\\_continuity.html](https://ndsfdc.org/business_continuity.html)