



OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

ACQUISITION
AND SUSTAINMENT

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING)
DIRECTORS, DEFENSE AGENCIES
DIRECTORS, DEFENSE FIELD ACTIVITIES

SUBJECT: Guidance for Assessment of Other COVID-19 Related Impacts and Costs

The Department of Defense (DoD) has taken a myriad of actions in response to the COVID-19 pandemic to maintain readiness and ensure mission continuity. In balancing these demands, a number of reasonable measures have been taken by both the Government and industry to prevent the spread of COVID-19 and allow facilities to remain open and productive. These actions include maximizing the use of telework within mission and contractual requirements, using personal protective equipment (PPE), special cleaning regimens to reduce exposure, and realigning shifts to practice social distancing. DoD Contractors may have already incurred, and will likely continue to incur, delays and costs associated with their response to the COVID-19 pandemic. However, to date, no funds have been appropriated specifically for reimbursement of these costs.

DFARS Class Deviation 2020-O0013 – CARES Act Section 3610 Implementation, effective April 8, 2020, provides a means for affected contractors to request reimbursement of costs incurred for paid leave granted to their employees during the COVID-19 pandemic. The purpose of Section 3610 is to maintain the contracting workforce in a ready state if facility closures cause work stoppage and affected employees are unable to telework. Subject to the availability of funds, a contracting officer may modify contracts or other agreements to reimburse up to 40 hours per week of paid leave costs.

Contractors may face further unplanned costs due to COVID-19, such as those related to providing PPE to employees, additional cleaning of work areas, changes to work spaces to accommodate social distancing, and delays in delivering and/or receiving purchased materials. Where allowable and allocable, these costs may be recovered on cost-reimbursement and incentive contracts.

DoD contracts contain clauses to excuse performance delays not due to the contractor's fault or negligence, including Federal Acquisition Regulation (FAR) clause 52.249-14, Excusable Delays; various "Termination" clauses; and FAR clause 52.212-4, Contract Terms and Conditions—Commercial Contracts. In the event of delays caused by COVID-19, the contractor may be entitled to relief from contract delivery requirements. However, there is no statutory, regulatory, or contractual entitlement to an adjustment to contract price for schedule delays that are attributable to excusable delays.

Unlike contractors performing under cost-type contracts, contractors under fixed-price contracts generally must bear the risk of cost increases, including those due to COVID-19 (e.g., costs associated with PPE, social distancing, and supplier delays and inefficiencies). However, Contracting Officers are granted discretion, subject to the availability of funds, to modify contracts (e.g., under FAR 52.243-1, Changes Fixed Price, and its applicable alternatives) to reflect changes to the Government's needs as a result of COVID-19. Any resulting changes in contract price must be substantiated by the contractor and determined by the contracting officer to be required to perform the contract as modified, and must be driven exclusively by the change(s) directed by the Government.

In making such modifications, Contracting Officers must be mindful that they are stewards of the public funds. They must only execute contract actions that result in fair and reasonable prices for the supplies or services provided and are determined to be in the best interests of the Government.

The costs that would be associated with such COVID-19 related, Government-directed change modifications may be above and beyond current available funding. In such cases, Contracting Officers may not direct a change or execute a modification that results in an increase to the contract price until and unless the Department receives additional appropriations. Modifications are recommended to be captured in a separate contract line item for auditing purposes.

The COVID-19 pandemic has presented historic and unprecedented challenges for the Department, its mission, and its people. These challenges require us to use all of our experience and skill to find innovative solutions to both protect Government interests and ensure the continued health of the Defense Industrial Base to support our mission.

Kim Herrington
Acting Principal Director,
Defense Pricing and Contracting