

Subject: Guidance to Federal Contract Holders & Other Subcontract Holders During this Pandemic State of Emergency

Guidance to Primary Federal Contract Holders:

Due to the current pandemic emergency that we are experiencing in the U.S., your primary federal contract **may be at risk** for non-compliance/non-performance. There are remedies available through the Federal Acquisition Regulation under **52.249-14 Excusable Delays** (see below) if the contracting officer allows it.

Every Primary Federal Contractor should immediately contact their Contracting Officer or official POC and inform them, **in writing via email**, (1) with a general description of the impact that the pandemic is having on their contract compliance/performance (2) ask for OFFICIAL guidance, also in writing, as to how to proceed. And most importantly, (3) also address what actions you may implement, to include possible STOP WORK, if you do not receive a response or instructions on how to proceed.

There is an implied 10 day response for correspondence between the Contractor and the Contracting Office. Keep this in mind in communications both ways. Also, **the Contracting Officer is the only federal official who can change, modify, offer relief, terminate for convenience, or allow excusable delays.** Many of your insurance companies will require proof of official government correspondence to allow your claims or other financial transactions to be accepted. Communication will assist in keeping you contractually responsible during these trying times.

52.249-14 Excusable Delays.

As prescribed in 49.505(b), insert the following clause in solicitations and contracts for supplies, services, construction, and research and development on a fee basis whenever a cost-reimbursement contract is contemplated. Also insert the clause in time-and-material contracts, and labor-hour contracts. When used in construction contracts, substitute the words "completion time" for "delivery schedule" in the last sentence of the clause.

Excusable Delays (APR 1984)

(a) Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. Default includes failure to make progress in the work so as to endanger performance.

(b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless -

(1) The subcontracted supplies or services were obtainable from other sources;

(2) The Contracting Officer ordered the Contractor in writing to purchase these supplies or services from the other source; and

(3) The Contractor failed to comply reasonably with this order.

(c) Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Government under the termination clause of this contract.

(End of clause)

[[48 FR 42478](#), Sept. 19, 1983, as amended at [72 FR 27394](#), May 15, 2007]

Guidance to Federal and Other Subcontract Holders:

Contracts between a Prime Federal Contractor and its Subcontractor(s) are considered commercial contracts. Subcontractors are encouraged to review agreements with their Prime Federal Contractor Representative to fully understand their obligations and recourse options in the event of **impact to performance** due to the coronavirus. As noted above, many commercial contracts contain a force majeure clause that provides for excusable delay for things like epidemics, quarantine restrictions, etc. However, it is important to know that these agreements often allow Prime Contractors to seek goods and services from other sources if a Subcontractor cannot fulfill its obligations for an excused reason.

We also encourage you to review the following Frequently Asked Questions (FAQs) guidance on the impact of the COVID-19 (Coronavirus) Outbreak for small businesses performing on federal procurement contracts from the U.S. Small Business Administration dated March 11, 2020.

[\(Click Here to See the FAQs for Coronavirus-GCBD Guidance Letter from SBA\)](#)

If you have further questions regarding this, or cannot open the link above, please reach out to the National Center American Indian PTAC or email ptac@ncaied.org. Thank you for your attention and we wish you, your family, and business the best during this national emergency.

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