

THE BDO GOVCON WEEK AHEAD - APRIL 2020

April 2020



April 13, 2020

Substantial Impact Expected on Federal Acquisition Policies in Response To COVID-19: Government contractors can expect to see calls for increased US-based manufacturing, tightened export controls, and a federal workforce that works more remotely as a result of experiences learned by novel coronavirus (COVID-19). These are among the changes predicted by Rich Beutel, a former senior Congressional staffer with many years in federal acquisition policy. Beutel predicts, “There will be a profound reassessment of basic supply chain structures to reinforce the defense industrial base.” The net result of this assessment will be the likely return of critical manufacturing to the United States, including everything from pharmaceuticals to weapons components. Commercial service and product companies will also see an impact. Beutel states that Congress may reassess “buy American” requirements and try to strengthen those requirements to decrease reliance on overseas suppliers. Beutel states that some previous attempts to establish “Trusted Foundries” have failed because of the enormous support costs required to sustain them. While some of these measures may seem like common sense reactions, the substantial momentum for change will likely result in some new rules and regulations that could ultimately prove to be counter-productive. Contractors will have to watch Congressional action closely and be prepared to educate leaders on changes that can be both positive or negative. See the story [here](#).

DOD Issues Memo on Managing Defense Contracts in Time Of COVID-19: There are several contract clauses used in the Department of Defense (DOD) contracts that provide default protection for contractors in cases where a failure to perform the contract is due to issues beyond the control, and without the fault or negligence, of the contractor. This is a major point from a recent memo by Kim Harrington, Acting Principal Director of Defense Pricing, and sent to all DOD acquisition functions. The undated memo, “Managing Defense Contracts Impacts of the Novel Coronavirus,” also states that the Office of Management and Budget and other acquisition functions have issued similar guidance. “They share the common theme that contracting officers are trusted and empowered to make the difficult decisions on appropriate adjustment to each contract,” Harrington writes. This is good news for contractors that may be struggling to overcome logistical hurdles in fulfilling their contract obligations. Like most memos, however, it is essential that contractors help to ensure that their individual customers are aware of it. Individual buying organizations sometimes literally “miss the memo,” which can lead to improper adverse actions against your company. Contractors may want to proactively send a copy of the memo to all their DOD, and perhaps even non-DOD, customers. The memo references

several specific Defense Federal Acquisition Regulation clauses with which contractors should also be familiar. Remember, your government customer may be struggling. They're under internal pressure to perform, and if your contract execution becomes an issue, they could initiate action against your company. Make sure you know the protections in your contract and remind your customer of DOD's guidance.

Uncertainty Persists On "Phase IV" COVID-19 Stimulus Bill: The initiation of CARES Act stimulus funding has been challenging, considering that the normal timeline from approved legislation to agency implementation can be between one to two years. Additionally, the Small Business Association (SBA) was mandated to implement the Paycheck Protection Program (PPP) with fifteen days, posing its own challenges.

SBA lenders are now at the forefront of the bottleneck between applications and reviews. What many anticipated to be an application review by SBA personnel and purely processing by banks, has turned into financial institutions yielding more power over the review process due to their vast personnel capacity. As of today, very few PPP loans have been approved, and small businesses eagerly wait to see if they can pay their bills. We are hopeful that this is the week loans start being approved in high quantities.

Many government contractors are anticipating another round of Congressional action to spur federal spending after the implementation of the CARES Act. The new legislation may address guidance and clarity on several outstanding PPP issues, such as PE/VC investment, small business definitions, total payroll cost, and other substantial issues. However, the content of any new bill is still very uncertain. Preliminary information indicates that the bill would be primarily for initiatives not tied directly to federal government contracting. Eviction relief, student loan forgiveness, and consumer protection have all been discussed. Thus, contractors should not wait for a new "Phase IV" bill to pursue federal business that is available now. Additionally, planning for a traditionally busy federal fiscal year fourth quarter is also a good idea.

Another piece of legislation being discussed would initiate a new infrastructure program for highways, roads, bridges and other projects. Whether this bill will be drafted is uncertain. It is likely that a new round of legislation will include additional funds for small businesses, especially minority-owned firms. Congress is currently out of session and is likely to stay that way until after Easter. Final action on any new measure could be a month away. Don't trade speculation on what if scenarios for business opportunities that are available now. Some may be COVID-19 related, but others may be federal business almost-as-usual. While no one can predict for certain when the pandemic will pass, current estimates show that it may run its course by July, which could lead to a busy "busy season." Be prepared.

COVID-19 Legislation and Impacts to Your Accounting System: COVID-19 has impacted us all from a personal and business perspective. As the world comes together to face the pandemic, we want to keep you informed of recent Federal Government actions and ways BDO can assist. BDO ERP system professionals are available to discuss the impacts to your accounting system configuration and make updates to support compliance with new laws. The BDO team has hands-on configuration experience with Deltek Costpoint, Unanet, Microsoft Dynamics, QuickBooks, and several other accounting systems.

Per the Families First Coronavirus Response Act (FFCRA), effective April 1-December 31, 2020, certain employers will be responsible for providing paid sick leave and/or expanded family and medical leave for qualified reasons related to COVID-19. The FFCRA is administered by the Department of Labor's Wage and Hour Division (WHD).

Covered Employers

Paid sick leave and the expanded family and medical leave provisions of the FFCRA apply to certain public employers and private employers with fewer than 500 employees. Additional guidance exists for federal employees and small businesses with fewer than 50 employees.

Qualifying Reasons for Leave

Per the FFCRA, an employee qualifies for paid sick time if the employee is unable to work or telework due to one of the following reasons, where the employee:

1. Is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. Has been advised by a health care provider to self-quarantine related to COVID-19;
3. Is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. Is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. Is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or
6. Is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury

Under the FFCRA, an employee qualifies for expanded family leave if the employee is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19.

Duration of Leave

Reasons I through IV, and VI: Full-time employees are eligible for 80 leave hours. Part-time employees are eligible for their average hours over a two-week period.

Reason V: Full-time employees are eligible for *up to* 12 weeks of leave (two weeks of paid sick leave followed by up to 10 weeks of paid expanded family and medical leave) at 40 hours per week. Part-time employees are eligible for the hours the employee would normally work over that period.

Calculation of Pay

Reasons I through III: Pay is calculated at either the employee's regular rate or the applicable minimum wage, whichever is higher, up to \$511 per day and \$5, 110 in the aggregate (over a 2-weekperiod).

Reasons IV & VI: Pay is calculated at 2/3 of the employee's regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$2,000 in the aggregate (over a 2-week period).

Reason V: Pay is calculated at 2/3 of the employee's regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$12,000 in the aggregate (over a 12-week period).

April 6, 2020

Legislation Provides Direct Loan Assistance to Help Small Businesses: One important feature of the recently-passed Novel Coronavirus (COVID-19) Aid, Relief, and Economic Security (CARES) Act is a new \$349 billion Paycheck Protection Program. The program is intended to provide relief to millions of small businesses so they can sustain their operations and keep their workers employed. The Paycheck Protection Program provides eight weeks of payroll support, as well as certain overhead assistance, to keep workers employed. The Department of

Treasury and the Small Business Administration expect to have the program up and running by April 3rd. Small firms seeking the assistance can go to a participating SBA 7(a) lender, bank, or credit union as of that date, apply for a loan, and be approved on the same day. Significantly, the loans will be forgiven so long as the funds are used to keep employees on the payroll and for certain other expenses. This program can benefit small business government contractors that may be struggling to get to connect with federal buyers who are currently being pulled in many directions at once. Small firms rely on cash flow and often find that their best assets are their people. This can be especially true for government contractors who often employ people with highly specialized skills. The Paycheck Protection Program can help ensure the retention of those critical employees and the competitiveness of small businesses in the federal market. For more information, check out the release.

How to Stand Out When Everyone Wants to Help: It's time to give your federal customers one click access to your business. With personnel working at home, constant Continuity of Operations Planning (COOP) discussions, and priorities that can change in hours, it's not good enough to say, "we're here to help." Proving this claim by giving your customer an easy way to reach you is essential. If you are selling services, make sure your customers have the e-mail addresses of each account manager so that all they have to do is click, write, and send. If you are having acquisition issues, be sure that customers and prospects have instant access to the contracting people who can answer the critical "how do I get to you?" question. Don't assume that your current or prospective customers know who to go to in your company, or how to buy from you. Make sure you tell them and emphasize that you're only a click or call away. Being proactive helps, as well. A short webinar or video white paper, especially one that shows thought leadership on a newly issued directive or recommended action, highlights your experience in this area and may tell your customer something they missed while in an internal meeting. This approach strengthens your image as a trusted, informed partner, and can lead to new business. Even though in-person meetings aren't possible right now, make sure you stay in active, creative contact with your customers and prospects. The government is open for business and companies that adapt to changing methods of interaction will benefit.

Pandemic Response Delays Key Contract Actions: Expected additions to the General Services Administration (GSA) One Acquisition Solution for Integrated Services (OASIS) contract, long-delayed action on the Alliant II Small Business contract, and GSA's anticipated commercial e-commerce platform award are a few significant acquisition programs to experience delays as response to the COVID-19 pandemic demands the time and attention of the acquisition workforce. While the National Institutes of Health (NIH) acquisition officials issued a draft RFP for their much-anticipated CIOSP-IV contract on March 27th, many of their acquisition resources are supporting a variety of healthcare-related needs, including research. The GSA is also responsible for a host of emergency response duties. Resources are being diverted to ensure that key products like masks and hand sanitizer are readily available, and that teleworking federal employees have the tools necessary to be productive. All of this is frustrating for contractors, especially those that do not currently hold an existing Indefinite Delivery/Indefinite Quantity contract. Such companies see participation in OASIS, CIOSP-IV, or other new vehicles as a vital part of growing their government business. The delay of new contracts or new additions to existing contracts does not mean that business isn't getting done. As noted in the previous story, the federal government is open. Existing IDIQ contracts are a popular approach in GSA, NIH, and elsewhere as they provide an expedited way for agencies to get the critical products and services they need to meet public health or telework missions. The GSA is expected to announce the status of their delayed acquisition actions in the near future. The GSA and NIH have a track record of communicating with industry, and likely would appreciate some patience on the part of their industry partners right now.
