

COVID-19 Related Contract Questions and Answers (Q&As)

Q: My contract worksite has been closed. How do I request a time extension?

A: Please contact your Contracting Officer (CO)/Contracting Officer Representative (COR) and include a copy of the closure order or other official notification to discuss impact to contract performance, budget, and/or requirements and negotiate reasonable options.

Q: What information should I include in a request for an extension to period of performance for my company?

A: Please include official confirmation of the closure, quarantine, or other incident that makes a timely completion of contract deliverables impossible. Requests to extend a contract's period of performance must be made before the termination date. Requests for extensions will be reviewed on a case by case basis by the Contracting Officer and agency program staff. The vendor will be notified with the decision.

Q: What happens if facing supplies/services disruptions caused by COVID-19?

A: Contractors should review their contracts to see what, if any, latitude for performance delays or unscheduled disruptions are available. While most commercial contracts have an unforeseeable circumstances clause that excuses performance under extreme circumstances including natural disasters or pandemics, Government contracts do not typically use this kind of commercial language. Instead, Government contracts usually contain Federal Acquisition Regulation (FAR) 52.249-14, Excusable Delays, a clause for delays 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 to endanger performance.

Q: What happens if there are excusable delays?

A: All commercial contracts should contain FAR 52.212-4(f), which provides that the contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the contractor and without its fault or negligence such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. To mitigate any potential impact, the contractor shall notify the contracting officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the contracting officer of the cessation of such occurrence. Also, contractors are encouraged to be in frequent communication with their Government counterparts to set expectations and develop a plan.

Q: What are the Government's payment obligations if a contractor is unable to perform?

A: The Government's payment obligation will be tied to the types of contracts it holds. If it is a time-and-materials contract and the contractor did not work because of COVID-19, the Government may be able to reduce its payments. On the other hand, if the contractor has a firm-fixed priced contract that provides payment upon completion of a deliverable and the contractor has completed the deliverable, the contractor should be paid. Different types of contracts and governing laws stipulate different requirements for different situations and potential outcomes, all of which would require a careful review and assessment of each Government contract. Nonetheless, it is very important for contractors to be proactive in timely communication with the Contracting Officer, Contracting Officer Representative, and agency program staff if COVID-19 will result in significant impact to performance.

Q: How are subcontracts impacted?

A: Prime and subcontractors should review their agreements to determine their rights and obligations. As noted above, most commercial contracts do contain an unforeseeable circumstances clause that excuses delays or disruptions.

Q: If I can safely work how can my Integrated Resource Service Contract (IRSC) be modified so I can keep working on items that COVID-19 delays have not impacted?

A: There may be opportunities in the contract to allow for performance of service only work items that can still be performed without a need for contract modification for extension.

Q: What if my IRSC contract has work bundled with multiple treatment elements on the same acre under a single pay item and COVID-19 delays are impacting some of them but not all?

A: If the proposed treatments can be separated from the bundled requirement (timber removal, culvert replacement, pre-commercial thinning, as examples) a potential revision of the award schedule may allow for separate pay items to be established where completion and acceptance can be made. The remaining work on the same acre that is impacted beyond the contractors control due to the COVID-19 health restrictions but are part of the overall end result would be the items subject to modification. This would all depend on the contractor's proposal for treatment methods with close coordination with the Contracting Officer and agency program staff to ensure budget and mission objectives can be met.