

DOD Issues Guidance on Managing Defense Contracts During COVID-19

April 1, 2020

WHAT: On the heels of the Office of Management and Budget's (OMB) guidance encouraging agencies to consider requests for equitable adjustment (REAs) for increased costs related to COVID-19, the U.S. Department of Defense (DOD) issued a similar memorandum for defense agencies. The memo outlines three ways defense agencies can work with contractors during this challenging time:

1. The memo reminds the defense community that delays related to COVID-19 are likely excusable under standard clauses included in DOD contracts, and contractors that are unable to perform due to events beyond their control will not be in default and should not receive negative performance ratings.
2. The memo recognizes that COVID-19 impacts on performance may also increase the cost of performance, and reiterates that contracting officers should consider REAs on a case-by-case basis.
3. The memo highlights Section 3610 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which, as we previously noted, authorizes agencies to reimburse contractors for the cost of paid leave incurred to keep contractor or subcontractor personnel in a "ready state" to the extent the contractor or subcontractor personnel were (i) unable to access a government facility or site and (ii) were unable to telework because their job duties could not be performed remotely. The memo states that DOD will provide implementing guidance for Section 3610 as soon as practicable.

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DOD's memorandum is available [here](#).

WHEN: The memorandum was issued on March 30, 2020.

WHAT DOES IT MEAN FOR INDUSTRY: Contractors should continue to monitor guidance about COVID-19 and implementation of the CARES Act. Contractors should also carefully look at the terms of their particular contracts, document the impacts of the COVID-19 crisis on their ability to perform as well as the cost of performance, and communicate with their customers to address potential impacts arising from COVID-19.

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