THE GOVERNMENT CONTRACTOR®

Information and Analysis on Legal Aspects of Procurement

APRIL 2, 2025 | VOLUME 67 | ISSUE 13

¶ 70 FEATURE COMMENT: A Federal Contractor's Survival Guide To Executive Actions And DOGE-Related Impacts Part 2—Suspensions And Stop-Work Orders, Contract Modifications, Tariffs, And Other Considerations

Introduction—In recent months, federal contractors have seen an uptick in very specific types of contracting activity. As a result of various Executive Orders and DOGE directives for agencies to conduct contract reviews and engage in mass contract cancellations, there has been a flurry of terminations for convenience, suspensions/stop-work orders, and contract modifications. Payments—even those undisputedly due and owing—have been delayed, and other EO- and DOGE-related impacts (as well as mass federal employee layoffs) have given rise to various claim issues. Many contractors have been left confused and unsure how to proceed in response these developments. This Comment seeks to address those concerns and provide contractors with a guide on how to navigate recent challenges, with a focus on preserving claim rights and maximizing recovery. Because of the breadth and complexity of the issues faced by Federal Government contractors in the current climate, this Comment has been drafted in two parts. The first installment, published March 26, 2025, 67 GC ¶ 64, addressed the issue of unpaid invoices and discussed terminations for convenience. This installment discusses suspensions and stop-work orders, as well as the potential for other types of claims arising out of EOs, DOGE-related impacts, and tariffs.

Suspensions and Stop-Work Orders—In recent weeks, many contractors have had their work suspended or have received stop-work orders in connection with certain existing contracts and/or orders with the Government. There are several Federal Acquisition Regulation clauses that agencies may include in Government contracts that give contracting officers the ability to suspend—or "pause"—work being done under a federal contract. Specifically, FAR 52.242-14, used in fixed-price construction or architect-engineer contracts, allows COs to "order the Contractor … to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the Government." Similarly, pursuant to FAR 52.242-15, in contracts for supplies, services, or research and development, "[a] Contracting Officer may, at any time … require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree." When a prime contractor receives notice that the Government has suspended performance or issued a stop-work order, the contractor must consider the following issues, among other things.

What Clauses Are in My Contract?: What should a contractor's first steps be upon receiving a suspension notice or stop-work order? As a threshold matter, contractors should confirm that the clause the agency is relying on to suspend the contract or stop work is, in fact, *in* the subject contract. There have been numerous examples these past weeks of agencies issuing stop-work orders, citing as the basis for such action clauses that are not actually included in the contracts they are trying to suspend. (This includes, but is not limited to, COs' attempts to improperly invoke FAR 52.242-15 on commercial item contracts under FAR Part 12). If that happens to you, at a minimum, it will require a conversation with that CO. (It might even require some legal assistance to push back, as appropriate). So much in the GovCon world is *contractual*; rights and obligations flow from the terms specific to the applicable contract. Accordingly, the terms of the applicable contract have to be the starting point of any discussion relating to suspension as they will serve as the basis for determining the contractor's rights regarding recovery of costs, etc. It is, therefore, imperative to make sure everything is done correctly, which means in full accordance with the clauses in the applicable, individual contract.

In summary, contractors should not take the CO's word as gospel and should not assume the COs are citing the right clauses. Contractors should remember that, for task order awards under indefinite-delivery, indefinite-quantity contracts; Government-wide acquisition contracts; or other multiple-award vehicles, they should review not only the order but the underlying contract as well. Same for blanket purchase agreement holders—contractors should check their General Services Administration schedule contracts.

Partial or Full Cessation of Work?: Prime contractors who receive a notice of suspension or a stop-work order must comply with the order and stop work! If work is only *partially* suspended, the contractor must stop the work that has been suspended but must also continue diligently with the work that was *not* suspended. If the cessation of a portion of the work makes continuing with the other work impossible, the contractor must alert the agency ASAP.

Relatedly, if suspension of some work makes the remaining work more expensive, causes inefficiencies that will result in delay and/or expense, or will otherwise delay the not-suspended work that the contractor is still responsible for performing, etc., the contractor will want to give notice of same to the agency. Contractors will also want to start segregating and tracking costs, so that they can substantiate any claims later on. (More on this below). It is often advisable to create a new cost code(s) for suspension costs.

Minimizing Cost and Managing Subcontractors: A big part of a contractor's role as a prime, when work has been suspended or there is a work stoppage, is minimizing costs incurred during the suspension period. Primes must "take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage." FAR 52.242-15. This may involve furloughing workers (contractors should check with their HR department and outside labor and employment counsel on best practices for doing so), buttoning up work, creating certain interim protections, or putting certain preparatory work or recruiting on hold, etc. Contractors should track costs associated with these efforts as well, as they may be recoverable later (see below).

Primes must also manage their subcontractors. This includes potentially suspending or even terminating for convenience, as appropriate, all subcontractors performing portions of the work that have been suspended. Ideally, suspension is something the contractor and its legal team planned for when drafting subcontract documents. If so, the contractor will likely be able to follow the procedures laid out in the contract's suspension or stop-work clause to stop work for its subs. If not, the contractor's best option might be to terminate the subcontractor for convenience, assuming it has the ability to do so under the subcontract. A prime contractor's options regarding suspension/termination, and what that prime needs to do to legally effectuate such a suspension or termination, will depend on the specific terms included in their individual subcontracts.

To the extent a contractor has options regarding the suspension or termination of subcontractors (as

in, they have both a suspension/stop-work clause and a termination for convenience clause in their subcontracts), they should consider what makes the most sense for each of their subcontractors, given the particular factual circumstances. What constitutes the best option will depend on a number of factors, all of which the contractor should discuss with its legal counsel. Some such factors include whether or not, if the Government lifts the suspension, the contractor would be able to resume work without the subcontractor or, alternatively, how quickly they would need the subcontractor to remobilize or get back on track. (Under both FAR 52.242-14 and FAR 52.242-15, contractors have an obligation to promptly return to work if the suspension is lifted, or if the set period covered by the stop-work order expires). If work resumes, can the contractor issue a new order to the subcontractor under a master service agreement, for example? Or maybe the contractor can *replace* the subcontractor if work resumes—but how quickly? The contractor might also want to consider what costs the subcontractor might incur in connection with remaining on "standby," and whether, under the subcontract, the contractor would be liable to cover those costs. Overall, primes and subs should also be openly communicating about whether a partial or full suspension causes the subcontractor to incur any damages, and/or what termination costs there may be. That is something the prime will need to think about later, when it seeks payment from the Government.

Prepare to (Potentially) Ramp Back Up and Resume Performance: As mentioned above, contractors have an obligation to promptly return to work if the suspension is lifted, if the stop-work order is canceled, or if the period set for the stop-work order (usually 90 days) expires. So, while contractors should take care to minimize costs while "on hold," they must balance that against the fact that they need to remain prepared to return to work within a reasonable time frame if asked to do so. This may involve the consideration of certain HR issues relating to furloughed employees, recruiting, etc. Contractors should discuss with their HR teams and their labor and employment attorneys.

Recovering Suspension Costs: Primes are able to seek the additional costs incurred in connection with a suspension through a request for equitable adjustment or (REA) claim. As outlined above, it is important that contractors begin—immediately upon receipt of a suspension or stop-work order—to segregate and carefully track the damages they are incurring as a result of any such order. That may involve new cost codes. Doing so will facilitate quicker recovery. Contractors should keep in mind that in certain industries, there may even be different or additional categories of damages available when dealing with a suspension (as compared to other types of claims). For example, if there is a Government-caused suspension of an uncertain duration on a construction project, the contractor may (assuming some other criteria are met) be entitled to extended home office overhead (*Eichleay* damages). Make sure you understand the full set of damages available to you, and that you are doing all you can to maximize your recovery of costs.

Timelines: Contractors must remain vigilant about the time limits for these types of claims. While the general statute of limitations for most Contract Disputes Act claims is six years, one definitely can't wait that long in this context. Pursuant to FAR 52.242-14, no claim shall be allowed "unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract." Pursuant to FAR 52.242-15, if a stop-work order is canceled or expires, then the CO shall make an equitable adjustment if "the Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage." If, instead of the stop-work order being canceled or expiring, prompting a return to work, the work covered by the stop-work order is ultimately terminated for convenience, "the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement."

Overall, the critical tasks for a contractor in this scenario will be to determine what types of damages they are and are not entitled to, figure out how best to track and document those damages, and identify what they must submit to the Government and when. An experienced legal team should be able to help navigate all of these issues.

Something for the Subcontractors: Above, we have mostly focused on things from a prime contractor's point of view, albeit keeping in mind that a prime's interactions and communications with subcontractors are important. Let's now briefly look at things from a subcontractor's point of view.

As a subcontractor, you are, unfortunately, pretty beholden to your prime contractor. Indeed, your rights and obligations are going to flow almost exclusively from your subcontract with that prime. Whether or not you can be suspended and/or terminated for convenience, and how much you may be owed, will depend on what clauses have been included in your subcontract. Hopefully, you negotiated well when drafting that agreement. For now, make sure you understand the terms included in your subcontract, and what they say about your rights and obligations in the event of the prime's contract being suspended. Moreover, because subcontractors cannot seek recovery of their costs directly from the Government, you will need to coordinate with your prime in order to get paid. The key is to ensure you are communicating with your prime as events unfold and that you develop a cooperative strategy to ensure you can recover any costs you incur as a result of the suspension. It might be wise to proactively reach out to your prime now to discuss what your plan should be if a suspension occurs.

Modifications and Other Contract Changes—Another thing that contractors are seeing now and are likely to see more of in the coming months, are contract modifications. Given the legal developments to date, it seems likely that many of these modifications will be deductive, reducing the scope of the work a contractor is supposed to perform under the contract or removing certain DEI-related language. But it is possible that, if additional EOs are issued or other legal developments occur, other additive modifications might start to become an issue as well. These types of modifications might follow a similar pattern to those that were issued several years ago, when President Biden issued his Executive Orders relating to mandated COVID vaccinations for Government contractors.

The critical considerations when it comes to modifications are always: (1) making sure that the contract is adjusted in terms of price and/or duration to the extent needed to offset the change being addressed in the modification, and (2) ensuring that the contractor's rights to seek those associated costs/additional days are not waived. How does one do that? By following the steps below:

- First, contractors should review the contract clause(s) cited as the basis/justification for the change and determine whether the clause is in the subject contract. They should also assess whether the requested change is even something in the CO's purview (likely it will be; COs have broad authority to make changes to contracts). Assuming it is, contractors should check to see what that clause says about contractors' rights to an equitable adjustment of the contract—in terms of money, time, or both—when such a change is made.

- Next, contractors should determine how much additional cost/additional time may be associated with the change, and whether it is covered in whole or in part in the modification itself. In other words, if a contractor needs $500,000 and an additional two months to perform due to the change being made, the contractor will want to see if the modification is, in addition to making the substantive change to scope or terms, making the necessary price and/or duration adjustments. If not, the contractor should try to negotiate for those things to be added. They may or may not be successful. If they are not, the key is to preserve claim rights for later, as outlined below.

- To the extent the modification does *not* add sufficient time and/or money to account for the change being made therein, the contractor must make sure not to unwittingly sign away its right to seek that time/money later. Beware language like the below, usually (though not always) found in the "Closing Statement" section:

> It is further understood and agreed that this adjustment constitutes compensation in full on behalf of the Contractor and its Subcontractors and Suppliers for all costs and markups directly or indirectly at-

> tributable to the change ordered, for all delays related thereto, for all extended overhead costs, and for the performance of the change within the time frame stated.

If a contractor is asked to sign a modification with language like this when it has not yet been properly compensated, it should decline. The contractor should see if the CO is willing to remove this release language or, if not, if the CO is willing to edit it. Alternatively, the contractor can see if the CO will issue the modification unilaterally.

Before we move on from modifications and changes, a note about *constructive* changes: In the paragraphs directly above, we talked about what a contractor should do if it gets a *written* modification to the contract. But what if they do not receive a written modification, but some other sort of written or oral order or directive from the agency, which requires them to proceed in a way that is different than what they had planned? Depending on what version of the Changes clause is in the applicable contract, that may or may *not* be permitted. (For example, pursuant to FAR 52.212-4(c), all changes to a commercial items contract must be bilateral and in writing). Where permitted (which again may depend on the version of the Changes clause in the applicable contract), such a directive might be treated as a change to the contract (even if not *called* a change or "modification" by the Government). That means time and money. Indeed, contractors can seek equitable adjustments to the contract (time and/or money) in connection with these types of changes—known as constructive changes—provided certain criteria are met. Specifically, (1) the contractor must give appropriate notice, and (2) the contractor must ensure that the direction or instruction to make the change came from someone with authority. Only the CO has the ability to change a contract. So, any change must *come from* a CO (and not from a CO's representative/CO's technical representative) or be *ratified* by a CO.

If you have questions about the proper notice procedures or how to deal with questions relating to authority, consult a legal professional. Lay the proper groundwork, and you should be able to successfully pursue a claim for the costs incurred with any change.

Tariff-Related Impacts—Most readers are probably aware that there's been a lot of talk about a variety of new tariffs impacting products imported from other countries. It is almost certain that these tariffs, if they stay in place, will impact contractors. Likely impacts include increased costs of performance, as well as potential supply shortages and significant delays associated with same.

Contractors should review their contracts now to determine whether the documents include any provisions that could assist with these issues. Contractors should be looking for clauses that would allow them to recover unanticipated costs incurred as a result of tariffs, as well as any provisions that would extend the contract's period of performance to account for supply shortage delays, and/or allow the contractor to characterize such delays as "excusable." Sadly, a "constructive change" theory, discussed above, is unlikely to provide a remedy for tariff-related impacts.

A couple of clauses to look out for:

EPAs: Contractors with Economic Price Adjustment (EPA) clauses in their contracts have somewhat of a golden ticket, with some limited caveats. These clauses "provide[] for upward and downward revision of the stated contract price upon the occurrence of specified contingencies," and are of three different types:

(1) Adjustments based on established prices. These price adjustments are based on increases or decreases from an agreed-upon level in published or otherwise established prices of specific items or the contract end items.

(2) Adjustments based on actual costs of labor or material. These price adjustments are based on increases or decreases in specified costs of labor or material that the contractor actually experiences during contract performance.

(3) Adjustments based on cost indexes of labor or material. These price adjustments are based on increases or decreases in labor or material cost standards or indexes that are specifically identified in the contract.

FAR 16.203. These clauses—FAR 52.216-2 Economic Price Adjustment-Standard Supplies, FAR 52.216-3 Economic Price Adjustment-Semistandard Supplies, and FAR 52.216-4 Economic Price Adjustment-Labor and Material—can provide a mechanism for recovery if tariffs cause a price hike. Be aware, however, that there can be some big limitations in place, as well. For example, reviewing FAR 52.216-4, you will see:

- First, there are strict notice requirements (i.e., 60 days after the increase in "the rate of pay for labor (including fringe benefits)" or the increase "in unit prices for material shown in the Schedule").
- Second, the adjustment shall only apply to supplies or services that are delivered or performed *after* the adjustment. In other words, no retroactivity. That makes sense, though, because the CO is meant to promptly negotiate an adjustment upon receipt of the notice of the change from the contractor. It therefore pays to get your notice in ASAP.
- Finally, there is a cap. "The aggregate of the increases in any contract unit price made under this clause shall not exceed 10 percent of the original unit price." (Though Department of Defense contractors should be aware that they may have additional protections under the Defense FAR Supplement).

The biggest downside of the EPA, though, is that not a lot of contracts have it. For most contractors, a review of their contract is unlikely to uncover an EPA provision. In the absence of this type of clause, contractors will have to get creative and look for what other contract terms might be of assistance.

"Taxes" Clauses:

- FAR 52.229-3 Federal, State, and Local Taxes. This clause might offer some relief to certain contractors. Pursuant to this clause, a contract price can be increased to cover an "after-imposed Federal tax," defined as "any new or increased Federal excise tax or duty … that the Contractor is required to pay or bear as a result of the … administrative action taking effect after the contract date." (In this context, "contract date" means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification). This includes tariffs imposed after the contract date.

To avail itself of the benefits of this clause, a contractor must act promptly to provide notice to its CO, and the contractor will also need to "warrant[ ] in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise." Beware: Taxes imposed after bid/proposal submission but *before contract award* will not be considered newly imposed, especially in the construction context.

- FAR 52.229-6 Taxes-Foreign Fixed-Price Contracts. For those contractors performing services or supply contracts outside the U.S., they may be able to avail themselves of this clause, which is similar to 52.229-3, but applies in lieu of that clause when the contract involves furnishing supplies or performing services outside the U.S.

"Excusable Delay"/Default Clauses: These clauses won't compensate a contractor for the increased costs it incurs. But contractors may be able to invoke these clauses to avoid the blame for delays arising from tariff-related supply shortages. At the very least, that will prevent the contractor from being terminated for default as a result of delays, if not get the contractor days (if not dollars) added to the subject contract. As there are different excusable delay/default clauses for different kinds of contracts, this is another situation in which the contractor must look at its specific contract to see what clause is applicable.

Let's look at FAR 52.249-10(b) (for use in solicitations and contracts for fixed-price construction contracts over the simplified acquisition threshold), for example. It provides that a contractor cannot be terminated for default if "[t]he delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor." That includes, among other things "[a]cts of the Government in either its sovereign or contractual capacity." (Note, however, that a

contractor needs to provide notice of a delay within 10 days of the beginning of the delay to take advantage of this safe harbor). Similar language is included in FAR 52.249-9(c) (solicitations and contracts for fixed-price research and development over the simplified acquisition threshold); FAR 52.249-8(c) (solicitations and contracts for fixed-price supply and service over the simplified acquisition threshold); FAR 52.212-4(f) (in solicitations and contracts for commercial products or commercial services); FAR 52.249-14(a) (in cost-reimbursement solicitations and contracts for supplies, services, construction and research and development, time and material contracts, and labor-hour contracts).

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Moving forward, contractors should consider what they can do to lessen the impacts of these tariffs, including making changes to supply chains where possible, or decreasing reliance on certain products or materials, if at all feasible. Contractors should also review solicitations for upcoming target contracts very carefully. If interested in pursuing an opportunity where the solicitation does not include an EPA, the contractor should raise the issue with the CO and/or source selection team to see if they will add one. Contractors should be aware that, if the agency does not agree to add the clause, the contractor will not be able to invoke the clause and may be limited in the ability to recover in future. Contractors should therefore make sure that all future bids/proposals take into account the new tariffs; they should not count on getting modifications or adjustments later. Finally, contractors should conduct a detailed review of their subcontracts and think about what adjustments need to be made to protect them in this new environment.

Miscellaneous—In addition to the above, smart contractors should also consider the miscellaneous issues listed below, which may arise from the EOs and DOGE initiatives already in place or arise due to future EOs or initiatives.

Subcontract Review and (if Possible) Proactive Modification: For prime contractors, now would be a good time to review executed subcontracts to ensure that they contain strong termination for convenience and suspension/stop-work order clauses. If they do not, it might be time to try and modify those subcontracts, or at least to start brainstorming with legal counsel about what to do if suspended or terminated.

Subcontractors should also be reviewing subcontract terms—with a particular eye towards anything having to do with changes, suspensions, and terminations—and preparing for what might be coming down the road.

Templates for future subcontracts should also be reviewed and—if necessary—modified, keeping in mind the new world we live in and the increased importance of having suspension and termination clauses that are as tight as can be. Tweak your dispute resolution provisions as needed as well.

Issues Relating to Federal Employee Layoffs: Impacts on Performance. Given the large number of Government employees recently terminated from their jobs, it is entirely possible that agency layoffs could impact a contractor's ability to perform a contract. For example, the contractor could arrive on-site at a federal facility only to find that there is no one there to let them in. Or massive layoffs at an agency could result in a logjam of agency work, thus delaying security badging or the agency's responses to contractor's requests for information, etc. Or a new CO, assigned to a project after the former CO's employment was terminated, could interpret a contract differently and direct a contractor to proceed with performance in a manner or using means the contractor did not plan on. To the extent a contractor is, as a result of these things, forced to incur costs that it had not anticipated, or suffer delays or disruptions to its performance, the contractor may have a basis for an REA or claim, separate and apart from any suspension or termination issues. Contractors should watch out for these things and consult with a legal professional if they occur.

Ensuring Continuity/Confirming POC. Given that many Government employees have been or may soon be terminated, contractors would be wise to be proactive about confirming the continued employment status of current points of contact (POCs) and, if there has been turnover, seeking out

new POCs at contracting offices, the SBA, etc. Contractors should get phone numbers and emails for higher-ups if necessary. They should reach out to see if there are alternate or backup POCs within the contracting office(s) relating to their contract(s). Contractors should plan ahead, so that they are not left without any clue as to whom to speak to about issues that arise on their contracts.

Key Takeaways—In conclusion, though we are living through uncertain times, there are FAR provisions and general precepts of Government contracts law to help guide contractors through these unchartered waters. Smart contractors will stay on top of new developments, maintain an open dialogue with their legal teams, and keep the following "best practices" in mind in relation to the topics covered herein as well as last month's installment:

- Check emails and alerts several times a day. Act immediately if you receive a notice of suspension/stop-work order or a notice of termination.
- Double check that agency actions are proper and consistent with law. Raise the issue when agencies cite the wrong contract clauses. Push back on unjustified terminations and improper suggestions regarding "no-cost" settlements.
- If you are a prime, manage your subcontractors (i.e., suspend or terminate your subs) as appropriate, and in accordance with the terms of your subcontract, as soon as you receive any notice of suspension/stop-work order, or notice of termination. Mitigate the costs incurred post-termination or during any suspension period or period of work-stoppage.
- If you are a subcontractor, work cooperatively with your prime to make sure you can recover costs incurred.
- Track, segregate, and document all costs associated with suspensions and terminations, and keep an eye on your deadlines to seek suspension or termination costs.
- If you are not getting paid for invoices that were properly submitted for work undisputedly satisfactorily performed, and there is no relief on the horizon, file a claim.
- If federal employee layoffs are impacting your ability to perform, raise the issue, and consider an REA or claim; segregate and track costs, and provide appropriate notice.
- Be wary of signing modifications with waiver language.
- Be proactive! Stay informed! Seek legal assistance when you need it. You likely need it earlier than you think you do.
- And, last but not least—stay calm, preserve your energy, and act deliberately and with purpose to protect your company and ensure recovery of the monies owed to you. This is going to be a marathon and not a sprint. But you can get through it!

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