



U.S. Small Business
Administration

**U.S. Small Business Administration
Office of Government Contracting
March 11, 2020**

Frequently Asked Questions (FAQs) guidance on the impact of the COVID-19 (Coronavirus) Outbreak for small businesses performing on federal procurement contracts.

The below FAQs were prepared to address concerns a small business performing on federal contracts may have related to the impact of the Coronavirus. The U.S. Centers for Disease Control and Prevention (CDC) continues to remind the nation that the risk to the average American remains low. Health and government officials are monitoring the spread of the Coronavirus around the globe, including in the United States. With that noted, the CDC offers [the most up-to-date information on COVID-19](#). Businesses are encouraged to examine their preparedness for maintaining their ability to perform on federal contracts.

The below FAQs are based on what is currently known. SBA's Office of Government Contracting will post updates to these FAQs at [Office of Government Contracting](#).

1. What is the Coronavirus and where can I find more information on the Coronavirus disease?

The U.S. Centers for Disease Control & Prevention (CDC) maintains that the risk to the average American remains low. Visit the [CDC's website for additional guidance](#).

2. What if I am unable to fulfill the Federal government contract awarded to me because of the Coronavirus?

Your first obligation as a prime contractor on a Federal government contract is to complete performance on that contract. If you do not perform at a satisfactory level on a Federal government contract, the contracting officer may have to terminate your firm for non-performance. Should your firm be terminated – for convenience or default – on a Federal government contract, it is possible you may not receive another Federal contract due to documented poor past performance.



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For any potential performance interruptions, contractors should review their contracts to see what, if any, latitude or remedy for performance delays are available. While most commercial contracts have a *force majeure* clause that excuses performance under extreme circumstances, including pandemics, government contracts do not typically utilize this kind of commercial language. Instead, contracts usually contain Federal Acquisition Regulation (FAR) and other agency-specific regulations. Here, some cost-reimbursement, time-and-material, and labor-hour government contracts contain **FAR Clause 52.249-14 – Excusable Delays**. This FAR clause, if inserted into the contract, provides that the Contractor shall not be in default because of any failure to perform if the failure arises from causes beyond the contractor’s control. Such circumstances include:

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 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.

Notably, the government still reserves the right to terminate the contract for convenience if there is a delay in contractual deliverables to the government subject to the clause above.

Further, all Federal government commercial contracts should contain **FAR Clause 52.212-4(f)**, which provides that the contractor shall be liable for default unless non-performance 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.

The contractor shall notify the contracting officer, or in the case of a subcontractor – the Prime’s contracting officer, **in writing as soon as it is reasonably possible** after the commencement of any excusable delay. Providing official notification will set forth



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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.

Contractors should take note that *this clause requires contractors to notify the contracting officer in writing “as soon as it is reasonably possible”* and mitigate any potential impact.

With or without this clause, contractors would be wise to be in frequent communication with their government counterparts to set expectations and develop a plan.

For small business concerns, find more information on planning for and responding to the Coronavirus disease: [Current CDC Business Guidance](#).

3. What happens if government worksite or personnel is unavailable, making it difficult or impossible to fulfill my Federal government contract?

Contractors should communicate in advance with agencies and determine the effects if it is possible that government employees will not be at their worksites and not be able to supervise a contract properly. It is best to complete tasks that may be done without government guidance and continue to attempt to reach the point of contact on the contract. Contractors should not make significant changes to schedule, scope, deliverable, or cost without formal approval to do so.

Note: Contractors may also be entitled to wind down and startup costs if performance is not possible due to the government’s unavailability.

4. What if I’m a subcontractor on a Federal contract? How are subcontracts impacted?

Contracts between a Prime contractor and its subcontractor(s) are considered commercial contracts. Subcontractors are encouraged to review agreements with their Prime 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



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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.

5. Who, in SBA, can I contact if I have questions regarding the impact of the Coronavirus on my Federal contract?

An SBA Procurement Center Representative (PCR) is an excellent resource to address questions regarding the impact to a contract. In addition to contract questions, the PCR may be able to address – or will refer you to someone who can answer – issues regarding small business size standards, certificates of competency, and subcontracting. The main mission of the PCR is to assist small businesses win federal contracts through advocacy and access. PCRs review many federal acquisition and procurement strategies before they're announced. This enables them to influence opportunities that should be set aside for small businesses. PCRs also conduct market research, assist small businesses with payment issues, provide counseling on the contracting process, and more. Visit the [PCR Directory online](#).

8(a) firms should contact their Business Opportunity Specialist (BOS) or contact their closest [SBA District Office](#).