Transition – A Presidential Change Update

February 2025

Best Practices for Navigating Contract Disruptions Under the New Administration

Key Notes:

- The series of executive orders (EO) and related actions by the new Trump administration have drastically impacted federal contracts and grants, leading to stop work orders, suspensions and terminations for many contractors.
- To protect their interests, contractors should take proactive steps, such as maintaining open communication with contracting officers and thoroughly documenting any cost or contract performance changes resulting from EO enforcement.

The second Trump administration wasted no time issuing EOs upon entering office on January 20, 2025. Within weeks, enforcement of the EOs and the policies implemented by incoming agency leadership and the new Department of Government Efficiency (DOGE) brought sweeping changes that fundamentally altered federal contracts and grant assistance. For example, EO 14169, "Reevaluating and Realigning United States Foreign Aid," resulted in stop work orders for many Department of State contracts and nearly all USAID contracts. While many of these EOs and policies face legal challenges nationwide, contractors need practical solutions to navigate the impacts on their contracts, including suspension and stop work orders and terminations. Below, we outline best practices to protect contractor interests in these unprecedented times.

Review Contract Terms

Contractors should review their contracts to determine which clauses apply to the agency's orders and direction before taking any action. Many contracts include standard FAR clauses that permit the government to issue stop work orders (FAR 52.242-15), suspension of work orders (FAR 52.242-14), or terminate the contract for the government's convenience (FAR 52.249-2). Understanding these clauses is essential, as the remedies under each differ.

Determine Contract Status

Contractors should clarify how agency directives affect their specific contract. If the directive is unclear, they should contact their contracting officers to determine whether it constitutes a stop work order, suspension of work order, notice of termination, or another directive pursuant to the terms of the contract. This holds true even if an agency indicates that they expect suspensions or terminations. Contractors should not take any action (or stop work) unless explicitly ordered by the contracting officer or another authorized official. A common mistake contractors could make during this time is drawing conclusions based on political developments or media coverage. The contracting officer should always be considered the authoritative source regarding contract status.

Mitigate Costs

Upon receiving notice of suspension, a stop work order, or termination, contractors must take immediate steps to mitigate costs. Depending on contract status, contractors may have an affirmative duty to do so (e.g., in the case of contract termination). Key cost-mitigation efforts include relaying the government's order to subcontractors, canceling supply orders, terminating leases for equipment used solely for contract performance, and reallocating employees to other contracts or activities when possible (and considering layoffs or furloughs where it is not possible). However, in cases of suspension or stop work orders, contractors must avoid actions that could materially diminish readiness for resuming performance. Those who take affirmative steps to limit costs resulting from the agency's order will be in a stronger position when seeking remedies.

Document Everything

Contractors should meticulously document any additional costs incurred due to stop work or suspension of work orders. They should also track cost-mitigation efforts and note why certain costs could not be mitigated. This includes maintaining organized records of receipts, lease agreements, and any other documentation supporting cost recovery from the government. Additionally, communication with the contracting officer should be documented to create a clear record of actions taken or not taken by the contractor.

Open Communication with Contracting Officer

Contractors should maintain regular communication with their contracting officers to receive critical updates on contract resumption or termination. This also provides an opportunity for contractors to put the government on notice of their intent to exercise recovery rights. The process will vary based on contract status. Contractors may need to submit requests for equitable adjustment (REA), claims or termination settlement proposals (TSP) to recover delay and termination costs.

Consult an Attorney

Given the immediate and drastic changes stemming from the White House, DOGE, and agency leadership, contractors may feel overwhelmed. When necessary, engaging experienced government contracts counsel is crucial. Our Government Contracts lawyers have the requisite experience advising contractors through uncertain periods, preparing REAs, claims, and TSPs to maximize recovery.

Our Government Contracts group will continue to monitor developments from the new administration that impact federal contractors.

FOR MORE INFORMATION

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