



DEPARTMENT OF THE ARMY
US ARMY MEDICAL RESEARCH ACQUISITION ACTIVITY
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MCMR-AAP-A
MEMORANDUM FOR SEE DISTRIBUTION

15 October 2009

SUBJECT: Procurement Advisory Notice (PAN) 10-01
Class Deviation to the DFARS for Continuation of Essential Contractor Services

1. Introduction. This Memorandum establishes Command policy and guidance on the continuation of essential DoD contractor services during crises.

2. Background.

a. Existing Department of Defense Instruction (DoDI) 3020.37, *Continuation of Essential DoD Contractor Services During Crises*, requires the Department to provide reasonable assurance of the continuation of essential services provided by contractors.

b. Contractors are an essential part of this command. Today's changing threat environment has increased the need for continuity of operations capabilities and plans that enable agencies to continue their essential functions during times of crises and emergencies. The Director of Defense Procurement and Acquisition Policy (DPAP) has authorized Class Deviation 2009-0010 until this additional language is incorporated into the Defense Federal Acquisition Regulation Supplement (DFARS) or until otherwise rescinded. The purpose is to ensure consistency in continuation of essential functions during crises and emergencies. Class Deviation 2009-0010 appears as Enclosure 1. The deviation contains the scope, definitions, policy, clause prescription, and the Continuation of Essential Contractor Services clause.

3. Effect.

a. Contracting Officers are authorized to use contract clause 252.237-70XX, Continuation of Essential Contractor Services, in solicitations and contracts that are identified by an organization as having essential contractor services which support mission essential functions. If an award or part of an award is designated as mission essential, the Contractor shall have a plan after award of the contract or incorporation of this clause in a contract by modification, for continuing the performance of services identified as essential.

b. The Contractor plan must identify provisions made for the acquisition of necessary personnel and resources for the continuity of operations for up to 30 days or until normal operations can be resumed.

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c. The plan must address, at a minimum,—challenges associated with maintaining contractor essential services during an extended period of crisis; the time lapse associated with the initiation of the acquisition of necessary personnel and resources and their actual availability on site; the components, processes, and requirements for the identification, training, and preparedness of personnel who are capable of relocating to alternate facilities or performing work from home; any established alert and notification procedures for mobilizing identified “essential contractor service” personnel; and the approach for communicating expectations to contractor employees regarding their roles and responsibilities during a crisis.

4. Procedure. If an organization’s Commander or Director determines an award or part of an award is “mission essential”, clause 252.237-70XX, Continuation of Essential Contractor Services, will be included in the solicitation and award. If an existing award is determined to include “mission essential functions”, the award shall be modified to include said clause. The Contractor will then have to provide a plan for the continuation of essential functions as described herein.

5. Point of Contact. Anthony J. Petrore, Procurement Analyst, Policy Branch, U. S. Army Medical Research Acquisition Activity, 301-619-2260 or email at anthony.petrore@us.army.mil.

Encl



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Enclosure 1

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Class Deviation 2009-00010

CONTINUATION OF ESSENTIAL CONTRACTOR SERVICES

Subpart 237.XX- CONTINUATION OF ESSENTIAL CONTRACTOR SERVICES

237.XX00 Scope.

This subpart prescribes procedures for the acquisition of essential contractor services which support mission essential functions.

237.XX01 Definitions.

As used in this subpart-

(1) "Essential contractor service" means a service provided by a firm or individual under contract to DoD to support mission essential functions, such as support of vital systems, including ships owned, leased, or operated in support of military missions or roles at sea; associated support activities, including installation, garrison, and base support services; and similar services provided to foreign military sales customers under the Security Assistance Program. Services are essential if the effectiveness of defense systems or operations may be seriously impaired by the interruption of these services.

(2) "Mission essential functions" means those organizational activities that must be performed under all circumstances to achieve DoD component missions or responsibilities. Failure to perform or sustain these functions would significantly affect DoD's ability to provide vital services or exercise authority, direction, and control.

237.XX02 Policy.

Although the excusable delays and termination for default clauses generally relieve contractors from delay and default

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liability when a failure to perform arises from causes beyond their control, contractors providing services designated as essential contractor services by a DoD component are expected to use their best efforts to continue providing such services, in accordance with the terms and conditions of their contracts even during periods of crisis.

237.XX03 Contract clause.

Use the clause at 252.237-70XX, Continuation of Essential Contractor Services in solicitations and contracts for services that are in support of mission essential functions.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.237-70XX, Continuation of Essential Contractor Services.

As prescribed in 237.XX03, use the following clause:

CONTINUATION OF ESSENTIAL CONTRACTOR SERVICES (Aug 2009)

(a) The Contracting Officer has identified all or a portion of the contractor services performed under this contract as essential contractor services in support of mission essential functions. The contractor-provided services that have been determined to be essential contractor services in support of mission essential functions are listed in attachment __, Mission Essential Contractor Services, dated _____.

(b) The Contractor shall have a plan after award of this contract or incorporation of this clause in a contract by modification, for continuing the performance of essential contractor services identified in (a) above during a crisis.

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(1) The Contractor shall identify in the plan provisions made for the acquisition of necessary personnel and resources, if necessary, for continuity of operations for up to 30 days or until normal operations can be resumed;

(2) The plan must, at a minimum, address—

(i) Challenges associated with maintaining contractor essential services during an extended event, such as a pandemic that occurs in repeated waves;

(ii) The time lapse associated with the initiation of the acquisition of necessary personnel and resources and their actual availability on site;

(iii) The components, processes, and requirements for the identification, training, and preparedness of personnel who are capable of relocating to alternate facilities or performing work from home; and

(iv) Any established alert and notification procedures for mobilizing identified "essential contractor service" personnel; and

(v) The approach for communicating expectations to contractor employees regarding their roles and responsibilities during a crisis.

(c) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption. In the event the Contractor anticipates not being able to perform due to any of the causes enumerated in the excusable delay clause of this contract, the Contractor shall notify the contracting officer or other designated representative as expeditiously as possible and use its best efforts and cooperate with the Government in the Government's efforts to maintain the continuity of operations.

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(d) The Government reserves the right in such crisis situations to use federal employees of other agencies or contract support from other contractors or to enter into new contracts for essential contractor services. Any new contracting efforts would be conducted in accordance with OFPP letter, "Emergency Acquisitions" May 2007 and FAR and DFARS Subparts 18 and 218 respectively or any other subsequent emergency guidance issued.

(e) This clause shall be included in subcontracts for the essential services.

(End of Clause)