

Questions and Answers related to Contract services during the COVID-19 Pandemic

Q1. What if I am unable to fulfill the contract awarded to me because of the Coronavirus?

A1. You are obligated to perform your contract. If you do not perform at a satisfactory level, the contracting officer may take action to remedy the situation up to and including termination of your contract for non-performance. The Federal Acquisition Regulation (FAR) and Library regulations address performance issues during the COVID-19 pandemic.

Some Library contracts are based on labor-hours and contain FAR Clause 52.249-14 – Excusable Delays. This FAR clause provides that the Contractor shall not be in default because of any failure to perform if the failure arises from causes beyond the control and without the fault or negligence of the contractor. The Library may terminate the contract for convenience if there is a delay in contractual deliverables to the government to enable the Library to secure the goods or services elsewhere.

All Library contracts for commercial goods and services contain FAR Clause 52.212-4(f), which provides that the contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the contractor and without its fault or negligence. This includes epidemics, quarantine restrictions, strikes, and other exceptional circumstances. The contractor must shall notify the contracting officer, in writing, as soon as it is reasonably possible after the commencement of any excusable delay. The notice must “set forth 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.”

This clause requires both notice and efforts to mitigate any potential impact. Maintain frequent communication with your Library contracting officer and/or contracting officer representative (COR) to set expectations and develop a plan.

Q2. What if I’m a subcontractor on a Library contract? How are subcontracts impacted?

A2. 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.

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Q3. What if the closure of Library buildings or the non-availability of Library materials or personnel make it difficult or impossible to fulfill my contract?

A3. On March 24, 2020, the Library restricted access to its buildings to individuals performing critical functions. If your work was impacted by those restrictions, assess the impact, complete tasks that may be done remotely or with materials on-hand, communicate with your contracting officer and contracting officer representative to establish a plan to perform to the maximum extent feasible under the contract including remote work. Identify any schedule or delivery modifications that may help ensure full performance. Do not make significant changes to schedule, scope, deliverable, or cost without formal approval in writing from a Library of Congress Contracting Officer to do so.

Q4. When this is all over, can the periods of performance be adjusted to shift everything so in essence no time is lost (for example, if the stop work order is in effect for 30 days do we modify the contract and shift everything 30 days so the maximum worked POP is not any different than it was before exclusive of the downtime)? Or will the lost time simply be lost by the stop work order? Will the Library automatically adjust all periods of performance to accommodate the time of stopped work?

A.4. The answer depends on the type of contract. Some contracts may be extended, others may enable the contractor to increase throughput once the stop work order is lifted, and some contracts cannot be effectively deferred. The Library will not automatically adjust periods of performance. Existing restrictions on fiscal year funding prevent extension in some cases.

Communicate with your contracting officer and COR, assess the impact, and establish a plan to perform to the maximum extent feasible under the circumstances. The contracting officer will evaluate contracts on a case-by-case basis to determine whether the periods of performance on contracts can be extended.

Q5. May we invoice for work that has been performed? For example, invoices under a firm fixed price contract that cover a month where the stop work order was issued on the 25th of the month?

A5. You may invoice the Library for all work that has been completed and accepted by the COR. You may not invoice for work or other costs unless they are explicitly covered by your contract.

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Q6. Due to the nature of my contract I will not be able to continue my work until the library opens back up for non-essential personnel. How can I address costs I incur as a result of the suspension of work?

A6. The contract clause 52.242-15 Stop-Work Order authorizes requires the contracting officer to modify the contract to make an equitable adjustment in the delivery schedule or contract price, or both, if the stop-work order results in an increase in the time required or costs allocable to contract performance and you assert your right to the adjustment within 30 days after the end of the period of work stoppage. Requests for equitable adjustment will be reviewed on a case-by-case basis. The Library does not guarantee payment for work performed after a stop work order has been issued.

Q7. Will the LOC pay for continued performance of services during the stoppage to retain staff dedicated to performance of contract obligations once the Order is lifted and work resumes? Will the Library continue to pay contractors for continued performance while the Library buildings are inaccessible?

A7. You will be paid for work performed before the stop work order was issued. If you are issued a stop work notice, then the Library will not pay for services that are not being rendered. We will consider equitable adjustments claimed under the terms of the contract. You will need to submit a request for equitable adjustment for any costs incurred after a stop work order has been issued. Requests for equitable adjustment will be reviewed on a case-by-case basis. The Library does not guarantee payment for work performed after a stop work order has been issued. If you are continuing performance offsite, the Library will continue to pay for work completed.

Q8. Will the Library consider return-to-work solutions that include measures for social-distancing as promoted by the CDC? If the work does not require team members to interact with each other, can the contractor propose a solution to provide for work stations a minimum of 6 feet apart in order to commence on-site work?

A8. At this time, access to Library facilities is restricted until further notice. Because the health and safety of Library employees, contractors and other visitors is our first priority, the Library is carefully and continuously monitoring information from the Centers from Disease Control and Prevention, local area health departments, and our Federal partners so that the Library can respond rapidly as conditions change regarding COVID-19 coronavirus.

The Library will consider contractor-proposed solutions to resume work on Library contracts. However, any solutions requiring access to Library buildings must be consistent with the Library's policies and restrictions on access to Library facilities. You should work with your contracting officer and COR on a feasible plan to resume on-site contract work safely.