



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS  
441 G STREET, NW  
WASHINGTON, DC 20314-1000

13 March 2020

Associated General Contractors  
Stephen E. Sandherr, CEO  
2300 Wilson Boulevard Suite 300  
Arlington, VA 22201-3308

Dear Mr. Sandherr,

Thank you for your concerns and letter dated 4 March 2020 titled , "Guidance on the Outbreak of the 2019 Novel Coronavirus (COVID-19).

USACE values all industry feedback, and I am particularly appreciative of your concerns with this emerging issue. USACE believes that each of our local contracting officers has been given the tools they need to address any contractual issues arising from COVID-19. USACE will follow the guidance provided by the Offices of the Secretary of Defense (OSD) and the Department of the Army regarding potential Novel Coronavirus contract impacts. We will continue to rely upon public health and OSD official actions to guide access to projects which will be communicated on a contract by contract basis as conditions might require.

For your reference, attached is the guidance we received. Once again, thank you for your interest and concern on this topic. Since the situation remains dynamic, we will remain fully engaged in Federal and OSD guidance and ensure that our contracting and construction offices stay apprised of the latest information.

A handwritten signature in blue ink, appearing to read "Christine T. Altendorf".

Christine T. Altendorf, P.E.  
Chief, Engineering and Construction



**DEPARTMENT OF THE ARMY**  
OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY  
ACQUISITION LOGISTICS AND TECHNOLOGY  
103 ARMY PENTAGON  
WASHINGTON DC 20310-0103

SAAL-ZP

MAR 12 2020

MEMORANDUM FOR SEE DISTRIBUTION

**SUBJECT: Deputy Assistant Secretary of the Army (Procurement) (DASA(P))  
Response to the Coronavirus Disease (COVID-19)**

Reference: Memorandum, Acting Principal Director, Defense Pricing and Contracting, 10 March 2020, subject: Planning for Potential Novel Coronavirus Contract Impacts

1. ODASA(P) recognizes the concerns related to the COVID-19 disease and its potential impact throughout the Army Contracting Enterprise. The global spread concerning the COVID-19 virus is rapidly evolving and may put many federal contractors at risk of missing contractual deadlines. The increased number of COVID-19 cases may impact a contractor's ability to perform in a timely manner and consequently endanger the U.S. Army mission.
2. As stated in the reference, communication between the Government and contractors is essential for workforce safety and mission continuity. Contracting Officers must assess each situation on a case-by-case basis. It is not the contracting officer's responsibility to determine whether the excuse of COVID-19 should apply or not.
3. Contractors should recognize that their contracts may contain clauses that would excuse performance delays including: Federal Acquisition Regulation (FAR) 52.249-14 (i.e., cost reimbursement and time and material contracts), FAR 52.249-8 (i.e., fixed price supply and service contracts), and FAR 52.212-4 (i.e., commercial contracts). Each of the aforementioned clauses share a special thread – a contractor should not be in default because of a failure to perform the contract if the failure arises beyond the control and without the fault or negligence of the contractor.
4. "Epidemics" and "quarantine restrictions" are also examples of causes beyond a contractor's control (FAR 52.249-14(a); FAR 52.249-8(c) and (d); FAR 52.249-9(c) and (d); and FAR 52.212-4(f)). These exceptions appear to consider circumstances such as the spread of the COVID-19 virus, which has been declared a public health emergency by U.S. authorities and subsequently resulted in global quarantine restrictions. If the failure to perform is caused by the default of a subcontractor and the cause of the default is beyond the control of both the contractor and subcontractor, contractors may be excused from liability for excess costs under FAR 52.249-14, FAR 52.249-8 and FAR 52.249-9. However, it may not apply under non-commercial contracts if the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule (FAR 52.249-14(b); FAR 52.249-8(d); FAR 52.249-9(d)).

SAAL-ZP

SUBJECT: Deputy Assistant Secretary of the Army (Procurement) (DASA(P))  
Response to the Coronavirus Disease (COVID-19)

Contractors also may not be entitled to relief if the contracting officer ordered the contractor to purchase the supplies from another source, and the contractor unreasonably failed to comply with that order (FAR 52.249-14). The commercial item clause does not address excess costs specifically but it does add a notice obligation.

5. The provisions mentioned above do not entitle the contractor to compensation. Non-compensable delays are delays for which the contractor is entitled to a time extension, but there is no entitlement to any additional monetary compensation. The federal government and contractor has no control over the non-compensable delay. Therefore, both parties assume their individual additional costs. The contractor absorbs its delay costs for being out on the project longer, and the federal government absorbs its costs by granting a time extension to the contractor and extending the contract.

6. To approve excusable delay provisions, contracting officers should carefully consider the circumstances of each case and ensure the contractor took reasonable steps to perform and provided notice as required.

7. In addition to the excusable delay provisions, the standard FAR changes clauses (e.g., FAR 52.243-1 or FAR 52.243-2) provide options for obtaining an equitable adjustment for increased work.

8. Heads of Contracting Activities and Senior Contracting Officials must keep the DASA(P) advised of significant COVID-19 related impacts to Army contracts and contract operations.

HAZLETT.STUAR Digitally signed by  
T.A.1230146817 HAZLETT.STUART.A.1230146817  
Date: 2020.03.12 13:48:24 -04'00'

Encl

Stuart A. Hazlett  
Deputy Assistant Secretary  
of the Army (Procurement)

SAAL-ZP

SUBJECT: Deputy Assistant Secretary of the Army (Procurement) (DASA(P))  
Response to the Coronavirus Disease (COVID-19)

DISTRIBUTION:

HEADS OF CONTRACTING ACTIVITIES:

U.S. ARMY MATERIEL COMMAND

U.S. ARMY MEDICAL COMMAND

U.S. ARMY CORPS OF ENGINEERS

NATIONAL GUARD BUREAU

RAPID CAPABILITIES AND CRITICAL TECHNOLOGIES OFFICE