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March 18, 2020

Russell Vought
Acting Director
Office of Management and Budget
Washington, D.C.

Emily W. Murphy
Administrator
U.S. General Services Administration
Washington, D.C.

Dear Acting Director Vought and Administrator Murphy:

I write requesting guidance to be issued from the Office of Management and Budget (OMB) and the General Services Administration (GSA) to all contracting officers with regard to the oversight of federal contracts during the national emergency relating to Coronavirus Disease 2019 (COVID-19).

Under the Federal Acquisition Regulation (FAR), contracting officers have the authority to enter into, administer, or terminate contracts on behalf of the federal government.¹ Although FAR includes several emergency guidelines with respect to acquisitions under a national emergency, it does not include provisions for contracting officers as it relates to overseeing contracts during a national emergency where work performance might be affected.

In a Memorandum issued March 10th, 2020 from the Office of the Under Secretary of Defense, Acquisition and Sustainment, contracting officers were strongly encouraged to engage with their Government program managers to determine what, if any, measures should be taken to ensure the welfare and safety of the total force, while ensuring mission continuity. Additionally, while most federal contracts include Default and Excusable Delay clauses, which would provide protections such as additional time to deliver services and goods due to causes outside of their control, it is unclear whether delays due to the COVID-19 response would be applicable.²

Given the need for a swift response as well as the wide variance across the federal government with how agencies are responding to COVID-19, guidance is needed from OMB and GSA to ensure contracting officers are able to implement full flexibilities of the contracts they oversee as well as ensure the contracting workforce can continue with its goal of mission fulfillment. This guidance should include, but not be limited to:

- Implementing maximum telework flexibilities;

¹ 48 CFR § 1.602-1

² 48 CFR § 52.249-14(a); 48 CFR § 52.249-8(c), 48 CFR § 52.212-4(f)

- The extent possible for imposition of a moratorium on invoking contract termination as a direct relation to the contractor's ability to provide service while following federal and/or CDC guidance in regard to COVID-19; and
- The extent possible to make determinations that federal contractors shall continue to receive payment if under excusable delay.

I am extremely concerned that terminating ongoing federal contracts will only contribute to the current economic decline and guidance from OMB and GSA regarding the above will help ensure the millions of federal contractors who execute the functions of the federal government on a daily basis can continue to do so without undue delays and inconsistencies due to lack of overarching guidance under this unprecedented national emergency.

Please contact Courtney Callejas in my office at 202-225-5136 or courtney.callejas@mail.house.gov if you have any questions and I look forward to your response.

Sincerely,



Jennifer Wexton
Member of Congress

CC: Federal Acquisition Regulatory Council