

Collins CIV Cathy

From: Collins CIV Cathy
Sent: Monday, April 05, 2010 10:04 AM
To: M_HQMC_MCFCS_Directors/Deputies; M_HQMC_MCFCS_Officer;
M_HQMC_MCFCS_Civilian; M_HQMC_MCFCS_Enlisted
Cc: M_HQMC_LB; Romano CIV Mark; Oliver CIV R. Kaye
Subject: APM 10-07 Continuation of Essential Contractor Services Procedures
Signed By: cathy.collins@usmc.mil

Attachments: ESSENTIAL CONTRACTOR SERVICES.pdf; Continuation of Essential Contractor Services Procedures.doc



ESSENTIAL
CONTRACTOR SERVICE



Continuation of
Essential Cont...

All,

BACKGROUND:

a. On 5 March 2010, DFARS Change Notification 20100305 added the new section DFARS 237.76 requiring contractors to continue providing essential contractor services during crisis situations. This new DFARS section includes definitions of Essential Contractor Service and Mission-Essential Functions (DFARS 237.7601), provides policy and procedures for ensuring the continuity of services in contracts containing essential contractor services (DFARS 237.7602), and requires insertion of a new clause DFARS 252.237-7023, Continuation of Essential Contractor Services, in solicitations/contracts for essential contractor services that are in support of mission essential functions (DFARS 237.7603).

b. In addition, shortly before the implementation of the DFARS change notification, OSD issued a memorandum, dated 26 February 2010 (forwarded by the attached DASN(A&LM) memorandum, dated 22 Mar 2010), which states requiring activities are requested to review proposed and existing contracted service requirements to determine those services critical to the support of mission essential functions and identify those services to the Contracting Officer.

POLICY:

a. For all new solicitations/contracts that include essential contractor services in support of mission essential functions, Contracting Officers shall comply with the policy and procedures in DFARS 237.76.

b. For existing contracts that include essential contractor services in support of mission essential functions, Contracting Officers shall ensure, at a minimum, the contract is in compliance with DoDI 3020.37.

c. As required by the attached OSD memorandum, dated 26 February 2010 (forwarded by DASN(A&LM) memorandum, dated 22 Mar 2010), requiring activities are requested to review proposed and existing contracted service requirements to determine those services critical to the support of mission essential functions and identify those services to the Contracting Officer

PROCEDURES: Follow the procedures outlined in the attached document, Continuity of Essential Contractor Services Procedures, to implement DFARS 237.76 and OSD memorandum, dated 26 February 2010, so that essential contractor services are continued during a crisis.

R/ cc

Cathy Collins
Policy and Process Team (LBP)
HQMC Contracts Division



DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
(RESEARCH, DEVELOPMENT AND ACQUISITION)
1000 NAVY PENTAGON
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MAR 22 2010

MEMORANDUM FOR DISTRIBUTION

SUBJECT: Continuation of Essential Contractor Services

Many services essential to support mission essential functions are acquired under contract. The attached Deputy Secretary of Defense memorandum of February 26, 2010, Continuation of Essential Contractor Services, reemphasizes requirements of the Federal Emergency Management Agency's Federal Preparedness Circular #65 "Federal Executive Branch Continuity of Operations (COOP)" and DoD Instruction 3020.37 "Continuation of Essential Services During Crises," for DoD components to provide reasonable assurances for the continuation of essential services provided by contractors during crisis situations.

Mission essential functions are those functions that must be performed under all circumstances to achieve missions or responsibilities. Essential contractor services are those contractor performed services that support mission essential functions.

To ensure that essential contractor services are maintained during a crisis situation, requiring activities are requested to review proposed and existing contracted service requirements to determine those services critical to the support of mission essential functions and identify those services to the contracting officer. Contracting officers shall use the clause at DFARS 252.237-7023-which supersedes the Class Deviation-in solicitations and contracts for services that are in support of mission essential functions.

A handwritten signature in black ink, appearing to read "D. F. Baucom", is positioned above the printed name.

David F. Baucom
RDML, SC, USN
DASN(A&LM)

Attachment:
As stated

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SUBJECT: Continuation of Essential Contractor Services

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SUBJECT: Continuation of Essential Contractor Services

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CONTINUITY OF ESSENTIAL CONTRACTOR SERVICES PROCEDURES

1. For any new solicitation/contract, the Contracting Officer shall:

a. Include in the acquisition planning documentation the elements in [DFARS PGI 207.105\(b\)\(20\)\(C\)](#), which are:

(1) The requirements of [Department of Defense Instruction \(DoDI\) 3020.37](#), Continuation of Essential DoD Contractor Services During Crises (per [DFARS PGI 207.105\(b\)\(20\)\(C\)](#)).

(2) Identification of whether contract services are likely to be performed in crisis situations outside the United States. If so, address operational plans and resources available to carry out these plans (per [DFARS PGI 207.105\(b\)\(20\)\(C\)\(1\)](#)). This should be conducted in conjunction with the requiring activity per OSD memorandum, dated 26 February 2010 (forwarded by DASN(A&LM) memorandum, dated 22 Mar 2010).

(3) Identification of which services have been declared so essential that they must continue during a crisis situation (per [DFARS PGI 207.105\(b\)\(20\)\(C\)\(2\)](#)). This should be conducted in conjunction with the requiring activity per OSD memorandum, dated 26 February 2010 (forwarded by DASN(A&LM) memorandum, dated 22 Mar 2010).

(4) Inclusion of technical evaluation criteria that evaluates the contractor's plan for continuity of essential services. At a minimum, the contractor's continuity plan must include the five elements outlined in clause [DFARS 252.237-7023\(b\)\(2\)](#) (per [DFARS PGI 207.105\(b\)\(20\)\(C\)\(3\)](#)).

(5) Inclusion of operational-specific contractor policies and requirements described in command operation plans, operation orders, or separate annexes (per [DFARS PGI 207.105\(b\)\(20\)\(C\)\(4\)](#)).

(6) A determination whether any services will become inherently Governmental during a time of crisis (per [DFARS PGI 207.105\(b\)\(20\)\(C\)\(5\)](#)). If so, contract language shall state:

(a) Whether any of the services are to be removed, either temporarily or permanently;

(b) Whether services will be removed upon occurrence of a triggering event (specified in the contract) or upon notice from the Contracting Officer that informs the contractor when its responsibility to perform affected duties will stop or restart; and

(c) The contractor is required to have a plan for restarting performance after the crisis ends.

(7) Whether the contingency plan requires military members to replace contractor employees during a crisis or contingency, and, if so, whether the contract will require the contractor to train military personnel to perform the contractor's duties (per [DFARS PGI 207.105\(b\)\(20\)\(C\)\(6\)](#)).

b. In accordance with [DFARS 237.7603](#), insert clause [DFARS 252.237-7023](#), Continuation of Essential Contractor Services, in a solicitation/contract that includes contractor essential services.

(1) The clause requires:

(a) Identification of the essential contractor services in a document titled Mission-Essential Contractor Services, to be provided as an attachment to the contract.

(b) The contractor to provide the Government with a written plan for continuing the performance of essential contractor services during a crisis. The clause also includes a list of elements that must be addressed in the contractor's plan.

(c) The contractor to notify the Government in the event the contractor anticipates not being able to perform any of the essential services and for the contractor to use its best efforts to cooperate with the Government in the Government's efforts to maintain continuity of operations.

(d) The contractor to segregate costs incurred in continuing performance of essential services in a crisis situation. The clause also requires the contractor to provide notification to the Contracting Officer of any increase or decrease in costs after continued performance was directed by the Contracting Officer.

(2) The clause protects the Government's right to use federal employees or contract support from other contracts to enter into new contracts for the essential services.

2. For existing service contracts, the Contracting Officer should:

a. Determine if the contract contains any essential contractor services, in support of mission essential functions, that must be continued during crisis situations. This should be conducted in conjunction with the requiring activity per OSD memorandum, dated 26 February 2010 (forwarded by DASN(A&LM) memorandum, dated 22 Mar 2010).

b. If a contract does require the continuity of essential contractor services during crisis situations, consider executing a bilateral modification to insert clause [DFARS 252.237-7023](#). If inserting this clause into a contract, the Contracting Officer shall work with the contractor to develop a written plan that ensures continuity of the essential services during crisis situations.

c. If it is not in the Government's best interest to insert clause [DFARS 252.237-7023](#) in an existing contract, ensure that at a minimum, the Government has a plan in place to ensure continuity of essential services in accordance with [DoDI 3020.37](#).

3. For any contract that includes essential contractor services, the Contracting Officer shall ensure that all appropriate clauses are included in the contract, including any of the clauses listed below. Even with a continuity plan in place, the Contracting Officer may invoke any of the following clauses to protect the Government's best interests during crisis situations:

a. "Changes" clauses at [FAR 52.243](#) – The Contracting Officer may unilaterally change the description of services to be performed, time of performance (i.e., hours of the day, days of the week, etc.), and place of performance of the services, and the contractor may be entitled to consideration.

b. Government Delay of Work at [FAR 52.242-17](#) – The contractor may be entitled to an adjustment (excluding profit) for any increase in the cost of performance of the contract caused by the delay or interruption.

c. Stop-Work Order at [FAR 52.242-15](#) – The Contracting Officer may require the contractor to stop all, or any part, of the work called for by the contract and the contractor may be entitled equitable adjustment in the delivery schedule or contract price or both.

d. Suspension of Work at [FAR 52.242-14](#) – The Contracting Officer may require the contractor to suspend, delay, or interrupt all or any part of the work of the contract for the period of time that the

Contracting Officer determines appropriate for the convenience of the Government and the contractor may be entitled equitable adjustment in the delivery schedule or contract price or both.

e. Termination clauses at [FAR 52.249](#) – The Contracting Officer may terminate performance of work under this contract in whole or in part if the Contracting Officer determines that a termination is in the Government’s interest and the contractor may be entitled to an equitable adjustment in the contract price.

f. Change Order Accounting at [FAR 52.243-6](#) - The Contracting Officer may require change order accounting whenever the estimated cost of a change or series of related changes exceeds \$100,000. The contractor, for each change or series of related changes, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work, both changed and not changed, allocable to the change. The contractor shall maintain such accounts until the parties agree to an equitable adjustment.

g. Excusable Delays at [FAR 52.249-14](#) - The contractor shall not be in default because of any failure to perform this contract beyond the control and without the fault or negligence of the Contractor.