

The Federal Contractors' Playbook: Managing Increased Costs From Tariffs and Domestic Material Demands

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Just two months into President Donald Trump's second term, contractors have been whipsawed by a flurry of executive orders, Department of Government Efficiency (DOGE) directives, and agency actions. This has brought an era of chaos, confusion, and uncertainty to the government marketplace as contractors endeavor to figure out what all of this means, day to day as they proceed with contract performance.

Companies (prime contractors, subcontractors, and supply chain vendors) under contract for federally funded construction projects have been challenged to source domestically produced iron and steel, construction materials, and manufactured products for incorporation into those projects. Now, with the imposition of tariffs on imported iron and steel products, construction materials, timber, and manufactured products (e.g., HVAC, plumbing, electrical, and communications, systems and components, textiles, furnishings, vehicles, etc.), the domestic supply chain for these products will inevitably be subject to upward price pressure. Contractors are therefore at risk of seeing their cost of performance exceed the contract price. What can they do to protect themselves from increased risk of loss stemming from these upward price pressures?

Solicitations and Contracts – Review and Understand Key Provisions

For newly issued solicitations, and before offers are submitted, consider submitting one or more questions to the agency, seeking clarification or even change to one or more contract terms and conditions. For example, if the contract type is designated as fixed price, consider asking the agency to amend the solicitation to make it a fixed price with economic adjustment type of contract, and specify adjustment based on actual labor and material costs. See FAR 16.203-1(a)(2), FAR 52.216-4.

If you have project offers under consideration, but no award has yet been announced, now would be a good time to review the solicitation terms and conditions to determine how, if at all, you can pass along to the government (or to your customer) future cost increases stemming from market pressures (e.g., supply, demand, taxes, tariffs, import duties, shortages, and such). As between you and your customer — who bears the risk of such increases? For federally funded projects, there will be a schedule of Federal Acquisition Regulation (FAR), Defense Federal Acquisition Regulation Supplement (DFARS), and other agency supplemental contract clauses that may speak to allocation of pricing risks. For multiyear contracts, it is common to include a price escalation factor from one year to the next. Before an award is announced, it may be prudent to consider submitting a revised offer in an effort to reallocate price risk. The solicitation likely will inform you as to the process for submitting a revised offer.

For contracts already awarded, look to the contract terms, conditions, and flow-down of federal contract clauses (FAR, DFARS and others, or 2 CFR 200 and agency supplements) to determine whether there is a path forward for claiming price increases stemming from tariff pressure or other market forces. Seasoned federal contractors are already familiar with the changes clauses and the disputes clause (FAR 52.243-X, and 52.233-1, respectively), both of which likely would be invoked to formally submit a request for equitable adjustment (REA) or formal claim under the Contract Disputes Act (CDA). Substantively, there may be a recovery theory rooted in FAR 52.229-3 Federal, State and Local Taxes, which allows for a price increase stemming from a post-award federal imposition of a new “duty,” no amount of which was previously factored into contractor’s offered pricing. FAR 52.229-3(c).

The contract may well include other contract clauses, terms, and conditions that directly or indirectly impact the question of whether the government or the contractor bears the risk of price increases. In these times of rapidly changing policies, carve-outs, and partial exemptions, this question should be considered early and often. The contractor should get comfortable with the possibility that it may have to formally assert its right to a price adjustment and be prepared to enforce that right as contemplated under the disputes clause.

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