

DFARS Case 2009-D017
Continuation of Essential
Contractor Services
Draft Interim Rule

PART 237—SERVICE CONTRACTING

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[SUBPART 237.76—CONTINUATION OF ESSENTIAL CONTRACTOR SERVICES

237.7600 Scope.

This subpart prescribes procedures for the acquisition of essential contractor services, which support mission-essential functions.

237.7601 Definitions.

As used in this subpart—

(1) “Essential contractor service” means a service provided by a firm or individual under contract to DoD to support mission-essential functions, such as support of vital systems, including ships owned, leased, or operated in support of military missions or roles at sea; associated support activities, including installation, garrison, and base support services; and similar services provided to foreign military sales customers under the Security Assistance Program. Services are essential if the effectiveness of defense systems or operations has the potential to be seriously impaired by the interruption of these services, as determined by the appropriate functional commander or equivalent.

(2) “Mission-essential functions” means those organizational activities that must be performed under all circumstances to achieve DoD component missions or responsibilities. Failure to perform or sustain these functions would significantly affect DoD’s ability to provide vital services or exercise authority, direction, and control.

237.7602 Policy.

(a) Contractors providing services designated as essential contractor services by a requiring activity shall be prepared to continue providing such services, in accordance with the terms and conditions of their contracts, during periods of crisis. As a general rule, the designation of services as essential contractor services will not apply to an entire contract but will apply only to those service function(s) that have been specifically identified as essential contractor services by the functional commander or equivalent.

(b) Contractors who provide Government-determined essential contractor services shall have a written plan to ensure the continuation of these services in crisis situations. Contracting officers shall consult with a functional manager to assess the sufficiency of the contractor-provided written plan. Contractors will activate such plans only during periods of crisis, as directed by the appropriate functional commander or equivalent.

(c) The contracting officer shall follow the procedures at PGI 207.105(b)(20)(C) in preparing an acquisition plan.

237.7603 Contract clause.

Use the clause at 252.237-7023, Continuation of Essential Contractor Services, in solicitations and contracts for services that are in support of mission-essential functions.]

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PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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[252.237-7023, Continuation of Essential Contractor Services.

As prescribed in 237.7603, use the following clause:

CONTINUATION OF MISSION ESSENTIAL FUNCTIONS (DATE)

(a) The Government has identified all or a portion of the services performed under this contract as essential contractor services in support of mission-essential functions. The contractor-provided services that have been

determined to be essential contractor services in support of mission-essential functions are listed in attachment ____, Mission-Essential Contractor Services, dated _____.

(b) The Contractor shall provide a written plan for continuing the performance of essential contractor services identified in (a) above during a crisis.

(1) The Contractor shall identify in the plan the provisions made for the acquisition of essential personnel and resources, if necessary, for continuity of operations for up to 30 days or until normal operations can be resumed;

(2) The plan must, at a minimum, address—

(i) Challenges associated with maintaining essential contractor services during an extended event, such as a pandemic that occurs in repeated waves;

(ii) The time lapse associated with the initiation of the acquisition of essential personnel and resources and their actual availability on site;

(iii) The components, processes, and requirements for the identification, training, and preparedness of personnel who are capable of relocating to alternate facilities or performing work from home;

(iv) Any established alert and notification procedures for mobilizing identified “essential contractor service” personnel; and

(v) The approach for communicating expectations to Contractor employees regarding their roles and responsibilities during a crisis.

(3) The Contractor shall maintain and update its plan as necessary and adhere to its requirements throughout the Contract term. The Contractor shall not materially alter the plan without the Contracting Officer’s consent.

(4) As directed by the Contracting Officer, the Contractor shall participate in training events, exercises, and drills associated with Government efforts to test the effectiveness of continuity of operations procedures and practices.

(c) In the event the Contractor anticipates not being able to perform any of the essential contractor services identified in (a) above during a crisis situation, the Contractor shall notify the Contracting Officer or other designated representative as expeditiously as possible and use its best efforts to cooperate with the Government in the Government's efforts to maintain the continuity of operations.

(d) The Government reserves the right in such crisis situations to use Federal employees of other agencies or contract support from other Contractors or to enter into new contracts for essential Contractor services. Any new contracting efforts would be conducted in accordance with OFPP letter, "Emergency Acquisitions" May 2007 and FAR and DFARS Subparts 18 and 218, respectively, or any other subsequent emergency guidance issued.

(e) *Changes.* The Contractor shall segregate and separately identify all costs incurred in continuing performance of essential services in a crisis situation. The Contractor shall notify the Contracting Officer of an increase or decrease in costs within ninety days after continued performance has been directed by the Contracting Officer, or within any additional period that the Contracting Officer approves in writing, but not later than the date of final payment under the contract. The Contractor's notice shall include the Contractor's proposal for an equitable adjustment and any data supporting the increase or decrease in the form prescribed by the Contracting Officer. The parties shall negotiate an equitable price adjustment to the contract price as soon as is practicable after receipt of the Contractor's proposal.

(f) This clause shall be included in subcontracts for the essential services.

(End of Clause)]

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