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FEATURE COMMENT: Prepare, Communicate, Document And Segregate—A Government Contractor's Guide To Addressing Performance Disruptions And Delays Related To COVID-19

The COVID-19 pandemic has had wide-ranging health, social and economic impacts. What started in December 2019 as a crisis constrained to Wuhan, China, has spread to every continent except Antarctica. All 50 U.S. states and the District of Columbia have confirmed cases of COVID-19 and, as of the time of publication, more than 44,000 cases of COVID-19 have been reported in the U.S. While governments and public health organizations attempt to contain the virus and develop a vaccine or treatment, millions of people across the world are being quarantined to avoid further spreading the virus. Non-essential international travel has been severely restricted, and many U.S. states and cities have imposed lockdowns and implemented other public health and safety measures, including prohibiting public gatherings. See Proclamation on the Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting Coronavirus, *www.whitehouse.gov/presidential-actions/proclamation-suspension-entry-immigrants-nonimmigrants-certain-additional-persons-pose-risk-transmitting-coronavirus-2/*. Conferences and other large public events have been cancelled, schools have closed, and many companies have encouraged or required employees to work from home. The Office of Management and Budget has directed federal agencies to "adjust operations and services to minimize face-to-face interactions," including the reduction of non-essential services and, in some cases, mandatory telework for federal employees. See Federal Agency Operational Alignment to Slow the Spread of Coronavirus COVID-19, *www.whitehouse.gov/wp-content/uploads/2020/03/M-20-16.pdf*. International shipping has declined as manufacturing in many countries—particularly China—has slowed.

In the modern global economy, these developments will have serious short-term (and likely long-term) impacts on all businesses, including Government contractors. Contractors must prepare for and mitigate the impacts of performance delays and business disruptions due to workforce illness, facility closures, travel restrictions, and domestic and international supply chain issues, among other threats. Prudent steps include assessments of continuity plans, workforce telecommuting policies, current insurance coverage, alternative suppliers, and the threats to performance and how to mitigate them.

Some business disruption mitigation considerations are unique to U.S. Government contractors. For example, contractors should:

- Review the contingency plans and directives of their customer agencies. See, e.g., Department of Homeland Security (DHS) Memo from the Chief Procurement Officer to the DHS Contractor Community, March 5, 2020, *beta.sam.gov/*;
- Update any applicable Mission Essential Contractor Services Plans required by Defense Federal Acquisition Regulation Supplement (DFARS) 252.237-7023 as necessary;
- Identify any other contract clauses requiring close coordination with Government customers in connection with any business disruptions (e.g., whether contracting officer approval is required to substitute a supplier or material) and implement plans for compliance;
- Identify any rated order requirements (and reaffirm those to suppliers); and
- Document all disruptions and mitigation efforts and segregate related costs.

Contractors should note that DFARS 252.237-7023 requires the contractor to notify the CO "as expeditiously as possible" if and when the contractor anticipates not being able to perform an essential service and to "use its best efforts to cooperate with the Government's efforts to maintain the continuity of operations." DFARS 252.237-7023(d)(2). This clause also requires the contractor to "segregate and separately identify all costs incurred in continuing performance of essential services in a crisis situation" and to "notify the Contracting Officer of an increase or decrease in costs within ninety days after continued performance has been directed by the Contracting Officer" with a proposal for equitable adjustment and supporting information. DFARS 252.237-7023(f).

We have summarized below some unique contract clauses, supply chain risks and employment issues Government contractors should consider and address in light of potential commercial and Government business disruptions the COVID-19 outbreak and response will precipitate. In all events, contractors should consider these topics and other guidance in light of specific contract terms and evolving circumstances.

Government Contract Clauses That May Provide Some Protection for COVID-19-Related Performance Delays and Government-Ordered or -Caused Work Stoppages or Interruptions—It is a Government contracting maxim to read your contracts. Although standard clauses exist in the FAR, it is important to review and understand which standard and unique clauses govern the performance at issue. Several standard FAR clauses may provide some protection to Government contractors faced with coronavirus-caused business disruptions, including FAR 52.249-14, Excusable Delays; FAR 52.242-15, Stop-Work Order; FAR 52.242-14, Suspension of Work; and the various changes clauses (FAR 52.243-1 through 52.243-4 and FAR 52.212-4). Each of these clauses has unique requirements, requires close coordination and communication with Government customers, and offers different types of potential relief.

Defensible Performance Delays Under the Applicable Excusable Delay Clause: An excusable delay defense is available in both standard commercial item and non-commercial item contracts for certain delays or non-performance. FAR 52.212-4(f); FAR 52.249-14. These clauses excuse delays arising solely from causes that are beyond the contractor's control. FAR 52.212-4(f); FAR 52.249-14. Note that, under the standard clause, a subcontractor's delay is not excusable if the contractor could have obtained the supplies or services from another source, the CO ordered the contractor in writing to purchase the supplies or services from the other source, *and* the contractor failed to comply with the order. FAR 52.249-14(b). The commercial clause requires the contractor to (i) notify the CO, in writing, of the excusable delay "as soon as it is reasonably possible after the commencement of the excusable delay, setting forth the full particulars"; (ii) "remedy such occurrence with all reasonable dispatch"; and (iii) notify "the Contracting Officer of the cessation of such occurrence." FAR 52.212-4(f). Providing notice to the CO and conducting discussions with, and obtaining buy-in from, the customer on how to handle the delay are best practices when seeking protection under either clause.

As relevant to the current and ever-growing business disruptions arising from COVID-19, both clauses identify "acts of the Government in either its sovereign or contractual capacity," "epidemics," and "quarantine restrictions," as examples of potential excusable delay. Itemized triggers qualifying for excusable delay do not mean, however, that the CO or any tribunal will always excuse contractor non-performance based on a claimed COVID-19 epidemic or quarantine restriction. Each claim for an excusable delay is evaluated on its facts, and the contractor has the burden of proving not only that the triggering event covered by the clause caused the delay but also that the delay was outside of its control. The boards of contract appeals have made clear that delays are not excusable if non-performance was in actuality the result of some reason other than the claimed epidemic or the contractor had the capability to overcome the effect of the epidemic or quarantine restrictions. *Tommy Nobis Ctr., Inc.*, GSBCA 8988-TD, 89-3 BCA ¶ 22,112 (finding no evidence that claimed influenza epidemic "was of long duration, or that it had an adverse effect on the volume of production"); *Brazier Lumber Co.*, ASBCA 18601, 76-2 BCA ¶ 12,207 (finding no excusable delay where supplies causing delay were available from other sources and obtaining them was not economically impractical); *Crawford Dev. & Mfg. Co.*, ASBCA 17565, 74-2 BCA ¶ 10,660 (manufacturer was without critical parts during time of claimed influenza epidemic); *Ace Elecs. Assocs., Inc.*, ASBCA 11496, 67-2 BCA ¶ 6,456 (denying excusable delay where contractor presented no evidence of which personnel were affected by influenza epidemic, whether absences in fact caused a delay and what efforts were taken to "keep the work going"); *Emco Metal Mfg. Corp.*, ASBCA

4983, 60-1 BCA ¶ 2,502 (denying appeal based on influenza epidemic that impacted certain key employees because evidence showed it was nevertheless possible for contractor to complete performance by contractual deadline). Boards will also consider other facts, such as the number of employees impacted and the average length of employee absences. See *Crawford*, 74-2 BCA ¶ 10,660 (recognizing that Tucson, Ariz., faced an influenza epidemic but holding that delay was not excusable where "several key employees" became ill but missed only an average of 2.5 days of work per week and no more than one employee was absent in any given week during delay). The U.S. Court of Federal Claims has reached similar conclusions. *Jennie-O Foods v. U.S.*, 580 F.2d 400, 405 (Ct. Cl. 1978) (no excusable delay for epidemic among subcontractor's turkey supply where there was "little evidence to support a finding of serious turkey disease" statewide).

Contemporaneously documenting how the excusable condition caused the delay and having real-time discussions with, and agreement from, the CO about its impacts during the crisis provide a much better path than seeking to defend against a default termination in after-the-fact litigation. Time extensions or terminations for convenience are potential remedies under the clause. Compensation is not available under the excusable delay clause, but an excusable delay may lead to the opportunity for additional compensation for accelerated performance. See *Pilcher, Livingston & Wallace, Inc.*, ASBCA 13391, 70-2 BCA ¶ 8,488; Cibinic, Nash and Nagle, Administration of Government Contracts ch. 6, § 1 (5th ed. 2006).

Potential Requests for Equitable Adjustments to Address Government-Directed Work Stoppages or Interference: Government contractors also should be vigilant to document Government actions or inactions related to the coronavirus outbreak that impact contract performance, to segregate any related costs, and to request equitable adjustment in delivery schedule, costs, or both, if permissible and capable of proof. Note that the DFARS includes its own request for equitable adjustment clause that requires the contractor to certify any such request that exceeds the simplified acquisition threshold. DFARS 252.243-7002. Relief may be available under one of the following clauses depending on the circumstances.

Government-Ordered Stop-Work and De Facto Stop-Work Orders. FAR 52.242-15, the Stop-Work Order clause, allows the CO to stop work "for a period of 90 days" and for any additional periods agreed to by the parties. FAR 52.242-15(a). Once an agency issues a stop-work order, the contractor must "immediately comply with the terms" of the order and "take all reasonable steps to minimize the incurrence of costs" related to the work covered by the order. Id. Contractors that receive a stop-work order may be entitled to an equitable adjustment if "[t]he stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of [the] contract." FAR 52.242-15(b)(1). The contractor must seek the adjustment no later than 30 days after the work stoppage ends. FAR 52.242-15(b)(2).

Even when the Government does not issue a stop-work order, its actions or inactions may result in a de facto stop-work order. Consider, for example, the contractor required to perform at a Government installation where the Government shuts down the installation due to concerns about the spread of the coronavirus. The contractor should be well aware of any agency contingency plans, notify the CO in writing of the impact on performance, and segregate any increased costs related thereto. When the condition is lifted, the contractor may be able to seek an equitable adjustment for the related time and/or cost impact.

Contractors should also review their contracts for any clauses related to denied access to Government facilities. For example, the NASA FAR Supplement contains clause 1852.7001, which permits the CO to deny contractor access to a NASA facility "for any reason" and requires the contractor to "exercise sound judgment to minimize unnecessary contract costs and performance impacts by, for example, performing required work off-site if possible or reassigning personnel to other activities if appropriate." 48 CFR § 1852.242-72(b). The clause contemplates a possible equitable adjustment of the contract performance or delivery schedule or consideration of "properly documented requests for equitable adjustment, claim, or any other remedy" available under the contract. Id. § 1842.242-72(d). The National Oceanic and Atmospheric Administration (NOAA) acquisition manual sets forth a similar clause, 1330-52.237-72 Contractor Access to NOAA Facilities, although the NOAA clause does not expressly provide for consideration of requests for equitable adjustment. See NOAA Acquisition Manual, pt. 1330-52.

Government-Caused Delays or Suspension. In connection with fixed-priced construction contracts, the CO may order the contractor to suspend, delay, or interrupt any or all of the work under FAR 52.242-14.

Unlike stop-work orders, suspension orders are not limited to 90 days, and contractors are not entitled to equitable adjustments unless the work is suspended "for an unreasonable period of time" and performance would not have otherwise been impacted. FAR 52.242-14(b). The contractor must assert the claimed amount in writing as soon as practicable after the suspension termination, and such amount must exclude any costs incurred more than 20 days before the contractor provided written notice of the act or failure to act causing the delay. FAR 52.242-14(c).

Contractors should also review their fixed-price contracts for FAR 52.242-17, Government Delay of Work. Under this clause, the contractor may be entitled to an adjustment of time or cost when the CO's act or failure to act delays or interrupts the work. Relief is not available under the clause "for any delay or interruption to the extent that performance would have been delayed or interrupted by any other cause ... , or for which an adjustment is provided or excluded under any other term or condition of the contract." FAR 52.242-17(a). As with FAR 52.242-14, the contractor must assert the claimed amount in writing as soon as practicable after the delay or interruption, and any claimed amount must exclude all costs incurred more than 20 days before the contractor provided written notification to the CO of the act or failure to act causing the delay. FAR 52.242-17(b).

Constructive and Other Changes to Contemplated Performance. The FAR contains various clauses that permit a contractor to seek an equitable adjustment when the Government changes directly or indirectly the time or place of performance, the time and place of delivery, the method of shipment, and other contractual specifications related to performance. The Government may issue such changes in response to the coronavirus and related disruptions. The requested adjustment may be either additive or deductive. It is important to review the specific changes clause in the applicable contract because each of the clauses provides a specified timeframe (typically within 30 days of the written order) by which the contractor must assert its right to any such adjustment. See, e.g., FAR 52.243-1(c); FAR 52.243-2(c); FAR 52.243-3(c); but see FAR 52.243-4 (d) (specifying 20 days).

Even if the CO does not issue a change order, the contractor may be entitled to an equitable adjustment if the Government's action or inaction constitutes a modification of the contract without a formal order (i.e., a constructive change). It is a best practice to notify the CO of the action or inaction that constitutes the change and the potential impact on contract performance and to seek direction on how to proceed. Any disputes shall be addressed under the contract's disputes clause. To obtain relief for changes, the contractor must establish a legal right to the change and prove the quantum. Accordingly, contractors should document the change and immediately begin to segregate the costs related to the changed work.

The Government Contract Supply Chain and the COVID-19 Butterfly Effect—As noted above, excusable delay and force majeure clauses may offer some protection to Government contractors unable to perform on schedule. But few rules have no exceptions. In this regard, many federal contractors and subcontractors hold Defense Priorities and Allocations System (DPAS) rated contracts. DPAS reprioritizes supply chain obligations in times of trouble and complicates the excusable delay analysis set forth above. Thus, if a federal contractor or subcontractor holds a rated contract or subcontract, further analysis beyond the excusable delay epidemic and quarantine provisions is necessary.

The Defense Production Act, 50 USCA § 4501, et seq. (DPA), authorizes DPAS—a Department of Commerce Regulation (15 CFR pt. 700) and system designed to ensure the timely availability of industrial resources necessary to the national defense and emergency preparedness. Under DPAS, certain "delegate agencies" have authority to place "rated orders" in support of authorized programs. FAR 11.602. A "rated order means a prime contract for any product, service, or material (including controlled materials) placed by a Delegate Agency under the provisions of DPAS in support of an authorized program and which requires preferential treatment." FAR 11.601.

DPAS also allows delegate agencies to issue "allocation orders." An allocation order allows delegate agencies "to control the distribution of materials, services, or facilities for a purpose deemed necessary or appropriate to promote the national defense." 15 CFR § 700.8. Through this authority, agencies can require persons to (1) "reserve materials, services, or facilities capacity in anticipation of the receipt of rated orders" and (2) "take or refrain from taking certain actions" (e.g., refrain from producing certain items or using certain materials, services, or facilities). Id. § 700.33(a)–(b). Agencies can also control how much of a material, service, or facility must be allotted to a specific use to promote the national defense. Id.

§ 700.33(c). The Government can use this authority to control distribution in the general civilian market, but there are severe restrictions on this authority. Id. § 700.32.

Of note, President Obama delegated DPA authority over "health resources" to the secretary of the Department of Health and Human Services by Executive Order 13603 that is still in effect, and HHS promulgated regulations to implement that authority. See 45 CFR pt. 101, et seq. The HHS regulations, titled the "Health Resources Priorities and Allocation System," significantly track the process set forth in the Commerce regulations and are "consistent with the guidance and procedures provided in other regulations that, as a whole, form the Federal Priorities and Allocations System." 45 CFR § 101.1. Most recently, on March 18, 2020, notwithstanding EO 13603, President Trump signed an "Executive Order on Prioritizing and Allocating Medical Resources to Respond to the Spread of COVID19," specifying "personal protective equipment and ventilators" as meeting the DPA criteria for priority and allocation and delegated authority to the HHS secretary to identify additional specific health and medical resources. See Executive Order on Prioritizing and Allocating Health and Medical Resources to Respond to the Spread of COVID19 (March 18, 2020). On March 23, 2020, President Trump issued a related EO delegating to the HHS secretary the authority under the DPA to prevent hoarding of health and medical resources necessary to respond to the spread of COVID19, and "to gather information about how supplies of such resources are distributed throughout the Nation." See Executive Order on Preventing Hoarding of Health and Medical Resources to Respond to the Spread of COVID19 (March 23, 2020).

DPAS establishes two levels of "order ratings," DX and DO. FAR 11.603. All DX ratings have equal priority and take precedence over DO-rated and unrated contracts (Government or commercial). 15 CFR § 700.14(b); 45 CFR § 101.34(b); FAR 11.603. Whether a contractor or subcontractor holds a rated order is typically apparent from the front page of the contract or subcontract. On Standard Form 1449, the rating information appears in Box 13, which answers both whether DPAS covers the prime contract and provides the rating assigned.

"Persons who receive rated orders must in turn place rated orders with their suppliers for the items they need to fill the orders." 15 CFR § 700.3(d); see also 45 CFR § 101.35(b) (corresponding HHS regulation). Thus, for example, "[i]f a person is in receipt of a DO-A3 rated order for a navigation system and needs to purchase semiconductors for its manufacture, that person must use a DO-A3 rated order to obtain the needed semiconductors." 15 CFR § 700.15(a). Significantly for contractors and subcontractors receiving rated orders and facing supply shortages, DPAS contains a series of mandatory acceptance, mandatory rejection, non-discrimination and timely response rules. Id. § 700.13; see also 45 CFR § 101.33. Scheduling conflicts with lower-rated and unrated orders do not provide a basis for rejection. 15 CFR § 700.13; see also 45 CFR § 101.33. Where a DPAS order relates to emergency preparedness, DPAS permits minimum times for acceptance or rejection as short as six hours where the hazard has occurred. 15 CFR § 700.13(d). Unsurprisingly, given its penalties, DPAS limits the use of rated orders to obtain greater quantities than needed or delivery at dates earlier than needed. Id. § 700.18; see also 45 CFR § 101.38. Contractors also cannot use DPAS to acquire certain specific items (e.g., raw copper materials, slag, etc.) or apply DPAS outside of the U.S. 15 CFR §§ 700.18(b), 700.55; see also 45 CFR § 101.38(b).

As relevant here, a contractor or subcontractor already holding a rated order must prioritize (if and as necessary to meet the contract schedule) the rated work over lower-rated Government work, unrated Government work or commercial work. Significantly, a prime contractor that issues a properly rated order to its subcontractor can require the subcontractor to hold the schedule even at peril to the subcontractor's lower-rated or unrated work. The failure to leverage DPAS in such a situation could impact the availability of an excusable delay or create other performance risks.

If a contractor holds a rated contract or subcontract and can meet the schedule despite supply chain impacts by adjusting delivery on lower-rated work, DPAS may require the contractor to do so. The failure to do so likely would not constitute excusable delay. Instead, the failure to reprioritize risks is a potential DPAS violation. "Willful violation" of the DPAS regulations can carry heavy fines and up to one year of jail time. 15 CFR § 700.74(a); see also 45 CFR 101.74(a).

Stated otherwise, if a contractor or subcontractor holds a rated order and suffers a supply chain impact, the contractor or subcontractor must use its scarce supplies as necessary to meet the rated contract obligations. If, however, the contractor cannot meet a

DPAS-rated order schedule deadline, the contractor or subcontractor "must notify the customer immediately, give the reasons for the delay, and advise of a new shipment or performance date." 15 CFR § 700.13(d)(3); see also 45 CFR § 101.33(d)(2). The law, in turn, requires nothing more of the Government (or higher-tier subcontractor) than payment for the goods or services it received. See *Kearney & Trecker Corp. v. U.S.*, 688 F.2d 780 (Ct. Cl. 1982). To be certain, the law does protect the contractor from claims for damages as to DPAS-displaced work, but DPAS does not compensate the contractor for the loss of its commercial work, etc. 15 CFR § 700.90; see also 45 CFR § 101.90 ("A person shall not be held liable for damages or penalties for any act or failure to act resulting directly or indirectly from compliance with any provision of this part, or an official action, notwithstanding that such provision or action shall subsequently be declared invalid by judicial or other competent authority.").

COVID-19-Related Employment Concerns for Government Contractors—One of the greatest impacts companies face due to the spread of the coronavirus is the health and safety of their own employees. On March 6, Arnold & Porter published *Pandemic Coronavirus: Practical and Legal Issues for Employers*, *www.arnoldporter.com/en/perspectives/publications/2020/03/pandemic-coronavirus-practical-and-legal*, which discusses general employment concerns related to coronavirus. This section focuses on some of the more unique issues facing Government contractors.

• *Maintaining Workforces:* Contractors must be prepared to resume performance as soon as a stop-work or suspension order ends. This means contractors should maintain their workforces to the maximum extent practicable or discuss plans with their Government customers to reestablish their workforces after the work stoppage ends.

• *Sick Leave:* Executive Order 13706, Establishing Paid Sick Leave for Federal Contractors, and its implementing regulations require contractors performing covered contracts to provide paid sick leave to their employees. This requirement applies to a variety of types of contracts, including those subject to the Service Contract Act. 29 CFR § 13.3; FAR 22.2110. Sick leave must accrue at a rate of at least one hour of paid leave per 30 hours worked on or in connection with the covered contract. FAR 52.222-62(c)(1). Contractors should review their sick leave policies to ensure compliance with these requirements if applicable.

• *Worker Adjustment and Retraining Notification (WARN) Act Notices:* Government contractors (and other companies) must ensure that they comply with state and federal WARN act requirements. The federal WARN Act 29 USCA §§ 2101–2109 generally requires employers with at least 100 employees who close plants or conduct mass layoffs to notify affected employees at least 60 days prior to closures or layoffs. 20 CFR §§ 639.2, 639.3. Many states have similar or even more onerous WARN statutes.

• *Telework:* Congress enacted the Telework Enhancement Act of 2010 to promote and manage telework for federal employees. 5 USCA §§ 6501–6506. That law does not apply to contractor employees. Contractors should review telework policies or consider creating such policies to maintain the maximum amount of flexibility and the ability to perform Government contracts in the event of facility closures, quarantines or similar restrictions. Establishing reasonable telework policies as a mitigation to any performance disruptions may be critical to justifying a delay as excusable or risk a tribunal viewing delays that could have been prevented through telework as the fault of the contractor. Contractors that allow employees to telework should implement measures to verify compliance with timekeeping requirements to avoid potential liability under the False Claims Act and other statutes. Of course, telework is not an option for many contracts, including classified work. To resolve any doubt, contractors should communicate with the CO about any telework questions and maintain the documentation of any guidance.

Adversity Begets Opportunities (with Their Own Risks) for Government Contractors—With COVID-19 on the rise and concerns rising about how to contain its spread, multiple federal, state, and local governments are scrambling to respond. Department of Health and Human Services agencies, including the Centers for Disease Control and Prevention and the National Institutes of Health, are looking at medications, diagnostic tests, and potential vaccines for immediate use and for the Strategic National Stockpile. DHS and the Federal Emergency Management Agency (FEMA) also have needs and may call on FEMA's prepositioned contracts. Recently, President Trump signed an Executive Order invoking DPAS for "health and medical resources needed to respond to the spread of COVID-19, including personal protective equipment and ventilators," and delegated authority to the secretary of health and human ser-

vices to identify additional specific health and medical resources to receive priority. See Executive Order on Prioritizing and Allocating Health and Medical Resources to Respond to the Spread of Covid-19 (March 18, 2020); 62 GC ¶ 75, in this issue.

Agencies (and others) may not know exactly what they need in order to respond to COVID-19, but whatever it is, they need it quickly. Contractors who are in a position to respond to these exigent needs may be able to take advantage of previously unavailable opportunities. Congress passed, and the president signed, an $8.3 billion emergency supplemental appropriations bill to address coronavirus. Because the president declared a national state of emergency, additional contracting flexibility is also available under FAR pt. 18. If a contractor's supply chain is such that it can provide what others cannot, it may be in a position to reap greater market share and profits, including through unsolicited proposals for items of which the Government may not be aware. Sole-source or limited competition awards may also be available. In addition to standard market research, Government agencies may also rely on the System for Award Management's Disaster Response Registry to find contractors that can help in the response.

Contractors should proceed with caution, however. As always, read your contract. Contractors should be sure that they can accept and comply with the terms and conditions the Government is requiring. This is especially important for companies that do not traditionally work with the Government, as the Government's terms and conditions differ from those in the commercial marketplace. A thorough and careful review of solicitation terms is equally important for experienced Government contractors, as coronavirus-related contracts may contain unique, non-standard requirements. For instance, at least one solicitation we reviewed included standard domestic preference clauses like FAR 52.225-6 (Trade Agreements Act) *and* also included non-standard supply chain provisions requiring a fully domestic supply chain.

While agencies learned from the Hurricane Katrina disaster and others before it, the acquisition workforce is still perceived as understaffed for emergency contracting. See *Disaster Contracting: FEMA Needs to Cohesively Manage Its Workforce and Fully Address Post-Katrina Reforms*, Government Accountability Office, GAO-15-783; 57 GC ¶ 302. In responding to these exigent procurement needs, contractors should be mindful that what is happening quickly now, "in the heat of the moment," will later be examined in minute detail once the current crisis is over. For example, Government auditors prepared over 550 reports regarding the over $10.6 billion in Hurricane Katrina procurement spending. These included 387 Defense Contract Audit Agency reports, 57 GAO reports, and 42 reports prepared by various agency inspectors general. See Waste, Fraud, and Abuse in Hurricane Katrina Contracts, H.R. Comm. on Gov't Reform (Minority Staff) Special Investigations Div. (Aug. 2006). In light of the history showing that periods of emergency Government contracting are often followed by periods of heightened enforcement (e.g., audits and investigations), contractors must be vigilant to maintain all records of contract negotiations, resolve any ambiguous requirements or obligations, and confirm the authority of their Government counterparts. Later reviews and investigations are likely, but potential disputes may be avoided or mitigated through early and continuous contractor diligence.

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