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# GOVERNMENT SHUTDOWN GUIDE CONTRACTOR RELIEF & REMEDIES UNDER FAR

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## PREFACE

On November 12, 2025, after forty-three days, the longest Federal Government shutdown in U.S. history came to an end. Approximately 900,000 Federal employees were affected, and countless Federal Government contractors suffered the loss of critical access to Government personnel and facilities and experienced delayed invoice processing and payments.

The 2025 shutdown was almost immediately followed by a short-lived partial Federal Government shutdown lasting four days from January 31 to February 3, 2026. The cause of this brief shutdown was Congress' failure to pass legislation to fund the Government for fiscal year 2026 before the expiration of the continuing funding resolution that kept the Government running after the record-breaking shutdown had ended. A major point of contention over the 2026 fiscal year appropriations legislation was funding for the Department of Homeland Security (DHS). Indeed, although Congress was able to pass legislation that opened the Government after the four-day shutdown, that 2026 fiscal year funding legislation included a short-term continuing resolution with respect to DHS that funded the agency for only two weeks. During that two-week period Congress failed to reach agreement over immigration enforcement reforms and so, on February 13, 2026 – shortly before the publication of this guide – DHS' funding lapsed. Consequently, for the third time in six months at least some part of the Federal Government shut down once again. As of this Guide's date of publication, funding for DHS has not yet resumed and, except for essential services like immigration and border enforcement, the agency remains shut down.

Whether the back-to-back Government-wide shutdowns and the targeted DHS funding carveout represent a new normal in Federal Government appropriations remains to be seen. Regardless, as Federal Government funding expiration deadlines approach, Government contractors should be prepared to quickly take steps to mitigate adverse consequences of Government-wide or Federal agency shutdowns. One key step toward that preparedness is having a familiarity with the Federal acquisition rules that are implicated by Government shutdowns and that provide remedies to Government contractors when shutdowns occur.

## INTRODUCTION

The protections and remedies that Federal Government contractors are entitled to when the entire Federal Government or a particular Federal Government agency shuts down or otherwise interrupts contract performance depend on the specific Federal Acquisition Regulation (FAR) clauses that are inserted into their contracts. Consequently, as Government funding deadlines draw near, Government contractors should review their contract clauses to determine what rights and remedies they might be able to avail themselves of in the event their performance is delayed or suspended by a full or partial Government shutdown.

Unfortunately, the protections and remedies under FAR are limited. For example, after a Federal Government shutdown commences, nothing in the FAR requires an agency to pop its doors open simply to take delivery of a contractor's products or services. Likewise, the Government is not required to pay for products or services it never actually receives. So, for example, when a service or maintenance contractor has to skip a routine or monthly service call because it cannot access the Government's facilities, its lost revenue may be not be recoverable even after the Government re-opens.

In other instances, a Government shutdown may not actually impede a Government contractor's performance, such as when a contractor performs in its own facilities and does not require access to Government personnel or a Government facility to perform. In those instances, absent a contrary instruction or order from the contracting officer or the agency, a Government contractor must continue performing under a fully or partially funded contract even if the Government's invoice processing and payments will be delayed, perhaps indefinitely, by the shutdown.

Lastly, although some FAR clauses prevent the Government from terminating a contract for default simply because a contractor is not able to perform when a Government shutdown occurs, the Government always retains its right to terminate a contract at any time for convenience.

Nevertheless, despite their limits, the FAR rules and corresponding FAR clauses do provide some measure of protection and several pathways to recoup at least some of the additional costs that Government contractors incur because of a shutdown. However, in order to recover these costs Government contractors have to meet deadlines for providing notice to the Government that they have incurred additional costs and for presenting the amount of their claims to the Government.

In this Guide, we briefly outline the relief, protections and remedies that may be available under the FAR to Government contractors that may help mitigate at least some of the adverse consequences of Government-wide or agency shutdowns. This Guide also describes the notice requirements that Contractors may have to comply with in order to receive the available remedies or relief and time limits that may apply to required Contractor notices and to Contractor claims for remedies.

One final note – although the FAR has undergone significant revisions under the “Revolutionary FAR Overhaul” (RFO) that was announced in August 2025, the model RFO deviations left the FAR rules that are relevant to Government-wide and agency shutdowns and that are discussed in this Guide largely untouched.

## I. Performance Extensions & Protections Against Default

### **Applicable FAR Clauses**

*52.249-8 Default (Fixed-Price Supply and Service)*

*52.249-9 Default (Fixed-Price Research and Development)*

*52.249-10 Default (Fixed-Price Construction)*

*52.249-6 Termination (Cost-Reimbursement)*

*52.249-14 Excusable Delays (Inserted In Cost-Reimbursement Contracts)*

As explained below, depending on which clause is inserted into the contract, a contractor may be entitled to the following remedies and protections that are found in the FAR's default, termination, and excusable delays clauses:

- Excuse from liability for any excess costs (FAR 52.249-8, FAR 52.249-9)
- Excuse from liability for damages, including liability for increased completion costs (FAR 52.249-10)
- Treatment of any termination as a termination for convenience (FAR 52.249-6, FAR 52.249-8, FAR 52.249-9, FAR 52.249-10)
- Right to continue with work in lieu of termination (FAR 52.249-10)
- An extension of time to complete work (FAR 52.249-10)
- Failure to perform deemed to be not a default (FAR 52.249-14)
- Revision of delivery schedule (FAR 52.249-14)

### **A. Relief From Performance Defaults and Liability For Government's Excess Costs**

If a Government contractor fails to deliver supplies or services on time or fails to otherwise perform under a contract within its specified time periods because of a Government shutdown, the default and termination clauses under FAR generally protect a contractor from claims that it has defaulted under the contract. These protections are important because contractors typically are deemed to be in default, and consequently will have their contracts terminated for default, if they fail to timely perform under their contracts and do not cure their failures within the cure periods under the default or termination clauses of their contracts. For contractors working under fixed-price contracts, the adverse consequences of terminations for default are further compounded because they also become liable for damages, including for increases in the Government's cost to complete work (FAR 52.249-10), or for excess costs that the Government may incur if the Government acquires the same or similar products or services from other sources (FAR 52.249-8, FAR 52.249-9). Lastly, some Government contracts may contain liquidated damage clauses that impose additional liabilities when the contracts are terminated for default.

Under the excusable delays clause (FAR 52.249-14) that is inserted into cost-reimbursement, time-and-material, and labor-hour contracts, a Contractor will be deemed not to be in default if a failure to perform is because of a cause beyond its control and without its fault or negligence. An example provided under the clause for such a cause is when it is the act of the Government in its sovereign or contractual capacity.

Similarly, under the default clauses for fixed price contracts (FAR 52.249-8, FAR 52.249-9, FAR 52.249-10) and under the termination clause for cost-reimbursement contracts (FAR 52.249-6), if the failure to perform under a contract is beyond the control, and without the fault or negligence, of the contractor – again, such as when the cause is an act of the Government in either its sovereign or contractual capacity – any termination of the contract shall be treated as a termination for convenience instead of a termination for default. In addition, a contractor will not be liable for damages, including liability for increased cost of completing work (FAR 52.249-10) and will not be liable for the Government’s excess costs if it acquires products or services from another source (FAR 52.249-8, FAR 52.249-9).

## **B. Extensions and Mandatory Delivery Schedule Revisions**

The default clause for fixed price construction contracts (FAR 52.249-10) and the excusable delays clause (FAR 52.249-14) also provide unique remedies to Government contractors that are not found in the other FAR termination and default clauses.

Specifically, under the default clause for fixed price construction contracts (FAR 52.249-10), when unforeseen delays are beyond the Contractor’s control, the Contractor’s right to continue will not be terminated as long as the Contractor notifies the Contracting Officer in writing of the causes of its delay within 10 days of the beginning of the delay. If the Contracting Officer subsequently decides an extension is warranted, the Contracting Officer may extend the time for completing work.

Similarly, under the excusable delays clause (FAR 52.249-14), if a Contractor’s failure to perform is a result of one of the causes enumerated in the clause that is outside the control of the contractor, again such as when it is caused by an act of the Government, then upon a Contractor’s request the Contracting Officer is required to examine the facts and extent of failure. If the Contracting Officer determines the failure to perform was caused by one or more of the causes under the clause that give rise to the excusable delay – such as when it is caused by an act of the Government – then the delivery schedule must be revised.

### **1. Required Contractor Requests and Notices**

Government contractors working under contracts containing the default clause for construction contracts (FAR 52.249-10) should submit their delay notifications within 10 days of the beginning of any delays in their performance and request an extension.

Government contractors working under cost-reimbursement contracts that contain the excusable delays clause (FAR 52.249-14) should submit their excusable delay request as soon as possible after a Government shutdown begins and request a delivery schedule revision.

## II. Adjustment Remedies For Stop-Work Orders, Suspensions & Delays

### ***Applicable FAR Clauses***

*52.242-14 Suspension of Work (Inserted In Fixed-Price Construction or Architect-Engineer Contracts)*

*52.242-15 Stop-Work Order (Inserted In Contracts For Supplies, Services, Research and Development)*

*52.242-17 Government Delay of Work (Inserted In Fixed Price Contracts For Supplies Other Than Commercial or Modified Commercial Products)*

Apart from the default termination protections and performance extensions that are available under the default, termination, and excusable delays clauses, other remedies under the FAR are available to Government contractors that suffer involuntary performance interruptions when they are caused by suspensions (FAR 52.242-14), stop-work orders (FAR 52.242-15) or Government delays (FAR 52.242-17).

Specifically, depending on the FAR clause that is inserted in a Government contract, a Government contractor may be entitled to one or more of the following remedies:

- An adjustment for any increase in cost of performance (excluding profit)(FAR 52.242-14, FAR 52.242-17)
- An equitable adjustment in the delivery schedule or contract price, or both (FAR 52.242-15)
- An equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other contract terms that may be affected (FAR 52.242-15)
- Reasonable costs resulting from a stop-work order (FAR 52.242-15)

As explained below, some contractor remedies are triggered by written orders. Consequently, Government contractors may wish to ask Contracting Officers to issue written orders, as applicable, after the Government shuts down if they have not already been issued, particularly if access to Government property or facilities or necessary Government personnel is impeded by a shutdown or if contractors are only given informal instructions to cease working. Lastly, Government contractors should be mindful of time limits that may apply to any required notices or to claims for adjustments.

### **A. Suspension of Work**

*FAR 52.242-14 (Fixed-Price Construction or Architect-Engineer Contracts)*

Fixed-price construction and architect-engineer contracts include a suspension of work clause (FAR 52.242-14) that permits a contracting officer to issue a written order requiring a contractor to suspend, delay, or interrupt all or part of work for a period of time that the Contracting Officer decides is appropriate.

Under that suspension of work clause, Government contractors are entitled to an adjustment remedy if all or part of the contractor's work is suspended, delayed, or interrupted

for an unreasonable period of time. The adjustment remedy, however, is not limited to suspensions, delays, or interruptions that are caused by written suspension orders. Rather, the adjustment remedy is more broadly triggered when a suspension, delay, or interruption for an unreasonable period of time is caused by (i) an act of the Contracting Officer in the administration of the contract (which may, but does not necessarily have to, be the issuance of a suspension order), or (ii) a failure to act within a time specified in the contract (or within a reasonable period of time if not specified).

Thus, the suspension work clause may apply in circumstances in which a contract only authorizes a Contracting Officer to issue written orders to suspend, delay or interrupt performance, but the Contractor takes other actions short of a written order, like issuing oral or informal written instructions to delay or suspend performance. Another circumstance in which the clause may apply in the context of a shutdown is if a contract requires the Contracting Officer to take some action in order for the Contractor to continue some or part of its performance but the Contracting Officer fails to take the action because of the shutdown.

A Contractor, however, is not entitled to an adjustment remedy if the Contractor's performance would have been suspended, delayed, or interrupted anyway by another cause (including the Contractor's fault or negligence), or if another clause or term under the contract provides or excludes an equitable adjustment for the delay, suspension or interruption of performance.

### **1. Mandatory Adjustment Remedy**

Under the suspension of work clause (FAR 52.242-14), the adjustment that a Contractor must receive when performance is suspended, delayed or interrupted for an unreasonable period of time because of a Contracting Officer's act or failure to timely act is an adjustment for any increase in the cost of performance of the contract, excluding profits, that is caused by the suspension, delay or interruption. In addition, the contract must be modified in writing to incorporate the adjustment.

### **2. Time Limits**

To preserve any claim for the adjustment, a Contractor must state the amount of the claim as soon as practicable after the termination of the suspension, delay, or interruption (i.e., as soon as practicable after a shutdown ends), but no later than the date of the final payment under the contract. In addition, if a claim for an adjustment is based on an act or failure to act by the Contracting Officer other than the issuance of a suspension order, a claim will not be allowed for costs that were incurred more than 20 days before the Contractor notified the Contracting Officer of the act or omission that caused the suspension, delay or interruption.

### **3. Notices**

Consequently, to maximize its recovery for increased costs resulting from suspension, delays, or interruptions, a Contractor may be required to provide up to two notices.

- a. When a Contractor's performance has been suspended, delayed or interrupted in the absence of a written suspension order from the Contracting Officer, in order to maximize its recovery for increased costs a Contractor should provide written notice that the Contractor's performance has been suspended, delayed, or interrupted because of the Contracting Officer's acts or omissions. In the context of a shutdown for example, a Contracting Officer's acts or omissions could include oral or informal instructions to remain off site or to not perform. The Contractor should provide this written notice no later than 20 days after the Contractor becomes aware that its performance will be suspended, delayed or interrupted. In many instances a Government contractor may know on "day one" of a shutdown that its performance will be impeded by the Contracting Officer's acts or omissions so it should provide this written notice within 20 days of the beginning of the Government shutdown.
- b. A Contractor must also notify a Contracting Officer of the amount of its claim for increased costs as soon as possible after the suspension, delay, or interruption ends (e.g., after the Government shutdown ends), but no later than the date of the final contract payment.

## **B. Stop-Work Orders**

*FAR 52.242-15 (All Contracts For Supplies, Services and Research and Development)*

The FAR clause on stop-work orders (FAR 52.242-15) is more broadly inserted into all contracts for supplies, services, and research and development. That clause permits a Contracting Officer to issue a written order to a contractor to stop all or part of work for 90 days or longer. The stop-work order must be specifically identified as a stop-work order that is issued under FAR 52.242-15. Once a Contractor receives the stop-work order it must immediately comply and take reasonable steps to minimize costs allocable to the work covered by the stop-work order during the work-stoppage period. Within 90 days (or longer if the parties agree), the Contracting Officer must cancel the stop-work order or terminate the contract (for default or convenience under the appropriate clause). If the stop-work order is canceled or expires, the Contractor must resume work.

### **1. Mandatory Adjustment Remedies**

Under the stop-work order clause (FAR 52.242-15), a Contractor must receive an equitable adjustment if a stop-work order results in:

- An increase in the time required for performance of any part of a contract; or
- An increase in the Contractor's cost allocable to the performance of any part of a contract

The kind of adjustment a Contractor is entitled to under the stop-work order clause (FAR 52.242-15) depends on whether the stop-work order is cancelled or expires and is subsequently followed by continued performance or whether the order is not cancelled and, instead, is followed by contract termination.

Typically, if a stop-work order is issued by a Contracting Officer in connection with a Government shutdown, the order is cancelled once the shutdown is over. Under the stop-work order clause (FAR 52.242-15), if a stop-work order is cancelled or expires, a Contracting Officer must make an equitable adjustment in the delivery schedule or contract price, or both if the contract is not a cost-reimbursement contract. If the contract is a cost-reimbursement contract and the stop-work order is cancelled or expires, the Contracting Officer must make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected by the stop-work order. In all instances, the contract must be modified accordingly in writing to incorporate the equitable adjustment.

If a stop-work order is not cancelled and is followed by a contract termination, a Contracting Officer must allow reasonable costs resulting from the stop-work order when arriving at a termination settlement under a termination for convenience. If the contract is terminated for default, the Contracting Officer must allow an equitable or other adjustment for reasonable costs resulting from the stop-work order.

## **2. Time Limits**

In circumstances in which work resumes after a stop-work order is cancelled or expires, the stop-work order clause (FAR 52.242-15) imposes a time limit on when a Contractor can assert a claim for an adjustment: 30 days after the end of the work stoppage period. However, if the Contracting Officer decides the facts justify a later submission, the Contracting Officer may receive and act upon a proposal for an adjustment that is submitted at any time before final payment under the contract.

If the stop-work order is not cancelled and the contract is terminated, the stop-work order clause does not specify a time limit for submitting claims and, instead, anticipates that adjustments will be made during close-out or as part of the termination settlement.

## **C. Government Delay of Work**

### *FAR 52.242-17 (Fixed-Price Contracts For Non-Commercial and Non-Modified Commercial Products)*

The government delay of work clause (52.242-17) is inserted into fixed-price contracts for supplies that are not commercial or modified commercial products. Under that clause, a Contractor is entitled to an adjustment remedy if all or part of a Contractor's performance is delayed or interrupted because of –

- An act of the Contracting Officer's in the administration of the contract that is not expressly or impliedly authorized; or
- A failure of the Contracting Officer to act within a specified time under the contract or within a reasonable time (if a time is not specified)

Thus, the government delay of work may apply in circumstances in which a contract only authorizes a Contracting Officer to issue written orders that are specifically designated as stop-work orders to delay or suspend performance, but the Contractor takes other actions

short of a written order designated as a stop-work order, like issuing oral or informal written instructions to delay or suspend performance. Another circumstance in which the clause may apply in the context of a shutdown is if a contract requires the Contracting Officer to take some action in order for the Contractor to continue some or part of its performance but the Contracting Officer fails to take the action because of the shutdown.

### **1. Mandatory Adjustment Remedy**

Under the government delay of work clause (FAR 52.242-17), if a Contracting Officer acts to delay or interrupt performance or fails to take a timely action and that failure causes a delay or interruption, a Contractor must receive an adjustment for any increase in the cost of performance (but not including profit) caused by the delay or interruption. In addition, the contract must be modified to incorporate the adjustment.

A Contractor, however, is not entitled to an adjustment remedy if the Contractor's performance would have been delayed or interrupted anyway by another cause (including the Contractor's fault or negligence), or if another clause or term under the contract provides or excludes the adjustment for the delay or interruption.

### **2. Time Limits**

To preserve any claim for an adjustment, a Contractor must state the amount of the claim as soon as practicable after the end of the delay or interruption (i.e., as soon as practicable after a shutdown ends), but no later than the final payment under the contract. In addition, a claim for an adjustment will not be allowed for costs that were incurred more than 20 days before the Contractor notified the Contracting Officer of the act or failure to act that caused the delay or interruption.

### **3. Notices**

Consequently, to maximize its recovery for increased costs resulting from a government delay of work, a Contractor must provide two notices under FAR clause 52.242-17.

- a. The Contractor must provide written notice to the Contracting Officer that the Contractor's performance has been delayed or interrupted as a result of the Contracting Officer's action or failure to take action. The Contractor should provide this written notice no later than 20 days after the Contractor becomes aware that its performance will be delayed or interrupted because of the Contracting Officer's action or inaction. During a Government shutdown, for example, a Contracting Officer may give oral or informal instructions to remain off site or to not perform, so a Contractor may know on "day one" of a shutdown that its performance will be delayed or interrupted by the Contracting Officer's acts or omissions. In those instances, a Contractor should provide this written notice within 20 days of the beginning of the Government shutdown.
- b. A Contractor must notify a Contracting Officer of the amount of its claim for increased costs as soon as possible after the delay or interruption ends (e.g., after

the Government shutdown ends), but no later than the date of the final contract payment.

#### **D. Possible Costs From Delays, Suspensions, Interruptions & Stop-Work Orders**

The suspension of work (FAR 52.242-14), stop-work order (FAR 52.242-15) and Government delay of work (FAR 52.242-17) clauses provide adjustments (i) for increased cost of performance (excluding profits) caused by suspensions, delays, or interruptions and (ii) for reasonable costs resulting from stop-work orders. Below are potential cost and cost-increases that may provide a basis for the adjustments:

- Demobilization, remobilization, ramp up, ramp down, and restart costs
- Expenses related to schedule disruptions
- Subcontractors' shutdown impact pass-through costs
- Possibly standby/idle labor costs (including fringe benefit and health costs) – particularly for employees with special skills who cannot easily be replaced if they are furloughed and then seek other employment
- Possibly idle equipment costs – particularly if equipment cannot be easily re-acquired or brought back online
- Any additional costs related to administering the contract delay or suspension – including the cost of providing any notices of suspension or delay
- Consulting and attorney's fees

### **III. Equitable Adjustments For Contract Changes**

#### ***Applicable FAR Clauses***

*52.243-1 Changes — Fixed-Price*

*52.243-2 Changes — Cost-Reimbursement*

*52.243-3 Changes — Time-and-Materials or Labor-Hours*

*52.243-4 Changes (Contracts for dismantling, demolition, or removal of improvements and fixed-price construction contracts above the simplified acquisition threshold)*

*52.243-5 Changes and Changed Conditions (Construction contracts at or below the simplified acquisition threshold)*

The last set of remedies addressed in this Guide that Contractors may be entitled to in connection with Government-wide or agency shutdowns and interruptions are not remedies that are granted because of shutdowns or interruptions. Rather these remedies may be granted when, as sometimes happens, the Government makes contract changes to anticipate or deal with the consequence of shutdowns or delays caused by shutdowns.

For example, if a Contractor's performance was significantly delayed during a shutdown, once the shutdown ends the Government may request that the Contractor work at an accelerated rate or pace to meet original deadlines or milestones. However, in order to complete performance under a shortened timeline a Contractor, in turn, may need its

employees to work longer daily or weekly hours, some of which may have to be compensated at higher hourly overtime rates.

At other times, the Government may seek to offload work normally done by Government staff to Government Contractors.

In these instances, the change clauses in the FAR require Contracting Officers to make equitable adjustments to account for these changed contract conditions.

**A. Change Orders Under Fixed-Price and Cost Reimbursement Contracts For Supplies**

*FAR 52.243-1 (Fixed-Price Contracts for Supplies)*

*FAR 52.243-2 (Cost-Reimbursement Contracts For Supplies)*

Under the FAR change clauses for fixed-price and cost-reimbursement contracts for supplies (FAR 52.243-1, FAR 52.243-2), a Contracting Officer may issue a written order to the Contractor to make one or more of the following changes to the contract:

- Drawings, designs, or specifications when supplies are specially manufactured
- Method of shipment or packing
- Place of delivery

**1. Mandatory Equitable Adjustments**

A Contracting Officer must make an equitable adjustment if any of the changes causes an increase or decrease in:

- The cost (fixed-price contracts) or estimated cost (cost-reimbursement contracts) of performance of any work
- The time required for performance of any work

If the change causes an increase or decrease in cost or time required for performance, then under the changes clause for fixed-price contracts (FAR 52.243-1) the Contracting Officer must make an equitable adjustment to either or both of the following:

- The contract price
- The delivery schedule

For cost-reimbursement contracts, if the change causes an increase or decrease in estimated cost or time required for performance, then under the changes clause for cost-reimbursement contracts (FAR 52.243-2) the Contracting Officer must make an equitable adjustment to each of the following:

- The estimated cost, the delivery or completion schedule, or both
- The amount of any fixed fee
- Any other affected contract terms

In addition, the contract must be modified to incorporate any equitable adjustment.

## **2. Time Limits**

In order to receive the equitable adjustment under either of the change clauses (FAR 52.243-1, 52.243-2), the Contractor must assert its right to an adjustment within 30 days of receipt of written change order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal for equitable adjustment that is submitted before final payment of the contract.

### **B. Time-and-Materials or Labor-Hour Contracts (52.243-3)**

Under the change clause for time-and-materials and labor-hour contracts (FAR 52.243-3), a Contracting Officer may issue a written order to the Contractor to make one or more of following changes to the contract:

- The description of services to be performed
- The time of performance (*i.e.*, hours of the day, days of the week, etc.)
- The place of performance of services
- Drawings, designs, or specifications when the supplies are specially manufactured
- The method of shipment or packing
- The place of delivery
- The amount of government-furnished property

#### **1. Mandatory Equitable Adjustments**

A Contracting Officer must make an equitable adjustment if any of the changes causes an increase or decrease in:

- Any hourly rate
- The ceiling price
- The time required for performance of any part of the work (whether or not changed by the order)
- Any other terms and conditions of the contract

If the change causes an increase or decrease in one or more of the contract terms described above, the Contracting Officer must make an equitable adjustment to one or more of the following:

- The ceiling price
- Hourly rates
- The delivery schedule
- Any other affected term

In addition, the contract must be modified to incorporate any equitable adjustment.

## **2. Time Limits**

In order to receive the equitable adjustment under the change clause (FAR 52.243-3), the Contractor must assert its right to the adjustment within 30 days of receipt of written change order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal for equitable adjustment that is submitted before final payment of the contract.

### **C. Fixed-Price Construction Contracts and Contracts Removing Improvements (FAR 52.243-4)**

The change clause for contracts requiring the dismantling, demolition, or removal of improvements and for fixed-price construction contracts above the simplified acquisition threshold (FAR 52.243-4) permits a Contracting Officer to make one or more of the following changes by a written order that is designated or indicated to be a change order:

- Changes in the specifications (including drawings and designs)
- Changes in the method or manner of performance of the work
- Changes in the government-furnished property or services
- Changes directing acceleration in the performance of the work

In addition, any other written or oral order (including any direction, instruction, interpretation or determination) by a Contracting Officer that causes a change will be treated as a change order as long as the Contractor gives the Contracting Officer written notice (i) that the Contractor regards the order as a change order, and (ii) the date, circumstance, and source of the order.

#### **1. Mandatory Equitable Adjustment**

A Contracting Officer must make an equitable adjustment if any of the changes designated as, indicated to be, or treated as a change order causes an increase or decrease in either of the following:

- The Contractor's cost of performing any part of the work
- The time required to perform any part of the work

If any of the above changes increases or decreases cost of, or time required for, performance, the Contracting Officer must make an equitable adjustment. If a change is made because of a defective specification by the Government, the equitable adjustment must include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specification. In addition, the contract must be modified to incorporate any equitable adjustment.

#### **2. Time Limits**

In the case of a written or oral order that is not designated as, or indicated to be, a change order, but that causes a change and is regarded by the Contractor as a change order, except for an adjustment based on defective specifications, no adjustment will be made for any costs incurred by the Contractor more than 20 days before the Contractor has given the

Contracting Officer the required written notice (described above) that it regards the order as a change order. Consequently, to maximize its recovery, a Contractor should submit its written notice to the Contracting Officer as soon as it can and, if possible, within 20 days after it receives an oral or written order that the Contractor intends to treat as a change order.

Also, in order to receive an adjustment a Contractor must provide a written statement of proposal for the adjustment that describes the general nature and proposed amount of the adjustment within 30 days after (i) the Contractor receives the Contracting Officer's written order designated or indicated to be a change order, or (ii) the Contractor provides the written notice to the Contracting Officer of an order that the Contractor regards as a change order. The statement of proposal for adjustment may, but does not have to, be included in the notice the Contractor gives to the Contracting Officer of an order that, while not designated as a change order, should be regarded as a change order.

Lastly, although the 30-day deadline for submission of the statement of proposal may be extended by the Government, no statement of proposal will be allowed if it is submitted after the final payment under the contract.

### **3. Notices**

Consequently, under the change clause for contracts requiring the dismantling, demolition, or removal of improvements and for fixed-price construction contracts above the simplified acquisition threshold (FAR 52.243-4), a Contractor may need to provide two written notifications to the Contracting Officer.

- a. In the case of an order not designated as, or indicated to be, a change order, the Contractor must provide written notice to the Contracting Officer (i) that the Contractor regards the order as a change order, and (ii) the date, circumstance, and source of the order.
- b. In all cases, the Contractor must provide a statement of proposal for adjustment that describes the general nature and proposed amount of the adjustment.

#### **D. Construction Contracts At or Below Simplified Acquisition Threshold (FAR 52.243-5)**

The changes and changed conditions clause for construction contracts at or below the simplified acquisition threshold (FAR 52.243-5) permits a Contracting Officer to issue written orders that change drawings and specifications within the general scope of the contract.

The changes and changed conditions clause (FAR 52.243-5) also requires a Contractor to promptly notify the Contracting Officer, in writing, of subsurface or latent physical conditions that differ materially from those indicated in this contract or of unknown unusual physical conditions at the site before proceeding with the work.

### **1. Mandatory Equitable Adjustments**

A Contracting Officer must make an equitable adjustment if any of the changes or changed physical conditions causes an increase or decrease in either of the following:

- the cost of performing the work
- the time required for performing the work

However, in the case of changed physical conditions, a Contracting Officer shall not make an equitable adjustment unless (i) the Contractor has submitted, and the Contracting Officer has received, the required written notice, or (ii) the Contracting Officer has waived the written notice requirement.

### **2. Time Limits**

To receive an equitable adjustment, the Contractor must submit a proposal for equitable adjustment before final payment under the contract.