

The New Normal

What U.S. Government Contractors and Grant Recipients Need to Know About Terminations, Stop Work Orders, Tariffs, and the Path Forward in 2025

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Agenda

- Introduction
- Stop Work Orders
- De-Scoping Contracts and Grants
- Terminations for Convenience
- Non-Payment and Other Breach
- The Impact of New Tariffs



Introduction

- Over the past 2 weeks, the Trump Administration has issued a host of executive orders, many of which affect government contractors and grant recipients.
 - E.g., EO “Ending Radical and Wasteful Government DEI Programs and Preferencing”
 - Requiring termination “to the maximum extent allowed by law” “equity-related” grants or contracts, as well as all DEI/DEIA performance requirements for employees, contractors, or grantees.
 - Agencies, such as Army and NASA, have started terminating contracts that are DEI-focused.
 - E.g., EO “Ending Illegal Discrimination And Restoring Merit-Based Opportunity”
 - Requiring termination of all “diversity,” “equity,” “equitable decision-making,” “equitable deployment of financial and technical assistance,” “advancing equity,” and like mandates, requirements, programs, or activities, as appropriate.
 - E.g., EO “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government”
 - A subsequent OPM memo also required agencies to review “all . . . contracts, and grants, and terminate any that promote or inculcate gender ideology.”



Introduction

- In light of these EOs, on January 27, 2025, OMB issued Memorandum M-25-13, to “temporarily pause all activities related to obligation or disbursement of all Federal financial assistance, and other relevant agency activities that may be implicated by the executive orders”
 - OMB rescinded this Memo two days later, but the White House noted that the rescission is not a rescission of the federal funding freeze.
 - On January 31, a Rhode Island federal judge issued a TRO, blocking the implementation of the federal financial assistance pause, but the impact on all contractors and grant recipients remain unclear.
 - Agencies have been, and may continue to, issue stop-work orders, implement changes to contracts, or terminate contracts for convenience.
- The Trump Administration also has plans to impose tariffs on good from Canada, Mexico, and China.
- Our discussion will focus on the steps that contractors and grant recipients can take now, to preserve your rights and protect the bottom line.



Stop Work Orders



Stop Work Orders

- A stop work order requires an immediate halt to the work specified in the respective contract or grant.
- Stop work orders are covered under FAR 52.242-15
 - Can be issued for 90 days (or more by agreement)
 - When the period ends, the contractor must resume, or the CO must terminate the work
 - The contractor is generally entitled to an equitable adjustment + profit
- Can lead to delays, increased costs, and disruptions– and contractors should comply with the order and take steps to minimize costs during the stoppage period.

Minimizing Costs + Receiving an Equitable Adjustment

- To protect the ability to receive an equitable adjustment, contractors should:
 - Stop all work covered by the order and notify all affected subcontractors to do the same
 - Notify affected personnel
 - Take reasonable steps to mitigate costs
 - Identify impacts on schedules
 - Keep the Contracting Officer updated on the impact of the stoppage
 - Be prepared to resume work if/when the government lifts the stop-work order
- Grants: What happens when the Govt directs a “pause”?



De-Scoping Contracts and Grants



De-Scoping Contracts and Grants

Changes Generally

- FAR 52.243-4 Changes: permits the CO to make changes to the work “within the general scope of the contract”
 - The government generally does not need a contractor’s consent to change the contract, but the CO must have the appropriate authority
- The changes clause entitles contractors to an equitable adjustment if “any change under this clause causes an increase or decrease in the Contractor’s cost of. . .the work under [the] contract.”
 - Additional costs + reasonable profit on the additional costs = equitable adjustment
- Timely notice requirement: must give the government timely notice if a contractor plans to assert the right to an equitable adjustment



De-Scoping Contracts and Grants

- De-scoping is considered a deductive change, and is permissible if “in the general scope of the contract”
 - Similar to a partial Termination for Convenience, discussed in the next section.
- Produces a *downward* equitable adjustment to the extent of the savings to the contractor due to the deletion
 - Generally priced based on how much the deleted work “would have cost” (or “anticipated cost” approach).
 - But if the de-scoped work is “severable” (e.g., FFP CLIN), then boards typically use an “as-bid” approach (similar to T4C methodology).
 - Government has burden to prove its entitlement to an equitable adjustment.



Protecting Your Rights

- **Key Actions Up Front:**

- Document the change (increase/decrease in costs, impact on schedule, etc.)
- Notify the CO that a change occurred
- Reserve the right to an equitable adjustment (money + time)

- **Document All Communications:**

- Understand the original contract requirements
- Document the Government actions/inactions

- **Duty to Proceed:**

- Disputes clause (52.233-1): “The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

- **Grants:**

- Bilateral changes and Extension; no express Govt unilateral right (§200.308, .309)
- Last Trump Administration ended grants by descopeing performance period

Terminations for Convenience



Termination for Convenience

- FAR Parts 49 and 52 give the Gov't broad authority to terminate without cause
 - No termination where the price of the undelivered portion is less than \$5,000
 - Can be partial termination
- Contractor's recovery limited to:
 - costs incurred,
 - profit on work performed,
 - costs of preparing termination settlement proposal,
 - continuing costs, and
 - subcontractor costs
- No-cost settlement instead of termination for convenience where...
 - Contractor amenable
 - No government property
 - No debts due the government
- For Grants—2 CFR 200.340 Termination: “if an award no longer effectuates the program goals or agency priorities”

Procedure: Termination for Convenience

- **Notice of Termination:**
 - In writing, by the CO
 - Including: effective date of termination, scope of termination, and any special instructions
- **Contractor Obligations Upon Notice:**
 - Stop work as specified in the Notice of Termination
 - **Notify** the TCO of any special circumstances that preclude the stoppage of work
 - Partial termination: Next slide...
 - Discontinue placing further orders on the terminated portion of the contract
 - Notify subcontractors
 - Provide termination notices
 - Ensure that scope of subcontractor termination is consistent with the prime contract termination
 - Notify employees; settle outstanding liabilities in connection with termination
 - Promptly submit termination settlement proposal; Ensure proper care of inventory
- Settlement proposal due in 1 year; inventory schedule in 120 days



Partial Termination for Convenience

- The government may also terminate only a portion of a contract.
 - Usually done unilaterally
 - Similar to Descoping, but different recovery and burden of proof.
- To adjust prices on the unterminated work due to the T4C, contractor should file an REA proposal to the CO in 90 days of the termination
 - Typically overhead and amortized costs that would no longer be recovered
 - 90 days can be extended in writing by the CO



Protecting Your Rights

- **Key Actions Up Front:**

- Contact your CO to assess whether an EO is applicable to your contract (i.e., subject to termination)
 - Communicate with subcontractors on updates
- Document all costs and expenses and mitigate costs
- Document communications with the CO/government and subcontractors
- Anticipate the need for a T4C proposal
- IF terminated.... (1) timely respond to the notice; and (2) promptly reserve claims for money and time
- Duty to Proceed (FAR 52.233-1)

Non-Payment and Other Breach



Non-Payment and Other Breach

- What happens if the government simply stops paying?
 - Contracts?
 - Grants?
- What happens if the government changes the allowable costs after award?
 - Contracts?
 - Grants?



The Impact of New Tariffs



New Tariffs

- President Trump has issued executive orders imposing additional tariffs on products from Canada (25%), Mexico (25%), and China (10%).
 - The Orders indicate that the tariffs will impact all imports deemed products of Mexico or China. The tariffs on Canadian foods are for “energy” products.
- The tariffs were set to go into effect on February 4, 2025.
 - Pursuant to an agreement reached between the U.S. and Mexico on February 3, 2025, the tariffs on Mexican products will be delayed for a month.
 - The U.S. and Canada reached an agreement to delay the tariffs for Canadian products at least 30 days on February 3, 2025.
- The Orders do not provide for exclusions, drawbacks (i.e., tariff refunds for items re-exported or destroyed), or a de minimis exception.
- The Department of Homeland Security will lead implementation.



Future Increases?

- The orders also provide that any retaliatory tariffs could trigger even higher tariffs on the retaliating country.
- All three countries have already announced preliminary plans for retaliatory tariffs.
 - Canada has announced 25% retaliatory tariffs on certain U.S. products (American alcohol, fruits and juices, clothing, sports equipment, household appliances, etc.).
 - Mexico has announced that it is preparing retaliatory tariffs, ranging from 5% to 20% on various products (pork, cheese, fresh produce, and manufactured steel and aluminum).
 - China has indicated that it will challenge the tariffs but has not indicated specific measures.
- It is still early to determine the precise impact of the tariffs on contractors, but industry groups are projecting significant impacts, especially on manufacturing, defense, and construction industries.

Avenues for Contractual Recourse

- Contractors may have avenues for contractual recourse for tariffs, but these are fact- and contract-specific.
- Options for recovery are greatest under cost-type contracts.
- For those with fixed-price contracts, contractors are most likely to have options if:
 1. The direct importer of a good subject to tariff, and their contract has the FAR tax clause (FAR 52.229-3)
 2. Their contract has one of the FAR economic price adjustment clauses (FAR 52.216-4).

How to Prepare

- Recognize early how the tariffs may increase your cost of performance or lead to supply shortages
- Review the terms of your contracts for the applicable tax (FAR 52.229-3) and economic price adjustment provisions (FAR 52.216-4)
- Factor increase cost and performance risks into any future bids or proposals
- Stay in communication with subcontractors
- Be aware of any notice requirements tied to changes or cost adjustments



Thank you



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