

Hey Nineteen

Written by Nick Sanders
Monday, 06 April 2020 07:18

Everybody is dealing with COVID-19. Big companies, small companies, we're all in this together right now.

Changes are happening quickly. The CARES Act. DOD Class Deviations. Direction to increase cash flow throughout the industrial base.

It's hard to keep up with it all—and meanwhile, contractors have real issues to deal with.

The workforce is affected. Some are getting sick; others may have been exposed but aren't showing symptoms yet. Freight costs are soaring (when you can get deliveries.) Suppliers are shutting down. And when suppliers are up and running, they're running behind. Basic consumable supplies are hard to get. Some companies are retooling to make healthcare products.

Yeah, there's a lot to worry about now.

You can find any number of free webinars on the various COVID-19 issues, offered by both law firms and providers of accounting services. They are, for the most part, worthy of your time if you have questions about how to respond to the various challenges your company is facing.

We're not going to duplicate their content on this site. Go find one of the freebies and spend an hour getting up to speed.

Having said that, we will offer some thoughts that we have gleaned from thinking about various challenges companies are facing. We're not lawyers and we're not your consultants, so there is no guarantee we've got this figured out. In the "for what it may be worth" department:

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Employees who can't work because they are sick are going to burn through a lot of sick leave. If they are sick, you do *not* want them coming back to work. Have you considered amending your sick leave policy to offer more sick leave? What about "borrowing" future entitlements? We're thinking allowable if reasonable in amount.

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Employees who are sick are going to incur a lot of healthcare expenses. Deductibles, co-pays, etc. They may run up against annual limits. Have you considered covering those expenses on their behalf? That would mean revising your healthcare policies. We're thinking allowable here as well.

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Employees who've been exposed need to stay away from everybody else for at least 14 days. How should they charge that time? Direct or indirect? What about paid time off? What about administrative leave or stand-by time? (Have you read the CARES Act?) You need a labor charging policy right now to deal with this.

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Speaking of labor charging policy, what happens if the government denies entry to a site where your employees have been working? What happens if employees can enter, but need to be quarantined for 14 days before they interact with anybody else? What happens if you have to shut down your own office or factory, because somebody with COVID-19 symptoms went into work? You need a policy position for all these contingent events—plus more we haven't listed.

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You may have a Forward Pricing Rate Agreement (FPRA) or you may have a Provisional Billing Rate Agreement (PBRA). Or you may be pricing and billing contracts on an individual basis. Whatever your situation, it is almost certain that your 2020 indirect cost rates are going to exceed what you budgeted/forecasted/negotiated. What are you doing about it? Let's be clear: right now the US Government (and especially DOD and DOE) are concerned about the health of their industrial bases, and they are telling contracting officers to enhance contractor cash flow wherever and whenever possible. Use that policy guidance to negotiate higher bidding and billing rates. Obviously, you don't know (because nobody does right now) the impact that will be felt by year-end. But don't let that stop you from making an estimate now and seeing if your CACO/DACO/ACO/PCO is amenable to an upward adjustment. We're betting most of them will be. You can always adjust later as more information becomes available.

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Subnote to those who have FPRAs. Read FAR 15.407-4 and comply with its requirements.

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Even if you don't adjust your FPRA, you still have an obligation under the Truthful Cost or Pricing Data Act ("TINA") to make appropriate disclosures.

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Any number of government contractors have DPAS-rated contracts. Normally, nobody cares about that (except for people who deal with CPSRs) but now it matters, since POTUS invoked the Defense Production Act (which constitutes the first three letters of DPAS). If you have a rated contract, you must do everything you can to keep working. If you did your job and properly flowed-down the DPAS rating to your suppliers, then they have to keep working as well. Which is to say: if your supplier tells you they are shutting down because of COVID-19, you get to tell them NO, they are *not* shutting down, because their subcontract/PO doesn't let them. When the auditors question your charging decisions a year or more from now (as they will), your primary defense is going to be the DPAS rating in your contract. (The secondary defense is going to be the CARES Act. The third line of defense is going to be DOD press releases, guidance memoranda, and Class Deviations.)

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Speaking of future audits, perhaps the single most important thing that contractors can and should be doing right now is to isolate COVID-19-related expenses from the normal routine expenses. Be in a position to show the (future) auditors where your costs increased because of the virus. Create new charge codes where necessary. Create new cost accounts and/or cost centers. Do everything you can to bucket the COVID-19 stuff because, a year or more from now, everybody is going to want to know how much the crisis cost your company.

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The second most important thing we can think of is documentation. Your company is making a lot of decisions very quickly, and it's likely that the documentation of those decisions is going to be a low priority. Don't let it be. Document the circumstances and the rationale for the decisions. That documentation is going to be *huge* when the auditors challenge you to support why what you did was reasonable under the circumstances.

Whether you are a small contractor or one of the largest contractors, you are facing the same issues and challenges as everybody else. Everybody is struggling to adjust to the new normal and nobody has figured out every answer to every challenge yet. This article is intended to get you thinking about some of the challenges and their possible solutions. The rest is up to you.

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