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### **Background**

This FAQs document is to address the impacts of the COVID-19 pandemic on National Logistics Wildland Fire Contracts/Agreements (herein referred to as contracts), and the Contractor's ability to perform under their contracts. This information is pre-decisional and official changes to contracts or agreements will be coordinated through the responsible Contracting Officer. Possible impacts noted for Government contracts are; contract schedules, additional safety measures, and within scope changes. Currently the Government is limited by the clauses within the respective contract to address the COVID-19 pandemic.

**\*\* NEW INFO 6/05/2020\*\*** The Government understands that there may be some additional costs associated with the changes in response to COVID-19. As the Shower and Crews are firm fixed priced contracts we must utilize FAR 52.243-1 ALT I Changes-Fixed-Priced-Services to implement any changes:

*Alternate I (Apr1984). If the requirement is for services, other than architect-engineer or other professional services, and no supplies are to be furnished, substitute the following paragraph (a) for paragraph (a) of the basic clause:*

*(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:*

*(1) Description of services to be performed.*

*(2) Time of performance (i.e., hours of the day, days of the week, etc.).*

*(3) Place of performance of the services.*

*(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.*

*(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.*

*(d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.*

*(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.*

The National Mobile Caterers, Mobile Retardant Bases and National Retardant Bulk/Full Service are firm fixed price, commercial contracts and as such we must utilize FAR 52.212-4: (c) Changes to implement any changes.

*(c) Changes in the terms and conditions of this contract may be made only by written agreement of the parties.*

*(d) Disputes. This contract is subject to 41 U.S.C. chapter 71, Contract Disputes. Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.*

All Requests for Equitable Adjustments must be submitted with sufficient documentation supporting the justification for the adjustment. Keeping in mind FAR 31.201-3 and FAR 31.201-4 ensuring that costs are reasonable and allocable to the effort at hand.

Therefore, if you feel that you will incur additional costs associated with these changes please submit a Request for Equitable Adjustment meeting the above stated guidelines. If you have any further questions, feel free to contact your contracting officer.

## **Guidance, Clauses, and References**

**USDA Office of Contracting and Procurement (OCP) [FAQs Regarding Contracting Response to COVID-19](#)**: The Government's payment obligation will be tied to the types of contracts it holds. Different types of contracts and governing laws stipulate different requirements for different situations and potential outcomes, and all of which would require a careful review and assessment of each government contract.

**OMB M-20-18, Managing Federal Contract Performance**. "Agencies should also consider whether contracts that possess capabilities for addressing impending requirements such as security, logistics, or other function may be retooled for pandemic response consistent with the scope of the contract. A number of contract clauses may be helpful in managing COVID-19 issues as they arise. The government may make changes (within scope) to the contract using the appropriate changes clause that applies to the contract (see FAR clauses [52.243-1](#) through [52.243-3](#) or clause [52.212-4\(c\)](#)). If necessary, generally after considering other alternatives, they may suspend or stop performance through clause [52.242-14](#), Suspension of Work, and clause [52.242-15](#), Stop Work Order".

**FAR Part 13** establishing procedures for simplified acquisitions. Section [13.303- 1\(a\)](#) of the FAR defines the BPA as "a simplified method of filling anticipated repetitive needs for supplies or services by establishing 'charge accounts' with qualified sources of supply." These charge accounts are established as an administrative convenience with multiple vendors "so purchases can thereafter be made without having to issue individual purchase documents each time."

The United States Court of Federal Claims has determined that a BPA does not manifest the necessary mutuality of consideration required for an enforceable contract, and instead is “merely a framework for future contracts [that] only creates a contractual obligation with regard to accepted orders.” Put another way, “[f]uture terms are spelled out, but performance is not guaranteed.” [Crewzers I, 98 Fed. Cl. at 79.](#)

In addition, the FAR provides relevant guidance on the treatment of BPAs. [FAR 13.303-3\(a\)\(2\)](#) requires a statement that expressly limits the Government’s obligation under a BPA “only to the extent of authorized purchases actually made under the BPA.” [48 C.F.R. § 13.303-3\(a\)\(2\)](#). [FAR 13.303-3\(a\)\(1\)](#) further requires a “statement that the supplier shall furnish supplies or services, described in general terms, if and when requested by the contracting officer . . . during a specified period and within a stipulated aggregate amount, if any.” [48 C.F.R. § 13.303-3\(a\)\(1\)](#). In *Crewzers I*, the United States Court of Federal Claims determined that the FAR’s provision of these mandatory terms and conditions “make[s] it abundantly clear that the BPA carries no guarantee of performance.” [Crewzers I, 98 Fed. Cl. at 79.](#) In addition, [FAR 13.004](#) states that “issuance by the Government of an order in response to supplier’s quotation does not establish a contract. The order is an offer by the Government to the supplier to buy certain supplies or services upon specified terms and conditions. A contract is established when the supplier accepts the offer.” [48 C.F.R. § 13.004](#). In this case, the BPA contains *Crewzers’* quotation and the qualification that the Forest Service may place orders with *Crewzers*, upon need. While *Crewzers* is correct that the FAR does not explicitly deny that a BPA is a contract, the aforementioned FAR provisions read together support a finding that a contract is not formed between a contractor and the Government until two conditions are met: **an order must be placed under the BPA; and the contractor must accept that order.**

[52.212-4](#): (c) Changes. Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) Disputes. This contract is subject to [41 U.S.C. chapter 71](#), Contract Disputes. Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR [52.233-1](#), Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(f) Excusable delays. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

#### [52.243-1 Changes-Fixed Price Alt I](#)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (*i.e.*, hours of the day, days of the week, etc.).
- (3) Place of performance of the services.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

## **Questions and Answers**

**Question:** Will the Government reimburse for additional Personal Protective Equipment (PPE) such as; masks, gloves, equipment to take temperature, sanitizing wipes, sanitizing spray or sanitizing liquid used while traveling to and from the incident or prior to leaving for dispatch?

**Answer:**

**National Type 2IA Contract Crews:** Pursuant to C.2 – SCOPE OF CONTRACT - The Contractor shall provide all necessary supplies to meet or exceed contract specifications; this includes but not limited to necessary supplies to keep employees safe pursuant to Centers for Disease Control and Prevention (CDC) Coronavirus (COVID-19) requirements (<https://www.cdc.gov/coronavirus>), no reimbursement is authorized.

*C.2 – SCOPE OF CONTRACT - The Contractor is responsible for furnishing and managing all equipment, materials, supplies, transportation, lodging, and trained/certified personnel necessary to meet or exceed the contract specifications.*

**National Mobile Showers:** Pursuant to C.1 (a) – SCOPE OF CONTRACT - The Contractor shall provide all necessary supplies to meet or exceed contract specifications; this includes but not limited to necessary supplies to keep employees safe pursuant to Centers for Disease Control and Prevention (CDC) Coronavirus (COVID-19) requirements (<https://www.cdc.gov/coronavirus>), no reimbursement is authorized.

*C.1 (a) – SCOPE OF CONTRACT - MSFUs are to include all equipment, labor, supervision, materials, supplies, equipment set up and take down, transport and maintenance (except for those items listed as Government furnished) to accomplish the full scope of the work defined herein. Only equipment necessary for the operation of a MSFU will be allowed and approved for use under this contract. Equipment must be capable of operating in remote, primitive locations with limited access.*

**National Mobile Caterers:** Contractor's shall provide all necessary supplies to meet contract specifications; this includes but not limited to necessary supplies to keep employees safe pursuant to Centers for Disease Control and Prevention (CDC) Coronavirus (COVID-19) requirements (<https://www.cdc.gov/coronavirus>), no reimbursement is authorized.

**National Mobile Retardant Bases:** Contractor's shall provide all necessary supplies to meet Blanket Purchase Agreement specifications; this includes but not limited to necessary supplies to keep employees safe pursuant to Centers for Disease Control and Prevention (CDC) Coronavirus (COVID-19) requirements (<https://www.cdc.gov/coronavirus>), no reimbursement is authorized.

**National Retardant Bulk/Full Service:** Contractor's shall provide all necessary supplies to meet contract specifications; this includes but not limited to necessary supplies to keep employees safe pursuant to Centers for Disease Control and Prevention (CDC) Coronavirus (COVID-19) requirements

(<https://www.cdc.gov/coronavirus>), no reimbursement is authorized.

**Question:** Will the Government reimburse for precautionary social distancing such as fewer people per vehicle requiring more transport vehicles?

**Answer:**

**National Type 2 IA Contract Crews:** Pursuant to C.2 – SCOPE OF CONTRACT - The Contractor shall provide all necessary transportation to and from the incident no reimbursement is authorized

*C.2 – SCOPE OF CONTRACT - The Contractor is responsible for furnishing and managing all equipment, materials, supplies, transportation, lodging, and trained/certified personnel necessary to meet or exceed the contract specifications.*

**National Mobile Showers:** Pursuant to C.1 (a) – SCOPE OF CONTRACT - The Contractor shall provide all necessary transportation to and from the incident, no reimbursement is authorized.

*C.1 (a) – SCOPE OF CONTRACT - MSFUs are to include all equipment, labor, supervision, materials, supplies, equipment set up and take down, transport and maintenance (except for those items listed as Government furnished) to accomplish the full scope of the work defined herein. Only equipment necessary for the operation of a MSFU will be allowed and approved for use under this contract. Equipment must be capable of operating in remote, primitive locations with limited access.*

**National Mobile Caterers:** The Contractor shall provide all necessary transportation as specified in the contract, to and from the incident, no reimbursement is authorized

**National Mobile Retardant Bases:** The Contractor shall provide all necessary transportation as specified in the Blanket Purchase Agreement, to and from the incident, no reimbursement is authorized.

**National Retardant Bulk/Full Service:** The Contractor shall provide all necessary transportation as specified in the contract, to and from the incident, no reimbursement is authorized.

**Question:** Will the Government reimburse for additional cost related to recruitment given the COVID-19 pandemic?

**Answer:**

**National Type 2 IA Contract Crews:** Pursuant to C.2 – SCOPE OF CONTRACT - The Contractor shall provide all management and personnel necessary, no reimbursement is authorized for recruitment.

*C.2 – SCOPE OF CONTRACT - The Contractor is responsible for furnishing and managing all equipment, materials, supplies, transportation, lodging, and trained/certified personnel necessary to meet or exceed the contract specifications.*

**National Mobile Showers:** Pursuant to C.1 (a) – SCOPE OF CONTRACT - The Contractor shall provide all management and personnel necessary, no reimbursement is authorized for recruitment.

*C.1 (a) – SCOPE OF CONTRACT - MSFUs are to include all equipment, labor, supervision, materials, supplies, equipment set up and take down, transport and maintenance (except for those items listed as Government furnished) to accomplish the full scope of the work*

*defined herein. Only equipment necessary for the operation of a MSFU will be allowed and approved for use under this contract. Equipment must be capable of operating in remote, primitive locations with limited access.*

**National Mobile Caterers:** The Contractor shall provide all management and personnel necessary as specified in the contract; no reimbursement is authorized for recruitment.

**National Mobile Retardant Bases:** The Contractor shall provide all management and personnel necessary as specified in the Blanket Purchase Agreement; no reimbursement is authorized for recruitment.

**National Retardant Bulk/Full Service:** The Contractor shall provide all management and personnel necessary as specified in the contract; no reimbursement is authorized for recruitment.

**Question:** Will the Government reimburse for additional costs for training such as programs for distance training, smaller classes sizes at a time, cleaning resources needed?

**Answer:**

**National Type 2 IA Contract Crews:** Pursuant to C.2 – SCOPE OF CONTRACT - The Contractor shall provide employees that meet the minimum requirements, meeting this requirement will not result in reimbursement.

*C.2 – SCOPE OF CONTRACT - The Contractor is responsible for furnishing and managing all equipment, materials, supplies, transportation, lodging, and trained/certified personnel necessary to meet or exceed the contract specifications.*

**National Mobile Showers:** Pursuant to C.1 (a) – SCOPE OF CONTRACT - The Contractor shall provide employees that meet the minimum requirements, meeting this requirement will not result in reimbursement.

*C.1 (a) – SCOPE OF CONTRACT - MSFUs are to include all equipment, labor, supervision, materials, supplies, equipment set up and take down, transport and maintenance (except for those items listed as Government furnished) to accomplish the full scope of the work defined herein. Only equipment necessary for the operation of a MSFU will be allowed and approved for use under this contract. Equipment must be capable of operating in remote, primitive locations with limited access.*

**National Mobile Caterers:** The Contractor shall provide employees that meet the minimum requirements as specified in the contract; meeting this requirement will not result in reimbursement.

**National Mobile Retardant Bases:** The Contractor shall provide employees that meet the minimum requirements as specified in the Blanket Purchase Agreement; meeting this requirement will not result in reimbursement.

**National Retardant Bulk/Full Service:** The Contractor shall provide employees that meet the minimum requirements as specified in the contract; meeting this requirement will not result in reimbursement.

**Question:** Will the Government allow for longer response times due to COVID-19 testing, gearing up additional items or getting additional vehicles?

**Answer:**

**National Type 2 IA Contract Crews:** Pursuant to C.12 (d) – DISPATCHING PROCEDURES - The Contractor shall meet established time and dates needed pursuant to C.12 (d). Flexibility in response time is not authorized.

*C.12 (a) (3) – Timeliness is of the essence when filling orders for emergency incident assignments. At any time the NCC cannot meet the date/time requirements for an emergency dispatch, the ordering protocol in C.12(a) is waived. HUCC dispatchers must document when this ordering protocol has been waived.*

**National Mobile Showers:** Pursuant to C.2 – DISPATCHING PROCEDURES - The Contractor shall meet established time and dates needed pursuant to C.12. Flexibility in response time is not authorized.

*C.2 (b) (5) – When a Contractor agrees to a delivery schedule at the time the order is placed, the Contractor is required to perform in accordance with the agreed upon schedule documented on the Mobile Food and Shower Service Request Form. In addition, the Contractor is required to follow DOT regulations at all times.*

**National Mobile Caterers:** The Contractor shall meet established time and dates specified in the contract. Flexibility in response time is not authorized.

**National Mobile Retardant Bases:** The Contractor shall meet established time and dates specified in the Blanket Purchase Agreement. Flexibility in response time is not authorized.

**National Retardant Bulk/Full Service:** The Contractor shall meet established time and dates specified in the contract. Flexibility in response time is not authorized.

**Question:** Will the Government make available cleaning supplies such as spray disinfectant or some form of cleaning at weed washing stations available to clean vehicles out twice a day to help better protect the personnel?

**Answer:**

**National Type 2IA Contract Crews:** These items are viewed as operating supplies and shall be furnished by the Contractor.

*C.2 – SCOPE OF CONTRACT - The Contractor is responsible for furnishing and managing all equipment, materials, supplies, transportation, lodging, and trained/certified personnel necessary to meet or exceed the contract specifications.*

**National Mobile Showers:** These items are viewed as operating supplies and shall be furnished by the Contractor.

*C.1 (a) – SCOPE OF CONTRACT - MSFUs are to include all equipment, labor, supervision, materials, supplies, equipment set up and take down, transport and maintenance (except for those items listed as Government furnished) to accomplish the full scope of the work defined herein. Only equipment necessary for the operation of a MSFU will be allowed and approved for use under this contract. Equipment must be capable of operating in remote, primitive locations with limited access.*

**National Mobile Caterers:** These items are viewed as operating supplies and shall be furnished by the Contractor.

**National Mobile Retardant Bases:** These items are viewed as operating supplies and shall be furnished by the

Contractor.

**National Retardant Bulk/Full Service:** These items are viewed as operating supplies and shall be furnished by the Contractor.

**Question:** Will the Government treat each resource as its own “Family Unit” so that if one unit gets a confirmed case it would limit exposure?

**Answer:** Recommendation will be passed forward, pending national direction and national IMT COVID-19 Standard Operating Procedures.

**Question:** What practices will the Government follow for the following situations?

**National Type 2 IA Contract Crews:**

- Isolation on site.
  - **Answer:** The Government will follow section C.21 – FIRST AID, EMERGENCY EVACUATION, AND ACCIDENTS.
- Demobilization home.
  - **Answer:** The Government will follow section C.12 (i) – DEMOBILIZATION OF NCCs.
- Notification to dispatch.
  - **Answer:** The Government will follow dispatching notifications pursuant to National Mobilization Guide.
- Pay under hire.
  - **Answer:** The Government will follow agreement section G.2 (a) – On Shift Time.
- Workers Compensation.
  - **Answer:** The Government will follow 52.222-41 Service contract labor standards, (t) Disputes concerning labor standards. The U.S. Department of Labor has set forth in 29 CFR parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives. <https://www.acquisition.gov/content/52222-41-service-contract-labor-standards>

**National Mobile Showers:**

- Isolation on site.
- **Answer:** The Government will follow section C.1 (d) – Contractor Furnished Equipment, Supplies, and Personnel.
- Demobilization home.
  - **Answer:** The Government will follow section G.6 – PAYMENT PROCEDURES.
- Notification to dispatch.
  - **Answer:** The Government will follow dispatching notifications pursuant to National Mobilization Guide.
- Pay under hire.
  - **Answer:** The Government will follow section G.6 – PAYMENT PROCEDURES.
- Workers Compensation.

- **Answer:** The Government will follow 52.222-41 Service contract labor standards, (t) Disputes concerning labor standards. The U.S. Department of Labor has set forth in 29 CFR parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives. <https://www.acquisition.gov/content/52222-41-service-contract-labor-standards>.

**National Mobile Caterers:**

- Isolation on site.
  - **Answer:** The Government will follow the contract for Contractor Furnished Equipment, Supplies, and Personnel.
- Demobilization home.
  - **Answer:** The Government will follow the contract for mobilization/demobilization procedures.
- Notification to dispatch.
  - **Answer:** The Government will follow the contract for dispatching procedures.
- Pay under hire.
  - **Answer:** The Government will follow the contract for payment procedures.
- Workers Compensation.
  - **Answer:** The Government will follow 52.222-41 Service contract labor standards, (t) Disputes concerning labor standards. The U.S. Department of Labor has set forth in 29 CFR parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives. <https://www.acquisition.gov/content/52222-41-service-contract-labor-standards>

**National Mobile Retardant Bases:**

- Isolation on site.
  - **Answer:** The Government will follow the Blanket Purchase Agreement for Contractor Furnished Equipment, Supplies, and Personnel.
- Demobilization home.
  - **Answer:** The Government will follow the Blanket Purchase Agreement for mobilization/demobilization procedures.
- Notification to dispatch.
  - **Answer:** The Government will follow the Blanket Purchase Agreement for dispatching procedures.
- Pay under hire.
  - **Answer:** The Government will follow the Blanket Purchase Agreement for payment procedures.
- Workers Compensation.
  - **Answer:** The Government The Government will follow 52.222-41 Service contract labor standards, (t) Disputes concerning labor standards. The U.S. Department of Labor has set forth in 29 CFR parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the

Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.  
<https://www.acquisition.gov/content/52222-41-service-contract-labor-standards>

**Question:** Will the Government be replacing Contracted Resources with Military Resources?

**Answer:** There has been no change in our intent of how, when, and where we would utilize National Guard or Active Duty military. We utilize these resources as “surge” capacity or specific gap capability under the authorities of (primarily) the Economy Act.

For any additional questions please contact the appropriate Contracting Officer for your resource.

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