

Background:

Addressing the impacts of COVID-19 on VIPR I-BPAs regarding the contractors' ability to perform under the agreement. Possible impacts noted for Government contracts are: contract schedules, additional safety measure costs, and within scope changes. With VIPR I-BPAs we are limited to the type of agreement established and the clauses within that are available to us to address COVID-19. Because the I-BPAs are not funded contracts, we cannot stop work, suspend work, or provide an equitable adjustment to contract price or delivery schedule. Actions available under VIPR I-BPA Clause 52.212-4 are listed below. Vendors are encouraged to review [Families First Coronavirus Response Act](#) in respect to their employee benefits offered by the Department of Labor (DOL).

Guidance:

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".

VIPR I-BPAs fall under 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.](#)

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at 79. In addition, [FAR 13.004](#) states that “issuance by the Government of an order in response to a 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.**

VIPR I-BPAs include 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.

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: Pursuant to D.1 – SCOPE OF AGREEMENT the vendor shall provide all necessary supplies to meet or exceed 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.

D.1 – SCOPE OF AGREEMENT (a) The intent of this Agreement is to obtain equipment for use on a local, Regional and Nationwide basis. The Contractor is responsible for all equipment, materials, supplies, transportation, lodging, personnel, and supervision and management of those personnel, necessary to meet or exceed the Agreement specifications. The resources may be used on fire suppression and all-hazard incidents. The Incident Commander or responsible Government Representative is authorized to administer the technical aspects of this agreement.

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

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Answer: Pursuant to D.1 – SCOPE OF AGREEMENT the vendor shall provide all necessary transportation to and from the incident no reimbursement is authorized.

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

Answer: Pursuant to D.1 – SCOPE OF AGREEMENT the vendor shall provide all management and personnel necessary no reimbursement is authorized for recruitment.

D.1 – SCOPE OF AGREEMENT (a) The intent of this Agreement is to obtain equipment for use on a local, Regional and Nationwide basis. The Contractor is responsible for all equipment, materials, supplies, transportation, lodging, personnel, and supervision and management of those personnel, necessary to meet or exceed the Agreement specifications. The resources may be used on fire suppression and all-hazard incidents. The Incident Commander or responsible Government Representative is authorized to administer the technical aspects of this agreement.

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: Pursuant to D.3.1 – TRAINING/EXPERIENCE the vendor shall provide employees that meet the minimum requirements, 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: D.6.5.1 – DISPATCHING PROCEDURES vendors shall meet established time and dates needed pursuant to D.6.5.1. Flexibility in response time is not authorized.

D.6.5.1 – DISPATCHING PROCEDURES When receiving a dispatch call, the Contractor shall confirm their availability and ability to meet specified timeframes. If the Contractor cannot be reached or is not able to meet the time and date needed, the dispatcher may proceed with contacting the next resource on the dispatch priority list. Contractor shall check in at the assignment at the time agreed upon when dispatched.

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: D.21.4 – OPERATING SUPPLIES these items are viewed as operating supplies and shall be furnished by the Contractor, the Government may, at its option, elect to furnish such supplies. Cost of the supplies shall be deducted from the vendors payment.

D.21.4 -- OPERATING SUPPLIES Even though this agreement may specify that all operating supplies are to be furnished by the Contractor, the Government may, at its option, elect to furnish such supplies when necessary to keep the resource operating. The cost of such supplies will be determined by the Government and deducted from payment to 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?

- Isolation on site.
 - **Answer:** The Government will follow agreement section D.21.8.3 – EXCEPTIONS.
- Demobilization home.
 - **Answer:** The Government will follow agreement section D.21.8.3 – EXCEPTIONS.
- 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 D.21.8.3 – EXCEPTIONS.
- 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. FULL TEXT:
<https://www.acquisition.gov/content/52222-41-service-contract-labor-standards>

Answer:

D.21.8.3 – EXCEPTIONS

(a) No further payment will accrue during any period that resource under hire is not in a safe or operable condition or it is not available for the assigned shift or portions of the assigned shift. Payment will be based on the hours the resource was operational during the assigned shift, as documented on the shift ticket versus the designated shift, as shown on the Incident Action Plan.

(b) If the Contractor withdraws resources prior to being released by the Government, no further payment shall accrue and the Contractor shall bear all costs of returning resources to the point of hire.

(c) After inspection and acceptance for use, resources that become inoperable and cannot be repaired at the site of work by the Contractor or by the Government in accordance with D.18, within 24 hours, may be considered as being withdrawn by the Contractor in accordance with Paragraph b. above with the exception that the Government shall pay return travel. The Government shall calculate travel in accordance with D.21.8.1.1 based on a normal release of resource. The Contractor shall bear any additional cost returning resource and/or operator(s) to the point of hire.

(d) No payment will accrue when the contractor is off shift in compliance with the mandatory "Work/Rest" and "Length of Assignment" provisions. Refer to D.6.7.

(e) Deductions. Unless specifically stated elsewhere in this agreement the cost of any supplies, materials, or services, including commissary, provided for the Contractor by the Government will be deducted from the payment to the Contractor.

(f) Reassignment of resources. Vendors being reassigned to a new incident shall close out the use invoice for payment on the current incident PRIOR to the reassignment. The day of closeout and reassignment shall be paid as a Daily Rate applied to the incident the resource is being reassigned to. Upon final release, travel shall be calculated in accordance with D.21.8.1.1.

Question: Will the Government consider cutting the standard 3-person crew for all engine typing, to help with “physical distancing?”

Answer: D.3.1.1 – ENGINE STAFFING REQUIREMENTS. The Government will follow staffing requirements currently outlined in D.3.1.1.

D.3.1.1 -- Engine Staffing Requirements.

(a) Training requirements, in addition to D.3.1, are listed in Exhibit N.

(b) The Contractor shall furnish type 3-6 wildland fire engine(s), consisting of a crew of three (3) to include:

Title: Engine Boss, Single Resource (ENGB)

Number of Personnel: 1 EACH

Engine Types: ALL TYPES

Title: Firefighter Types 1 or 2 (FFT1 or FFT2)

Number of Personnel: 2 EACH

Engine Types: ALL TYPES

(c) Additional crew members ordered at the time of dispatch will be compensated at the daily rate of \$300 each.

(d) Type 6 engines may operate with only two personnel, however, the engine must be ordered and it must be documented on the resource order that only two personnel is acceptable. If two (2) crew members are ordered and documented on the resource order, \$300 will be deducted from the daily rate.

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.

Question: Testing at the incident, will COVID-19 testing be available?

Answer: Screening and testing guidance at the incident will follow CDC guidelines.

Question: If a contracted resource has been exposed to COVID-19, what will mitigation strategy be?

Answer: It will be left to the discretion of the Incident Commander to demobilize an entire resource or to allow replacement personnel considering team, local agency administrator, medical professional and best management practices to help prevent the spread of COVID-19.

Question: Will quarantined contracted resources remain under hire?

Answer: No, operators of contracted resources not fit for duty will be demobilized and placed into non-pay status pursuant to D.21.8.3 - Exceptions.

D.21.8.3 – EXCEPTIONS

(a) No further payment will accrue during any period that resource under hire is not in a safe or operable condition or it is not available for the assigned shift or portions of the assigned shift.

Payment will be based on the hours the resource was operational during the assigned shift, as documented on the shift ticket versus the designated shift, as shown on the Incident Action Plan.

(b) If the Contractor withdraws resources prior to being released by the Government, no further

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payment shall accrue and the Contractor shall bear all costs of returning resources to the point of hire.

(c) After inspection and acceptance for use, resources that become inoperable and cannot be repaired at the site of work by the Contractor or by the Government in accordance with D.18, within 24 hours, may be considered as being withdrawn by the Contractor in accordance with Paragraph b. above with the exception that the Government shall pay return travel. The Government shall calculate travel in accordance with D.21.8.1.1 based on a normal release of resource. The Contractor shall bear any additional cost returning resource and/or operator(s) to the point of hire.

(d) No payment will accrue when the contractor is off shift in compliance with the mandatory "Work/Rest" and "Length of Assignment" provisions. Refer to D.6.7.

(e) Deductions. Unless specifically stated elsewhere in this agreement the cost of any supplies, materials, or services, including commissary, provided for the Contractor by the Government will be deducted from the payment to the Contractor.

(f) Reassignment of resources. Vendors being reassigned to a new incident shall close out the use invoice for payment on the current incident PRIOR to the reassignment. The day of closeout and reassignment shall be paid as a Daily Rate applied to the incident the resource is being reassigned to. Upon final release, travel shall be calculated in accordance with D.21.8.1.1.

Question: Who will be responsible to ensure; cleanliness, proper social distancing, proper PPE, providing PPE, mitigating hazards and enforcing COVID-19 policies?

Answer: Contractors and their employees shall follow all Federal State and local laws pursuant to FAR 52.212-4(q) – Contract terms and Conditions.

52.212-4 – CONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS (OCT 2018)

(q) Other compliances. The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

Question: What is the direction provided regarding self-isolation requirements upon incident demobilization?

Answer: Contractor shall follow applicable Federal, State and local guidelines. Additional questions shall be addressed by employer. Pursuant to FAR 52.212-4(q) – Contract terms and Conditions.

52.212-4 – CONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS (OCT 2018)

(q) Other compliances. The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

Question: Is this time in self-quarantine compensable or non-compensable?

Answer: Time in self-quarantine is non-compensable. Before the vendor accepted the order to mobilize, they should understand self-quarantining requirements upon demobilization and make appropriate plans to follow applicable Federal, State and local guidelines.

Question: Does Section 3160 of the CARES Act apply to these agreements?

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Answer: No. Section 3610 also provides limitations on reimbursements:

A contractor may only receive reimbursement if its employees or subcontractor employees:

- Cannot perform work on a government-owned, government-leased, contractor owned, or contractor-leased facility or site approved by the Federal Government for contract performance due to closures or other restrictions; and
- Are unable to telework because their job duties cannot be performed remotely during the public health emergency declared on January 31, 2020, for COVID-19.

Question: Guidance being put out by Area Commands states that resources should arrive at incident with the ability to be self-sufficient for 72hrs. How are vendors going to provide for their employees after that 72hrs if the Government is not able to provide a camp with meals?

Answer: The guidance being put out by Area Commands is intended to be utilized by the land management agencies and their cooperators. This is guidance and does not change the terms and conditions of any contracts or agreements. Contractors/Vendors are required to follow what their contracts or agreements state. If there are any changes in requirements they will come in the form of a modification to the contract/agreement from the respective Contracting Officer.

Contractors/Vendors are not being required to be self-sufficient for the first 72hrs. Contractors/Vendors are required to be self-sufficient for the first 24hrs (there is an exception for Crew Carrier busses see section D.21.6) at no additional cost to the Government.

For all VIPR agreements except for the crew carrier buses this is covered in section

D.21.6 Food & Drink and D.21.5 Remain Overnight Allowance (RON). Section D.21.6 states the following:

(a) Contractors are required to provide sufficient food & drink to support their employee(s) while in travel status and the first shift of the incident. This is not reimbursed by the Government.

(b) After that time, when Government subsistence at incident camps are available, meals for Contractor's operator(s) will be furnished without charge. Government will furnish meals without cost if restaurant subsistence is the approved camp for incident personnel.

(c) The Government, during demobilization and/or reassignment, may provide sack lunches to the Contractor personnel without charging the Contractor

Section D.21.5 states the following:

(a) Contractors under this agreement are not paid per diem or lodging expenses to and from incidents.

(b) When the Government cannot provide a campsite after the first shift worked, the Government will pay actual lodging expenses or the per diem locality rate published by the U.S. General Services Administration (GSA) web site (www.gsa.gov), whichever is less. Double occupancy of hotel rooms is required. Any associated lodging taxes are reimbursable as documented. Lodging receipts, as well as documentation by incident personnel that a campsite was not provided, shall be submitted as supporting documentation with payment documents.

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(c) Reimbursement for meals and incidental expenses (M&IE) is based on per diem locality rates minus any Government-provided meals. The maximum allowable rates are referenced at www.gsa.gov.

(d) If the resource can return to its dispatch location during off-shift time, RON allowance is not authorized.

(e) The maximum RON that shall be allowed is based on the number of operators or crewmembers shown on the shift ticket. Payment shall be included as an addition on the OF-286 Emergency Equipment Use Invoice.

For the crew carrier buses the language is slightly different, however it is covered in section D.21.6 Food & Drink. Section D.21.6 states the following:

(a) TRAVEL TO OR FROM AN INCIDENT WITHOUT A CREW ON BOARD THE BUS.

Contractors are required to provide sufficient food & drink to support their employee(s) while in travel status. This is not reimbursed by the Government.

(b) TRAVEL TO OR FROM AN INCIDENT WITH A CREW ON BOARD THE BUS.

The Government will pay meals and incidental expenses (M&IE) to or from an incident only when transporting a crew (ie. crew is on board the bus). The Government will pay M&IE based on per diem locality rates published by the US General Services Administration (GSA) web site (www.gsa.gov), minus any Government-provided meals.

(c) AT THE INCIDENT. When Government subsistence at incident camps are available, meals for Contractors Operator(s) will be furnished without charge. The Government will furnish meals without cost if restaurant subsistence is the approved method of feeding incident personnel.

(d) If Government subsistence at incident camp is not available, the Contractor is expected to have sufficient food & drink for their personnel until the Government can make arrangements for food & drink. The Government will reimburse meals and incidental expenses (M&IE) based on per diem locality rates published by the US General Services Administration (GSA) web site (www.gsa.gov), minus any Government-provided meals.

(e) The Government, during demobilization and/or reassignment, may provide sack lunches to Contractor personnel without charging the Contractor.

Question: I have read the new Interagency for mobilization of resources. With the resources having to be self-sufficient for 3 days instead of the 1 day will contractors be reimbursed for these extra costs?

Answer: VIPR I-BPA holders will follow D.21.5 – REMAIN OVERNIGHT ALLOWANCE (RON) and if the Government is unable to provide meals after the first operational period, reimbursement for meals and incidental expenses (M&IE) is based on the per diem locality rates, maximum allowable rate is referenced at www.gsa.gov. These additions will be added to the vendor's OF-286.

D.21.5 -- REMAIN OVERNIGHT ALLOWANCE (RON).

(a) Contractors under this agreement are not paid per diem or lodging expenses to and from incidents.

(b) When the Government cannot provide a campsite after the first shift worked, the Government will pay actual lodging expenses or the per diem locality rate published by the U.S. General Services Administration (GSA) web site (www.gsa.gov), whichever is less. Double

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occupancy of hotel rooms is required. Any associated lodging taxes are reimbursable as documented. Lodging receipts, as well as documentation by incident personnel that a campsite was not provided, shall be submitted as supporting documentation with payment documents.

(c) Reimbursement for meals and incidental expenses (M&IE) is based on per diem locality rates minus any Government-provided meals. The maximum allowable rates are referenced at www.gsa.gov.

(d) If the resource is allowed to return to its dispatch location during off-shift time, RON allowance is not authorized.

(e) The maximum RON that shall be allowed is based on the number of operators or crewmembers shown on the shift ticket. Payment shall be included as an addition on the OF-286 Emergency Equipment Use Invoice.

Question: What is the fire screening tool that is supposed to be used to screen employees? A thermometer?

Answer: VIPR I-BPA holders are encouraged to follow CDC and local health authority guidance for any necessary employee screening. I-BPA agreements do not specify a screening process or the tool to complete a screening.

Question: Will dispatch centers be requiring this form to be filled out and submitted with the dispatch order? Or is it up to each dispatch center?

Answer: There are no additional submittals required per the VIPR I-BPA. Additionally, no requirements have been added to the VIPR I-BPA's for the 2020 season. Finally, vendors are encouraged to follow CDC and local health authorities for the safety of their employees.

Question: Are the Shift Tickets and payment packets going to be digital and signed digitally?

Answer: Potentially, where this capability is available. Efforts are in place to develop more robust capabilities to support electronic or digital timekeeping, but nothing is finalized yet. Some incidents may still rely on paper timekeeping processes.

Question: Will the Government rep signing still work with the vendors and provide copies of all documents and payment packets?

Answer: The government rep and/or Finance Section will ensure the vendor has copies of all payment package documentation, as necessary.

Question: What will the interactions and meetings look like?

Answer: Wildland fire incidents will be following CDC guidelines for helping to prevent the spread of COVID-19 such as maintaining social distancing and use of PPE as well as implementing the Best Management Practices outlined in the Geographic Area Wildland Fire Response plans in the appendices.

For any additional questions please contact the appropriate Regional [point of contact](#).