UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer
Assistant Secretary for Administration
Washington, D.C. 20230

OCT 5 2006

PROCUREMENT MEMORANDUM 2007-01

ACTION

MEMORANDUM FOR HEADS OF CONTRACTING OFFICES

FROM: Michael S. Sade
Director for Acquisition Management and
Procurement Executive

SUBJECT: Contract Performance During Pandemic Influenza Outbreak, SARS Outbreak, or Other Biomedical Emergency or Catastrophe

During the summer of 2006 Acquisition Offices worked with their Program Offices to identify contracts that are mission critical and essential to the operations of the Department of Commerce (DOC). The purpose of this Procurement Memorandum (PM) is to provide guidance to ensure contracts identified as mission critical and essential in the event of a Pandemic Influenza outbreak, SARS outbreak, or other biomedical emergency or catastrophe contain the proper contract provisions, and required contingency plans to ensure that necessary levels of support are available to DOC operations during the event.

Effective the date of this PM, the attached clause (Attachment A), CAR 1352.218-70, "Contract Performance During Pandemic Influenza Outbreak, SARS Outbreak, or Other Biomedical Emergency or Catastrophe," should be incorporated in all current contracts, as well as new solicitations and contracts that have been determined to be mission critical and essential to the ongoing operations of the Department of Commerce (DOC) in the event of a Pandemic Influenza outbreak, SARS outbreak, or other biomedical emergency or catastrophe. All applicable current contracts should be modified, pursuant to the "Changes Clause," to incorporate the new provision and the required contingency plan by November 30, 2006.

The attached checklist (Attachment B) is provided as guidance for incorporating CAR 1352.218-70. It is provided to identify the necessary steps for incorporating the clause and contingency plan in all applicable contracts.

HCOs unable to meet the dates outlined above shall notify the Procurement Executive, through their respective Bureau Procurement Official, describing the circumstances preventing incorporation of the clause and contingency plan, and providing a firm date for incorporation.

Questions about this memorandum may be directed to Leslie A. Andrecs, Commerce Acquisition Performance, Policy, and Support Division at landrecs@doc.gov or 202-482-4721.

Attachments

Prescription: Insert CAR 1352.218-70 in all supply and service contracts determined to be mission critical and essential to the ongoing operations of the Department of Commerce in the event of a Pandemic Influenza outbreak, SARS outbreak, or other biomedical emergency or catastrophe.

CAR 1352.218-70 Contract Performance During Pandemic Influenza Outbreak, SARS Outbreak, or Other Biomedical Emergency or Catastrophe (October 2006)

It has been determined that in the event of a Pandemic Influenza outbreak, SARS outbreak, or other biomedical emergency or catastrophe, this Contract is mission critical and essential to the ongoing operations of the Department of Commerce (DOC). Accordingly, all performance under this Contract shall continue without any delay, interruption or other disruption of any kind whatsoever.

In the event of a Pandemic Influenza outbreak, SARS outbreak, or other biomedical emergency or catastrophe the Contractor hereby agrees to continue to maintain performance under this Contract at a ____ % (INSERT percentage) level (hereafter referred to as "modified performance level") throughout the duration of the event, or until such time as DOC, in its discretion, determines the modified performance level to be necessary, whichever is later. Performance at the modified performance level shall be negotiated with the DOC Contracting Officer pursuant to the Changes Clause of this Contract. Performance at a modified performance level pursuant to this clause shall not commence until the Contractor receives "Notice to Proceed" from an authorized DOC Contracting Officer.

In addition, the contingency plan for operations at the modified performance level provided by the Contractor is hereby incorporated into the Contract. Failure of the Contractor to maintain the modified performance level of supply or service until the Pandemic Influenza outbreak, SARS outbreak, or other biomedical emergency or catastrophe has been declared ended, or for such time until DOC determines that the modified performance level should be changed, whichever is later, shall constitute a breach of this Contract and shall entitle DOC to immediately pursue any and all remedies to redress the Contractor's breach of this Contract.
END

Guidance for the Incorporation of CAR 1352.218-70 Contract Performance during a Pandemic Influenza Outbreak, SARS Outbreak or Other Biomedical Emergency of Catastrophe

Instructions:

This checklist is intended to provide guidance on the steps necessary to ensure that mission critical and essential contracts are identified, that they contain the proper contract provisions, and incorporate required contingency plans to ensure that necessary levels of support are available to the Department of Commerce operations in the event of a Pandemic Influenza outbreak, SARS outbreak, or other biomedical emergency or catastrophe.

		Completed & Date
1.	Identify mission critical and essential contracts working with Program Office and Contracting Officer Representative.	Yes ☐ No ☐
2.	Working with the Program Office and COR identify the appropriate level of support (hereinafter referred to as modified level) that is required for each mission critical and essential contract in the event of a Pandemic Influenza outbreak, SARS outbreak, or other biomedical emergency or catastrophe to ensure continued operations for the Department of Commerce (DOC)	Yes ☐ No ☐
3.	Review the identified mission critical and essential contracts to determine if they already contain a requirement for continuity of service during emergencies/disasters.	Yes ☐ No ☐
4.	Where practicable, identify three levels (primary plus two alternates) of both CO and CORs (working with the Program Office and COR) for each mission critical and essential contact.	Yes ☐ No ☐
5.	Does the contract currently contain a requirement for continuity of service, determine if the contractor has submitted a contingency plan that addresses how the contractor will maintain service at the designated level should an emergency occur.	Yes ☐ No ☐
6.	If a contingency plan has not been submitted, request contingency plans for those mission critical and essential contacts that have the requirement for continuity of service.	Yes ☐ No ☐
7.	If a mission critical and essential contract does not contain a requirement for continuity of service, issue a request to the Contractor, pursuant to the Changes Clause of the Contract, to incorporate CAR 1352.218-70, "Contract Performance During Pandemic Influenza Outbreak, SARS Outbreak, or Other Biomedical Emergency or Catastrophe," into the Contract. In addition, the request should also require the Contractor to submit a proposal for equitable adjustment that includes a contingency plan describing how the Contractor intends to provide the appropriate level of support during the event. If the requirement is new or a follow-on contract, the contractor should be asked to submit the contingency plan as part of its proposal.	Yes ☐ No ☐

8.	Upon receipt of proposal, review with Program Office and COR to determine negotiation position and secure the necessary funding, if needed.	Yes ☐ No ☐
9.	Negotiate an equitable adjustment to the Contract Price and Period of Performance for the incorporation of the DOC CAR 52.218-70 and contingency plan.	Yes ☐ No ☐
10.	Award or modify mission critical and essential contract and incorporate DOC CAR 52.218-70, contingency plan requirement, and additional levels of CO's and COR's.	Yes ☐ No ☐
11.	In the event of an actual Pandemic Influenza Outbreak, SARS Outbreak, or Other Biomedical Emergency or Catastrophe, issue Notice to Proceed at the modified performance level to the Contractor.	Yes ☐ No ☐
	NOTE: Identify contracts that would not be necessary during a possible reduced level of operations as the result of Pandemic Influenza Outbreak, SARS Outbreak, or Other Biomedical Emergency or Catastrophe. Work with the Program Office and OGC to determine the appropriate plan of action (suspension, reduction of services, etc)	Yes ☐ No ☐