

How next year's Military Cuts will affect you! – Pending Budget Cuts will increase Stop Work Orders and Terminations!

A recent Wall Street Journal Article "Combative Clash on Military Cuts" dated August 2, 2012, discussed the dispute between House Republicans and Obama's Budget Director at the House Armed Services Committee Hearing.

At the heart of the issue are the pending potential cuts to the defense budget. Specifically, should the planned cuts go through, defense budgets will have to be cut by \$50 Billion in the next fiscal year. As an effect of these cuts, Military contractors claim that they will be forced to scale back programs and lay off workers. To explain the impact, Deputy Defense Secretary Ashton Carter testified that the pending cuts would have "devastating effects," using as an example a reduction of four F-35 fighter jets on order with Lockheed Martin.

What does this mean to Prime and Sub Government Contractors?

Prepare yourselves for stop work orders and terminations! Many Fixed Price and Flexibly priced prime and subcontractors may certainly face stop work orders and full or partial terminations to their Government funded programs in the near future. The sad truth; however, is that many recoverable expenses are never fully realized because companies did not know that they were entitled to recover certain costs and/or how to calculate the recoverable costs. Have no doubt that the Government and / or some Prime contractors will not offer up these costs for you to recover!

So how does a responsible contractor prepare? Here are some of the key considerations:

- Establish "New Cost Accounts" immediately – The identification and collection of direct costs may seem obvious, but what about specifically identifiable indirect costs that but for the Stop Work or Termination would not have been incurred? . The most successful contractor's establish a series of new cost accounts as soon as the company becomes aware of a Stop Work Order or a Termination to collect the costs both direct and indirect.
- Distinguish recoveries - Learn the difference between an Equitable Adjustment (Stop Work) and a Termination proposal (Termination for Convenience) and how these costs are categorized, proposed and recovered.
- Document your proposal efforts – Evidence of time devoted to the preparation of these proposals (both direct and indirect labor costs) should be directly recoverable as proposal expenses!
- Obtain the best help available to you – The Federal Acquisition Regulation (FAR) explicitly states that consulting expenses incurred toward generating an equitable adjustment and termination proposal are allowable. This means that the cost required to prepare a proposal may be directly added and recovered as part of the proposal. A properly prepared consultant should be able to identify costs recoverable under a "Stop Work" versus "Termination." Should you select a consultant to provide assistance, the consultant should be able to assist you from: (1) prepare your company's entire proposals, subject to company review, and thereby minimizing interruption to the business, or (2) act only as a very knowledgeable proposal team member who will ask probative questions to assist the company in its efforts to properly maximize cost recovery opportunities and anywhere in between these to continuum points

Certainly, dealing with any kind of "Stop Work Order" or "Termination" proposal is not something anyone wants. But have no doubt, stop work orders and terminations are forthcoming. Companies who have procedures and processes in place today will certainly fair better tomorrow.

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