

STOP-WORK ORDERS – HOW WILL YOU MANAGE THE RETURN TO WORK?

RETURNING TO WORK AND RECOVERING YOUR COSTS

INTRODUCTION

In the event that a stop-work order is lifted by the Government, the contractor is required to return to work immediately, and has only a 30-day period “after the end of the period of work stoppage” to provide the contracting officer with any cost increases incurred due to the stopped work. FAR 52.242-15 (b)(2). If the contractor fails to submit a claim within the **30-day period** following the return to work, the **contractor relinquishes its right to file a claim stemming from the stop-work period.**

By knowing what to expect and taking proactive steps, contractors can efficiently manage work stoppages subsequent return to work, and **recover their related cost and time increases.**

STOP WORK ORDERS

Under FAR 52.242-15, a stop-work order is a means by which a contracting officer (“CO”) may direct a contractor, in writing, to stop all or part of the work on a project for 90 days. If a stop-work order needs to be extended beyond the initial 90 days, both parties must agree to such an extension in writing (the CO may also expressly reduce this time period to less than 90 days). Otherwise, the order is **automatically lifted** when the 90 days expires.

The “Stop-Work Order” clause applies to Government contracts including fixed-price or cost-reimbursement contracts, supplies contracts, and services contracts and must be given to a contractor in writing. Reasons for issuing a stop-work order may include changes in programs, unavailability of funding, or engineering breakthroughs. Notwithstanding the availability of this clause, the FAR encourages the parties to use a supplemental agreement instead of a stop-work order where possible. FAR 42.1303(b).

A stop work order should include: (1) a description of the work to be suspended; (2) instructions concerning the contractor’s issuance of further orders for materials or services; (3) guidance to the contractor on action to be taken on any subcontracts; and (4) other suggestions to the contractor for minimizing costs. FAR 42.1303(c).

Upon receipt of a stop-work order, contractors are required to take steps to ensure that costs incurred during the work stoppage are kept to a minimum. Contractors should also begin accounting separately for those costs associated with the stopped work, so that they can be accurately tracked and easily identified when the contractor asserts its right to the corresponding adjustment of the contract.

Contractors should also be aware that they are required to immediately take action to ensure compliance with the requirements of a stop-work order. Some of those actions include:

- Making immediate plans to properly account for all costs that may be incurred during the stop-work period; these costs must be kept separate from other job account costs
- Ensuring that all subcontractors have been notified that a stop-work order has been issued
- Tracking the stop-work period to ensure time is properly tracked for deadlines
- Inquiring about a possible stop-work order cancellation or time extension

Failure to take these steps may cause a contractor to incur **unnecessary costs** and/or hinder its ability to recover its costs.

CRITICAL 30-DAY PERIOD

When the period of work stoppage ends, the CO shall make an equitable adjustment to the contract price IF the work stoppage caused increased costs, AND the contractor “asserts its right” to the **adjustment** within 30 days of the end of the stop-work period. Although this 30-day time limit is strictly enforced, the contracting officer has the discretion to receive and act on a change order request any time before final payment. See FAR 52.242-15(b)(2).

In any event, the contractor should be prepared to submit and assert its right to equitable adjustment within the 30-day timeframe to avoid missing the opportunity to recover its costs.

An equitable adjustment provides recovery for time of performance, costs incurred, or both. A stop-work order is considered to be a **contract modification** and action must be taken so that the contractor is afforded a just and reasonable recovery. Some of these recoverable costs can include:

- Management costs
- Idle time and facilities
- Remobilization costs
- Additional staff/labor
- Unabsorbed overhead
- Costs associated with preparing the claim for equitable adjustment (i.e., consultant’s fees and administrative costs)

Because there are many cost items that a contractor can claim under an equitable adjustment, costs can accumulate quickly. Provisions for equitable adjustments in the case of stop-work orders are broadly construed because the contractor can be strongly impacted by the inability to work.

ADDITIONAL CONCERNS

Contractors can take proactive measures while navigating a directed work-stoppage to make a turbulent process go as smoothly as possible. The following are some suggestions:

Communicate with the contracting officer. Seek a meeting with the CO as soon as you learn of a work stoppage. Ask for direction, and **get it in writing!** Ask about the cause of the stoppage and the status of funding issues. Proactively conduct an analysis of how the stoppage will impact

your contract and operation, and communicate the same to the contracting officer. Because you know your operation better than anyone else, this at the very least can help the CO make the most informed decision possible as it relates to your operation. Keep in mind, however, that your operation and contract may not be the CO's first concern.

Contractors should also communicate the stoppage and its expected impacts to its employees in order to be in front of logistical and morale issues. Similarly, contractors should communicate with their subcontractors, suppliers, and other team members to mitigate costs resulting from the work stoppage. Alternatives should be explored in advance. Can employees be reassigned to other projects? If so, is it possible for the employees to return to the government contract work? Can the contractor reasonably anticipate that it will recover costs for reassignment?

Finally, contractors should **meticulously document** their work in order to increase the likelihood of recovering increased costs and time associated with the work stoppage.

CONCLUSION

Navigating the processes of a stop-work order can be complicated – especially when trying to recover additional costs and time that were incurred directly from the work stoppage. Contractors that are unsure of what to do during a stop-work period are left on “standby,” waiting to be told to resume work by a contracting officer. For example, an uninformed contractor may wait out the period stated in the stop-work order only to find that the Government plans to terminate the contract for convenience. The contractor would therefore incur unnecessary and avoidable costs as a result.

Contractors that attempt a resolution without some expert guidance may find the process very complex.

Assistance by a consultant should be explored to properly and thoroughly protect a contractor's interests in the event a contractor is issued a stop-work order. The experts at Excell Consulting International, Inc. can assist and evaluate your company's position and provide valuable and cost-effective protection for your business. With empowerment through partnership, **you can rest assured that you will be guided through the claim process.**

In the end, you will be glad you made the call.

EXCELL CONSULTING: “HERE TODAY FOR YOUR TOMORROW.”

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