

BRIEFING PAPERS[®] SECOND SERIES

PRACTICAL TIGHT-KNIT BRIEFINGS INCLUDING ACTION GUIDELINES ON GOVERNMENT CONTRACT TOPICS

What's Your Exit Strategy? How Government Contractors In Afghanistan Can Prepare For The United States' Impending Withdrawal

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President Joe Biden announced in April that U.S. forces will withdraw from Afghanistan by September 11, 2021, roughly 20 years after the war in Afghanistan began.¹ With the departure date fast approaching, details of the U.S. exit strategy have been sparse, particularly when it comes to the more than 18,000 government contractor personnel who are supporting U.S. missions in Afghanistan.² Contractors currently provide the U.S. and Afghan governments a wide range of critical services, including base life support, maintenance of military equipment, transportation and logistics, fuel, and various categories of professional services, such as private security, military training, and translation.

The top priority in the coming months for the United States and its contractors will be to ensure that they get their personnel and property out of Afghanistan as safely and efficiently as possible. But before the dust settles on this precipitous exit, prime contractors and their subcontractors must also turn to evaluating and pursuing any requests for equitable adjustment or claims for payment arising from the termination, modification, or interruption of their contracts. In many cases, contractors and subcontractors will be entitled to compensation from the United States (or from each other), though they will have to satisfy certain contractual and legal requirements to recover.

This BRIEFING PAPER explains how government contractors in Afghanistan can prepare now to maximize their recoveries and avoid unnecessary losses as the United States makes its departure from the country. Specifically, the PAPER discusses steps contractors can take to plan for potential terminations for convenience, written change orders and constructive changes, and suspension of work or stop-work orders under the terms of their contracts. It also explains how contractors can address operational challenges posed by the government's demobilization and redeployment directives, the need for physical security and force protection, and disposition and management of govern-

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ment and contractor property due to the U.S. exit from Afghanistan. It concludes with some practical guidelines highlighting the key recommended strategies for contractors.

Contract Issues: Likely Scenarios And How To Prepare

Though the full details of the U.S. exit plan remain to be seen, one point already seems clear—the United States gradually will require less contracted support as the date for withdrawal draws closer. With “Go to Zero” operations now underway in Afghanistan,³ U.S. contracting officers have started to terminate, modify, or pause existing contracts due to declining demand for contracted support. The exact nature and timing of these actions will differ based on a variety of factors, such as a contract’s terms and conditions and how long the U.S. government will need certain supplies and services. Decisions to continue contracted support for the Afghan government following the withdrawal will also determine the fate of particular contracts. Regardless, the U.S. government in most cases will use well-established procedures to wind down existing contracts. Below we outline several likely scenarios and provide guidance to help contractors prepare now.

Terminations For Convenience

In situations where the government no longer needs a contractor’s support, the contracting officer will likely end the prime contract via a termination for convenience.⁴ For example, once U.S. personnel leave a given area, certain local support contracts (*e.g.*, for fuel delivery, translation services) may no longer serve a purpose and can be terminated in full. Similarly, if the United States plans to demobilize an operating base, the government may gradually draw down base life support contracts (*e.g.*, for food

service, water production, billeting, power generation, laundry, operations, and maintenance) in a series of partial terminations for convenience.⁵

A termination for convenience is formally initiated in a written Notice of Termination.⁶ The government has significant discretion to terminate a contract for its convenience, and contractors have limited options to overturn such a decision. Thankfully, virtually every standard “Termination for Convenience” clause is written with the goal of fairly compensating the contractor for work performed.⁷ Also, unlike in a termination for default, a contractor’s past performance ratings generally should not suffer because of a termination for convenience.⁸ Upon receiving a Notice of Termination, a contractor should immediately review the notice and the terms of the applicable “Termination for Convenience” clause included in its contract or the Federal Acquisition Regulation (FAR).⁹ In most cases, the contractor will be required immediately to take the following actions:

- Stop work as stated in the notice (but continue any non-terminated portions of work).
- Place no further subcontracts or orders for materials, services, or facilities, except as necessary to continue performing any non-terminated portions of work.
- Terminate all subcontracts to the extent they relate to the terminated work.
- If directed by the contracting officer, assign all right, title, and interest of the contractor under the terminated subcontracts. In this scenario, the government will have the right to settle and pay any termination settlement proposals with such subcontractors.
- If the right to settle with terminated subcontractors

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is not assigned to the government, settle all outstanding liabilities and termination settlement proposals with such subcontractors (subject to approval and ratification by the contracting officer to the extent required by the government).

- Follow the contracting officer's instructions regarding the transfer, delivery, protection, preservation, disposition and sale of parts, completed work, supplies, materials, plans, drawings, information, and other property relevant to the contract.¹⁰

In a termination for convenience, a contractor generally is entitled to be paid for work performed, including a reasonable profit or fee.¹¹ Costs incurred as a result of a termination for convenience also are recoverable (*e.g.*, costs of terminating and settling subcontracts; accounting, legal, clerical, and other expenses reasonably necessary to prepare a termination settlement proposal; and storage, transportation, and other costs reasonably necessary to preserve, protect, and dispose of property).¹² Contractors must keep in mind, however, that the exact amounts they can recover following a termination for convenience may vary depending on the contract type and the terms of the applicable "Termination for Convenience" clause. For example, under the termination for convenience provision applicable to commercial items contracts (FAR 52.212-4(I)), the contractor is entitled to be paid "a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate . . . have resulted from the termination," which may include costs reasonably incurred in anticipation of performance, general and administrative expenses, and a reasonable profit.¹³ Therefore, a terminated contractor must carefully examine its contract and the pertinent termination clause before seeking any compensation from the government.

Following a termination for convenience, a contractor may request payment from the government of amounts owed and previously unpaid by submitting a termination settlement proposal to the contracting officer.¹⁴ Preparing an effective settlement proposal is a team effort and typically requires input from a company's contracts administration, program management, accounting, property management, and legal personnel. Under non-commercial item contracts, the proposal must be submitted within one year of the termination's effective date, unless extended by the contracting officer in writing.¹⁵ The contractor also must

submit complete termination inventory schedules within 120 days of the termination's effective date.¹⁶ Most termination proposals are settled in a negotiated agreement or, if the parties fail to agree, through a unilateral determination by the contracting officer.¹⁷ In the case of a fixed-price contract, the settlement amount may not exceed the contract price.¹⁸ If a contractor is dissatisfied with a contracting officer's unilateral settlement determination, it may appeal the decision under the contract's "Disputes" clause, either to a board of contract appeals or the U.S. Court of Federal Claims.¹⁹

Contractors tend to be most successful in such appeals when they can demonstrate that they:

- Complied with the terms of the Notice of Termination and the applicable "Termination for Convenience" clause.
- Met all relevant time deadlines, including for the submission of a termination settlement proposal, termination inventory schedules, responding to government requests for information, and appeals to the appropriate tribunal.
- Accurately and comprehensively tracked all costs arising from the termination.
- Took reasonable steps to minimize costs, including with respect to subcontractors.
- Incurred the requested amounts due to the government's termination decision.

The government's termination of a prime contract also can have significant ramifications for subcontractors. Many prime contractors use a standard FAR "Termination for Convenience" clause in subcontracts or incorporate a tailored version that allows the prime to terminate for its convenience to the same extent as the government. But some primes fail to include an appropriate termination clause in their subcontracts or improperly invoke the right to terminate in circumstances not covered by the provision they have included. With potentially significant sums at stake, a subcontractor should not accept a termination for convenience without first assessing its contractual rights. Upon receiving a notice of termination from a prime, subcontractors should carefully review the terms of the subcontract termination for convenience clause (if any). This review should focus on determining if the prime's ac-

tions are justified or if the purported termination constitutes an actionable breach of the subcontract.

Written Change Orders & Constructive Changes

The rapid drawdown of U.S. resources from Afghanistan will create a highly fluid situation over the next several months and, to keep pace, the government may direct contractors to perform tasks or in ways that differ from the stated requirements of their contracts. For example, the U.S. may instruct a contractor to relocate equipment or perform services in areas or under conditions not contemplated by the contract. The U.S. government also could direct the contractor to provide its services to other U.S. or allied entities or to support Afghan personnel during or even after the withdrawal. In a perfect world, the contracting officer would provide such direction in a written change order, as contemplated in clauses such as FAR 52.243-1, “Changes—Fixed-Price (Aug. 1987),” FAR 52.243-2, “Changes—Cost-Reimbursement (Aug. 1987),” and FAR 52.243-3, “Changes—Time-and-Materials or Labor-Hours (Sep. 2000).”²⁰ These clauses allow the government to make changes within the general scope of the contract, including (as applicable) changes to contract drawings, designs, or specifications, method of shipment or packing of supplies, place of delivery, description of services, or time or place of performance.²¹ Generally, if such a change causes an increase or decrease in the cost of or the time required for performance, the contractor will be entitled to an equitable price or schedule adjustment.²² A contractor must assert its right to such an adjustment within 30 days of receiving the written change order.²³ Ideally, the contractor and the government would then negotiate the request for equitable adjustment (REA) to a mutually agreeable resolution.

But circumstances may not be “ideal” in what promises to be a quick departure, and the government could also make contract changes without the issuance of a formal written order. Such “constructive changes” occur when a contractor is forced to perform work not required by the contract and the new work was either informally ordered by the government (*e.g.*, through an oral or written act or omission) or caused by government fault.²⁴ A constructive change may entitle the contractor to an equitable price or schedule adjustment and can be asserted in an REA to the contracting officer. Tribunals have found constructive changes where the government improperly interprets a contract,²⁵ impedes or fails to cooperate with a contractor’s

performance,²⁶ prevents the contractor from performing efficiently,²⁷ provides defective specifications,²⁸ fails to disclose superior knowledge,²⁹ or speeds up the contractor’s timeline for performance.³⁰ For example, with a looming exit deadline from Afghanistan, contracting officials may accelerate a contractor’s work by exerting pressure on the company to deliver earlier than required by the contract. The government may also withdraw certain contractually required support that is intended to facilitate the contractor’s performance (*e.g.*, individual protective equipment, force protection, evacuation services, clothing, weapons, mortuary affairs), or interpret the contract in a way that makes it more costly for the contractor to continue or end its work.

Whether arising from a formal change order or a constructive change, if the parties do not reach agreement on an REA that is satisfactory to the contractor, the contractor may prepare and submit a claim under the contract’s “Disputes” clause.³¹ This clause outlines the procedures for filing such claims with the contracting officer pursuant to the Contract Disputes Act of 1978 (CDA).³² A contractor also may convert an REA into a claim at any time or skip the REA process entirely and simply submit a claim with the contracting officer. In each case, the contractor’s claim must satisfy the requirements of the CDA, including the requirement to demand payment of a “sum certain” and to properly certify any claim seeking more than \$100,000.³³ Further, to be considered timely, a contractor must assert a CDA claim within six years from the date of accrual, as defined in FAR 33.201.³⁴ If the contracting officer denies a claim (or fails to issue a decision within 60 days), the contractor may appeal the decision to an appropriate board of contract appeals or the U.S. Court of Federal Claims.³⁵ In CDA appeals involving changes or constructive changes, contractors are most successful when their underlying claim:

- Is supported by comprehensive, contemporaneous documentation.
- Describes the government actions and inactions that caused the contractor’s increased costs or delays.
- Asserts the various facts and alternative legal theories they are likely to raise on appeal.
- Seeks costs that are allowable, as defined in FAR 31.201-2.³⁶

Subcontractors also can be greatly impacted by

government-directed changes and constructive changes. But because they lack privity of contract with the government, subcontractors typically must first submit REAs and claims to the prime contractor, which can then choose to make a “sponsored” submission to the government. Subcontractors also should keep in mind that, in some cases, the prime contractor may have caused a change or even assumed some of the contractual risk for government-caused changes (*e.g.*, promising to work with the government to provide base access or force protection to subcontractor employees). Therefore, if faced with a change, a subcontractor should carefully review the terms of its subcontract to determine if it may also have recourse against the prime.

Suspension Of Work Or Stop-Work Orders

Given the many unknowns in Afghanistan over the coming months, the government may not yet know if or how long it will need a given contractor to continue performing. For example, as the U.S. solidifies plans for its post-withdrawal role in the region, the government may be unsure if it will extend or assign certain contracted services for the benefit of the Afghan government (*e.g.*, facilities construction, military training, military equipment maintenance, logistics, and transportation support). In these circumstances, the contracting officer may look to temporarily pause a contract until the government decides whether to continue or terminate such an agreement. To implement such a pause, a contracting officer may invoke the contract’s “Suspension of Work” clause (required in fixed-price construction and architect-engineer contracts)³⁷ or “Stop-Work Order” clause (required in contracts for supplies, services, and research and development).³⁸ This typically is done in writing, though government personnel also can initiate a “constructive suspension” by their words and actions.³⁹

Under the “Suspension of Work” clause, the government may “suspend, delay, or interrupt all or any part of the work [under a contract] for a period of time that the Contracting Officer determines appropriate for the convenience of the Government.”⁴⁰ The contractor is entitled to a price or schedule adjustment, however, if the contract is paused for “an unreasonable period of time” due to the actions or inactions of the contracting officer.⁴¹ Similarly, under the “Stop-Work Order” clause, the contracting officer may halt all or part of the work on a contract for up to 90 days or any “further period” agreed upon by the

parties.⁴² If the government lifts the order, the contractor must resume performance.⁴³ Regardless, the contractor is entitled to a price or schedule adjustment (or both) if the stop-work order increases the time needed to perform, or the costs properly allocable to, any portion of the contract.⁴⁴ The contractor must request an equitable adjustment within 30 days after the end of the period of work stoppage.⁴⁵ Like any other REA, such a request must be well-documented and carefully connect the dots between the government’s actions and the increased costs or delays incurred by the contractor. Prime contractors often flow down the “Suspension of Work” and “Stop-Work Order” clauses to subcontractors or otherwise instruct subcontractors to pause work when directed by the government. Depending on the terms of the agreement, such direction from a prime may entitle the subcontractor to its own equitable price or schedule adjustment.

Operational Issues: Likely Scenarios & How To Prepare

Apart from the contracting issues discussed above, contractors in Afghanistan will soon face a host of operational challenges caused by the U.S. withdrawal. Below we discuss a few of these challenges, focusing on likely scenarios that could most directly impact contractor personnel and property.

Demobilization & Redeployment

Contractors and subcontractors currently have personnel, equipment, and other tangible assets located throughout Afghanistan. When it comes to equipment and tangible assets, some contracts may contain explicit demobilization instructions, but many contracts will not. In the absence of clear written guidance, contractors should initiate discussions with authorized U.S. contracting officials about the government’s plans to demobilize specific sites. As part of these discussions, contractors should request government direction on when to demobilize their equipment and assets, the specific locations and areas to which those items should be relocated, and the means for transporting and securing them in transit and at each destination along the way. With respect to personnel, contractors should initiate similar discussions with the government, focusing on applicable contract requirements⁴⁶ and theater-specific guidance issued by the military. For example, on April 20, 2021, Army Contracting Command-Afghanistan

issued a memorandum with detailed procedures for redeploying contractor personnel through an “established redeployment theater gateway cell” located at Bagram Air Field (also known as Bagram Airbase).⁴⁷ Among other guidance, the memorandum emphasizes the importance of maintaining accurate contractor data in the Synchronized Predeployment & Operational Tracker (SPOT), the Department of Defense (DoD) database for tracking personnel during stability operations.⁴⁸

Physical Security & Force Protection

Following the U.S. announcement in mid-April that it would not meet its original withdrawal deadline of May 1, 2021,⁴⁹ the Taliban threatened to take countermeasures against “the occupying forces” and the Afghan government.⁵⁰ A few weeks later, on April 27, the U.S. Embassy in Kabul issued a security alert stating that it had ordered the evacuation of non-essential embassy personnel and urging U.S. citizens to depart the country as soon as possible.⁵¹ In the time since, Taliban fighters have repeatedly launched attacks throughout Afghanistan, including a major offensive in the southern Helmand province, according to public reports.⁵² If these events are any indication of what lies ahead, the need for physical security in Afghanistan will be at an even higher premium in the coming months. Current DoD policy states that military force protection will be provided to contractors if it is not operationally or cost-effective for contractors to provide their own security.⁵³ This includes situations where security conditions deteriorate so badly that the U.S. military must step in to protect contractors. But with contractors greatly outnumbering available U.S. troops in Afghanistan (approximately 18,000 to 2,500 or a ratio of 36 to 5),⁵⁴ the U.S. military would be hard-pressed to provide all the necessary force protection on its own. As such, contractors may also need to rely on a combination of Afghan military forces, private security companies, and their own armed personnel for security. If you are a contractor in Afghanistan and have not already done so, you should immediately plan and arrange for your physical security needs during the withdrawal. This should include consideration of static security at locations housing company personnel and property (however temporary), as well as movement security while traveling by ground or air.

Government & Contractor Property

Withdrawing from an unstable environment that falls

under the authority of a foreign sovereign can create tricky questions about the appropriate disposition of property such as equipment, facilities, and other valuable commodities. The rules addressing the management and disposition of U.S. government-furnished property (GFP) are well-established and contractors and subcontractors in Afghanistan should take the time now to carefully review any GFP clauses included in their contracts.⁵⁵ But contractors should not assume that it will be easy to implement those rules as the United States prepares to exit. The government in some instances will want GFP to be transported out of the country for reuse, while in others it may decide to abandon or transfer the property to the Afghan government or other entities. These decisions may change, be delayed until the 11th hour, or encounter practical barriers (*e.g.*, closed roads, dangerous conditions). In all cases, however, the key to minimizing losses is early, continuous, and documented communication with the government about its plans for GFP. Initiating these discussions now will help avoid misunderstandings down the road. These discussions also should address plans for any contractor-owned equipment, facilities, and other assets that may have been leased by or operated for the benefit of the U.S. government. In the past, miscommunications with the U.S. government have resulted in contractor-owned property being taken by or turned over to the host nation, requiring the owner to then seek relief from the courts.⁵⁶ The preferable approach, of course, is to proactively engage your U.S. government counterparts and avoid any misunderstandings altogether.

Conclusion

With less than three months before the United States’ scheduled withdrawal, government contractors in Afghanistan will soon face a wide range of complex contractual and operational challenges. Many of these challenges will be unavoidable and may not materialize for some time, but as explained above, contractors can and should take practical steps now that will protect their personnel, property, and bottom line if and when those challenges do arise.

Guidelines

These *Guidelines* are intended to assist you in understanding how government contractors in Afghanistan can prepare now to maximize their recoveries and avoid unnecessary losses as the United States exits the country.

They are not, however, a substitute for professional representation in any specific situation.

1. With the withdrawal from Afghanistan fast approaching, contractors should re-familiarize themselves with the contract clauses that the U.S. government might use to wind down or modify their contracts. Understanding the terms and requirements of these provisions will help contractors maximize the relief to which they are entitled down the road.

2. To maximize their recovery, contractors should follow the government's directions and keep accurate records of all actions taken to do so. Following the government's instructions and documenting your efforts will, among other benefits, help avoid any allegation that your company adopted unreasonable measures that should not be compensable.

3. Be sure to establish an open line of communication with your government counterparts and do not be afraid to ask for direction. Specifically, before taking any important actions (e.g., disposing of equipment needed to perform the contract), consider advising the government of your company's plans and, whenever possible, obtain the government's written concurrence. Not only will this help avoid miscommunication, it will support your efforts to be compensated for expenses you incur along the way.

4. Prime contractors are not the only entities that will be impacted by the withdrawal from Afghanistan. Subcontractors also must be ready to enforce their contractual rights, whether against a prime contractor or the government, and prepare to deal with potentially complex operational issues involving demobilization, physical security, and property.

5. As the U.S. draws down its military resources, the top priority for most contractors in Afghanistan is and should be to ensure the well-being of their employees and security of their property. But soon after exiting the country, contractors will have to turn to the business of ensuring that they are fairly compensated for their efforts. In many cases, this will require contractors to prepare and submit termination settlement proposals, REAs, or claims to the contracting officer. Such submissions should be well-supported, easy to follow, and carefully crafted by experienced professionals from either inside or outside your organization.

ENDNOTES:

¹See Remarks by President Biden on the Way Forward in Afghanistan (Apr. 14, 2021), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/04/14/remarks-by-president-biden-on-the-way-forward-in-afghanistan/>.

²See Gibbons-Neff, Cooper & Schmitt, "Departure of U.S. Contractors Poses Myriad Problems for Afghan Military," N.Y. Times (June 19, 2021), <https://www.nytimes.com/2021/06/19/world/asia/Afghanistan-withdrawal-contractors.html>; Ali & Stewart, "Pentagon Chief Says Removal of All Contractors From Afghanistan Underway," Reuters (May 6, 2021), <https://www.reuters.com/world/asia-pacific/removal-all-contractors-afghanistan-underway-pentagon-chief-2021-05-06/>.

³See Gibbons-Neff, Schmitt & Cooper, "Pentagon Accelerates Withdrawal From Afghanistan," N.Y. Times (May 25, 2021), <https://www.nytimes.com/2021/05/25/us/politics/us-afghanistan-withdrawal.html>.

⁴See FAR pt. 49, "Termination of Contracts"; see also FAR 52.212-4(l).

⁵See, e.g., FAR 52.249-2(a) & FAR 52.249-6(a) (permitting the Government to terminate contractors for its convenience in whole or in part).

⁶See, e.g., FAR 52.249-2(a); FAR 52.249-6(b).

⁷See FAR 49.201(a).

⁸See generally FAR 42.1503(h)(1)(iii)–(iv).

⁹See, e.g., FAR 52.249-2, "Termination for Convenience of the Government (Fixed-Price) (Apr. 2012)"; FAR 52.249-6(a)(1), "Termination (Cost-Reimbursement) (May 2004)"; see also FAR 52.212-4(l), "Contract Terms and Conditions—Commercial Items (Oct. 2018)."

¹⁰See, e.g., FAR 52.249-2(b); FAR 52.249-6(c).

¹¹See, e.g., FAR 52.249-2(f); FAR 52.249-6(h) & (h)(4); FAR 49.201(a), 49.202; see also SWR, Inc., ASBCA No. 56708, 15-1 BCA ¶ 35,832, 2014 WL 7084933, at 30–31 (recognizing the availability of profit under both prongs of the commercial items termination for convenience provision at FAR 52.212-4(l)).

¹²See, e.g., FAR 52.249-2(f), (g), (i); FAR 52.249-6(h); see also SWR, Inc., ASBCA No. 56708, 15-1 BCA ¶ 35,832, 2014 WL 7084933.

¹³See FAR 52.212-4(l); see also SWR, Inc., ASBCA No. 56708, 15-1 BCA ¶ 35,832, 2014 WL 7084933, at 28–31.

¹⁴See, e.g., FAR 52.249-2(e); FAR 52.249-6(f); see also FAR 49.112-1(a) (allowing prompt partial payment on interim or final settlement proposals, to the extent permitted by contract).

¹⁵See, e.g., FAR 52.249-2(e); FAR 52.249-6(f).

¹⁶See, e.g., FAR 52.249-2(c); FAR 52.249-6(d).

¹⁷See, e.g., FAR 52.249-2(f), (g); FAR 52.249-6(g), (h).

¹⁸See, e.g., FAR 52.249-2(f).

¹⁹See, e.g., FAR 52.249-2(j); FAR 52.249-6(j).

²⁰See, e.g., FAR 52.243-1(a); FAR 52.243-2(a); FAR 52.243-3(a).

²¹See, e.g., FAR 52.243-1(a); FAR 52.243-2(a); FAR 52.243-3(a).

²²See, e.g., FAR 52.243-1(b); FAR 52.243-2(b); FAR 52.243-3(b).

²³See, e.g., FAR 52.243-1(c); FAR 52.243-2(c); FAR 52.243-3(c).

²⁴Int'l Data Prods. Corp. v. United States, 492 F.3d 1317, 1325 (Fed. Cir. 2007).

²⁵See, e.g., Kiewit Infrastructure W. Co. v. United States, 972 F.3d 1322 (Fed. Cir. 2020), 62 GC ¶ 259.

²⁶See, e.g., SIPCO Servs. & Marine, Inc. v. United States, 41 Fed. Cl. 196 (1998).

²⁷See, e.g., Valerie Lewis Janitorial v. Dep't of Veterans Affairs, CBCA No. 4026, 2020 WL 2507940 (May 5, 2020), 62 GC ¶ 164

²⁸See, e.g., Ace Constructors, Inc. v. United States, 499 F.3d 1357 (Fed. Cir. 2007), aff'd, 499 F.3d 1357 (Fed. Cir. 2007), 49 GC ¶ 380.

²⁹See, e.g., Johnson & Son Erectors, ASBCA 24564, 81-1 BCA ¶ 15,082, 1981 WL 7060, aff'd, 231 Ct. Cl. 753 (1982).

³⁰See, e.g., Robust Constr., L.L.C., ASBCA No. 54056, 05-2 BCA ¶ 33,019, 2005 WL 1634771.

³¹See FAR 52.233-1, "Disputes (May 2014)"; see also FAR 33.215(a).

³²41 U.S.C.A. §§ 7101–7109.

³³See FAR 52.233-1(c), (d)(2).

³⁴See FAR 52.233-1(d)(1); FAR 33.201 ("Accrual of a claim means the date when all events, that fix the alleged liability of either the Government or the contractor and permit assertion of the claim, were known or should have been known. For liability to be fixed, some injury must have occurred. However, monetary damages need not have been incurred.").

³⁵41 U.S.C.A. §§ 7103(f)(5), 7104.

³⁶For a cost to be allowable, it must meet five basic requirements: (1) it must be reasonable; (2) it must be allocable to the contract in question (and not absorbed by another contract); (3) for certain contracts, the cost must be in accordance with the Cost Accounting Standards (otherwise, in accordance with generally accepted accounting principles and practices appropriate to the circumstances); (4) it must be consistent with the terms of the contract; and (5) it is subject to any specific limitations contained in FAR 31.205, "Selected Costs." FAR 31.201-2(a).

³⁷See FAR 52.242-14, "Suspension of Work (Apr. 1984)."

³⁸See FAR 52.242-15, "Stop-Work Order (Aug. 1989)."

³⁹See FAR 52.242-14(a), (b).

⁴⁰FAR 52.242-14(a).

⁴¹FAR 52.242-14(b).

⁴²FAR 52.241-15(a).

⁴³FAR 52.241-15(b).

⁴⁴FAR 52.241-15(b).

⁴⁵FAR 52.241-15(b)(2).

⁴⁶See, e.g., DFARS 252.225-7040, "Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States (Oct. 2015)."

⁴⁷Dep't of the Army, Army Contracting Command-Afghanistan, Memorandum for Contracting Activities Awarding or Administering Contracts in Support of United States Forces—Afghanistan (USFOR-A), "Guidance for All Contractor's Redeploying Out of the Combined Joint Operations Area—Afghanistan (CJOA-A) Through the BAF Redeployment Theater Gateway in Accordance With COMBAF Fragmentary Order 20-071 MOD 4" (Apr. 20, 2021).

⁴⁸See <https://www.acq.osd.mil/log/PS/spot.html>; see, e.g., DFARS 252.225-7040(g).

⁴⁹See Remarks by President Biden on the Way Forward in Afghanistan (Apr. 14, 2021), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/04/14/remarks-by-president-biden-on-the-way-forward-in-afghanistan/>.

⁵⁰See Ali & Psaledakis, "U.S. Preliminary Plan on Afghanistan Is To Remove At Least Some Contractors—Pentagon," Reuters (Apr. 16, 2021), <https://www.reuters.com/world/us/us-preliminary-plan-afghanistan-is-remove-least-some-contractors-pentagon-2021-04-16/>.

⁵¹See <https://af.usembassy.gov/security-alert-u-s-embassy-kabul-afghanistan-14/>.

⁵²See George, "Afghan War Enters More Brutal Phase As U.S. Troops Begin Pullout," Wash. Post. (June 3, 2021), <https://www.washingtonpost.com/world/2021/06/03/afghanistan-war-taliban-helmand/>.

⁵³See 86 Fed. Reg. 1063, 1075 (Jan. 7, 2021) (proposed rule amending 32 C.F.R. pt. 158, "Operational Contract Support (OCS) Outside the United States").

⁵⁴See Liebermann, "Pentagon Could Open Itself to Costly Litigation From Contractors If U.S. Pulls Out of Afghanistan This Year," CNN (Mar. 29, 2021), <https://www.cnn.com/2021/03/29/politics/pentagon-contractors-afghanistan/index.html>.

⁵⁵See, e.g., FAR 52.245-1, "Government Property (Jan. 2017)"; see also FAR pt. 45; DFARS pt. 245.

⁵⁶See, e.g., Langenegger v. United States, 756 F.2d 1565 (Fed. Cir. 1985); Kuwait Pearls Catering Co., WLL v. United States, 145 Fed. Cl. 357 (2019).

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