# COVID-19: GOVERNMENT CONTRACTS, SMALL BUSINESSES AND EUROPEAN TRAVEL RESTRICTIONS -- ASSESSING THE WHITE HOUSE'S RESPONSE

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**U.S. Government Contracts Alert**

The past week produced a number of updates regarding the White House's response to COVID-19 that may impact government contractors. The Office of Management and Budget ("OMB") released a memorandum ("OMB Memo") on March 9, 2020, authorizing agencies to relieve administrative burdens on certain recipients and applicants of Federal awards and assistance directly impacted by COVID-19. Additionally, in a speech from the Oval Office on March 11, 2020, President Trump addressed the White House's responses to the COVID-19 outbreak thus far and announced additional measures that will be implemented in the near future. In this alert, we summarize some key takeaways for Government contractors from the OMB Memo and the President's speech.

## OMB MEMORANDUM REGARDING COVID-19 SUPPORT CONTRACTS

On Monday, March 9, OMB published a memorandum authorizing agencies to exercise discretion to alleviate administrative burdens on certain recipients and applicants of Federal awards and assistance directly impacted by COVID-19. "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" are governed by 2 C.F.R. Part 200, which includes an "Exceptions" section authorizing OMB to "allow exceptions for classes of Federal awards or non-Federal entities" in the event of "unusual circumstances."[1] In accordance with this exception, OMB identified the class of Federal awards eligible for the identified administrative relief as:

> [T]hose awards that support the continued research and services necessary to carry out the emergency response related to COVID-19 during the period formally declared by the Department of Health and Human Services through the 90 Day Public Health Emergency Declaration (Public Health Emergency Period).[2]

For this class of Federal awards, OMB named 10 exceptions that awarding agencies are authorized to make to the usual administrative requirements relating to Federal awards. We summarize four of these exceptions that may be of particular interest to Government contractors below.[3]

### Exception #1: Flexibility with SAM registration/recertification for applicants.

Awarding agencies may relax the requirement that at the time of making an offer, a contractor must have an active SAM registration. However, the requirements of 2 C.F.R. § 200.205 detailing how agencies must review risks posed by offerors continues to fully apply.

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### Exception #3: Pre-award costs.

Awarding agencies may allow necessary pre-award costs incurred (i) from January 20, 2020 through the Public Health Emergency Period (defined above) and (ii) before the effective date of a Federal award.

### Exception #4: No-cost extensions on expiring awards.

Awarding agencies may extend awards active as of March 31, 2020 and scheduled to expire before or up to December 31, 2020, automatically at no-cost for up to 12 months. OMB explains this action as allowing time for recipient assessments, resumption of individual projects, and a report to agency staff on program progress and financial status. Project-specific reports will be due 90 days after the extension ends, and agencies may be allowed to extend other project reporting as needed.

### Exception #8: Exemptions of certain procurement requirements.

Awarding agencies may waive the geographical preference prohibitions listed in 2 C.F.R. § 200.319(b), meaning geographical preference may be utilized. Awarding agencies also may waive the procurement requirements in 2 C.F.R. § 200.321 regarding small and minority businesses, women's business enterprises, and labor surplus area firms, meaning agencies need not take the usual affirmative steps to assure awards, when possible, to these entities.

## LOW-INTEREST LOAN AVAILABILITY FOR SMALL BUSINESSES

In a speech from the Oval Office on the evening of Wednesday, March 11, President Trump addressed the White House's responses to the COVID-19 outbreak to date and announced additional measures that will be implemented in the near future. Relevant to small business Government contractors, the President addressed the availability of low-interest loans for those small businesses economically impacted by COVID-19:

> Effective immediately, the SBA will begin providing economic loans in affected states and territories. These low-interest loans will help small businesses overcome temporary economic disruptions caused by the virus. To this end, I am asking Congress to increase funding for this program by an additional $50 billion.[4]

The President's reference was to the Small Business Administration (“SBA”) Disaster Loan Program, which allows the SBA to provide low-interest disaster loans to small businesses as they recover from declared disasters.[5] On Friday, March 6, President Trump signed into law an $8.3 billion supplemental funding package to combat COVID-19 that included funding for the SBA Disaster Loan Program.[6] The Act states that “coronavirus shall be deemed to be a disaster” and that amounts under the Disaster Loan Program will be available for loan use.[7] Specifically, the Act allows $1 billion in loan subsidies to be used by the SBA for small business disaster loans, which “could enable the [SBA] to provide an estimated $7 billion in loans to these entities.”[8] Another $20 million is appropriated to administer the loans.[9]

After the President's Wednesday evening address, the SBA announced on Thursday, March 12 that it would offer the low-interest disaster loans to designated states and territories upon request from the state or territory's Governor.[10] Upon receiving such a request, the SBA may issue an Economic Injury Disaster Loan declaration

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making loans available to small businesses in designated areas of the relevant state or territory.[11] SBA stated that the loans, offered in amounts up to $2 million, “may be used to pay fixed debts, payroll, accounts payable and other bills that can't be paid because of the disaster's impact.”[12] The interest rate for the loans is 3.75% for small businesses and 2.75% for non-profits; long-term repayment plans will be offered up to maximum of 30 years, with terms determined on a case-by-case basis.[13] Importantly, SBA clarified that small businesses with credit available elsewhere are ineligible for the low-interest disaster loans.[14]

Small business Government contractors may be able to take advantage of these low-interest loans if economically affected by COVID-19. Small businesses seeking a disaster loan should contact their state or territory's Governor's office, which will work with the SBA's Office of Disaster Assistance to submit an assistance request. If SBA issues a disaster declaration within a state, information on the loan application process will be made available to the affected communities.[15]

## EUROPEAN TRAVEL RESTRICTIONS

Also in his Wednesday evening speech, President Trump announced additional measures the White House plans to take in the near future to combat effects of COVID-19. Of particular note, the President announced that beginning at midnight on Friday, March 13, travel from Europe (except the United Kingdom) to the United States will be suspended for 30 days.[16] The President suggested in his speech that the European restrictions would apply not only to travelers, but also to a “tremendous amount of trade and cargo.”[17] The White House later issued a Fact Sheet stating that the travel restrictions will in fact only apply to human beings (primarily foreign nationals), and not to goods or cargo.[18] Government contractors should, however, be on the lookout for travel restrictions should they expand in the future. In the event that prime contractors or subcontractors are utilizing European suppliers for their Government contracts, a restriction on goods or cargo from Europe could have significant effects on the ability to perform.

## CONCLUSION

As the Government's response to COVID-19 continues to progress, contractors should be on the lookout for changes regarding the award and administration of Government contracts, availability of assistance, and effect on contract performance. K&L Gates continues to monitor the emerging impacts of COVID-19 on contractor and subcontractor performance rights and obligations. Our government contracts, procurement policy, and national security teams stand by to help federal contractors and suppliers identify and evaluate their rights. Contact any of the authors listed on this alert for more information.

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**Notes:**

[1] 2.F.R. § 200.102(a).

[2] Memorandum, Administrative Relief for Recipients and Applicants of Federal Financial Assistance Directly Impacted by the Novel Coronavirus (COVID-19), Executive Office of the President, Office of Management and Budget (Mar. 9, 2020), https://www.whitehouse.gov/wp-content/uploads/2020/03/M-20-11.pdf.

[3] Exception numbers correspond to the numbered list in the OMB Memorandum. *Id.*

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[4] Remarks by President Trump in Address to the Nation, The White House (Mar. 11, 2020), https://www.whitehouse.gov/briefings-statements/remarks-president-trump-address-nation/.

[5] *See* 13 C.F.R. Part 123.

[6] Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020, H.R. 6074, 116th Cong. § 2(A)(II) (2020) ("Act").

[7] *Id.*

[8] Press Release, Title-By-Title Summary, H.R. 6074, Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020, U.S. House Committee on Appropriations (Mar. 4, 2020), https://appropriations.house.gov/sites/democrats.appropriations.house.gov/files/Coronavirus%20Supp%20Summary%203.4.20.pdf.

[9] Id.

[10] Press Release, SBA to Provide Disaster Assistance Loans for Small Businesses Impacted by Coronavirus (COVID-19), U.S. Small Business Administration (Mar. 12, 2020), https://www.sba.gov/about-sba/sba-newsroom/press-releases-media-advisories/sba-provide-disaster-assistance-loans-small-businesses-impacted-coronavirus-covid-19.

[11] *Id.; see also* 13 C.F.R. § 123(a)(5) (describing the method of issuing a disaster declaration that is being utilized here, where "SBA makes an economic injury declaration in reliance on a state certification that at least five small business concerns in a disaster area have suffered substantial economic injury as a result of the disaster and are in need of financial assistance not otherwise available on reasonable terms. The state certification must be signed by the Governor, must specify the county or counties or other political subdivision in which the disaster occurred, and must be delivered (with supporting documentation) to the Disaster Assistance Field Operations Center serving the jurisdiction within 120 days of the disaster occurrence.").

[12] SBA to Provide Disaster Assistance Loans, *supra* note 10.

[13] *Id.*

[14] Id. ("The interest rate is 3.75% for small businesses without credit available elsewhere; *businesses with credit available elsewhere are not eligible*.") (emphasis added).

[15] *Id.*

[16] Remarks by President Trump, *supra* note 4.

[17] *Id.*

[18] President Donald J. Trump Has Taken Unprecedented Steps To Respond To The Coronavirus And Protect The Health And Safety Of Americans, The White House (Mar. 11, 2020), https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-taken-unprecedented-steps-respond-coronavirus-protect-health-safety-americans/

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