

The FAR Clauses Every Federal Contractor Should Know for Tariff Relief

- Cheat Sheet and Action Plan -

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On April 5, 2025, a baseline 10% tariff was imposed on all countries except Canada and Mexico.

On April 9, 2025, President Trump imposed new country-specific “reciprocal” tariffs targeting nations with significant U.S. trade deficits to address global trade imbalances. Later that day, a 90-day pause was issued for all countries except China, whose tariff rate was increased to 125% as of EOD April 9. This delays the reciprocal tariffs to mid-July when we will be in the peak of federal bidding season. [Miller & Chevalier](#) provided a helpful [Tariff FlowChart](#) to assist in identifying applicable rates, though updates are frequent and the chart may become outdated quickly.

⚠ Why This Matters:

Under key FAR clauses, the date specific tariffs are imposed in relation to your bid or contract award can determine whether you're eligible for cost recovery. Missing this window could mean absorbing material cost increases.

Fortunately, the 2025 Federal bidding season is just starting to heat up, so its not too late to take action.

When it feels uncertain or chaotic, good leaders focus on key protections within our control and mitigate those that are outside of our control. Retaliatory tariffs and uncertainty in material pricing and availability are impacting the markets. It can feel like the sky is falling to sureties and banks, so it's important to recognize the resilience we've built into our organizations after the past 5-6 years of material/labor shortages and price increases. We have a much better playbook to help us defend our organizations from the potential blows, so let's lean on those lessons.

Key FAR Clauses to Review Immediately

Federal contracts are typically firm-fixed-price — meaning price increases caused by tariffs *won't automatically be reimbursed*. However, some FAR clauses do allow cost recovery or schedule relief if properly included in your contract..this is readers digest version and not legal advice.

◆ FAR 52.229-3 – Federal, State, and Local Taxes

- Allows for **price increase/ recovery of tariffs** if a new federal tax or tariff is imposed *after* contract award.
- To qualify:
 - Tariff must be imposed after bid opening.
 - In negotiated contract or modification, tariff must be imposed after the effective date of the contract or modification
 - Contractor must warrant in writing that the cost was not included in the bid.
- **⚡ Important:** Tariffs imposed after bid submission, but before contract award do *not* qualify because they will not be considered “newly imposed” under FAR 52.229-3. Also note that not all contracts include this clause, so be sure to check for it.

FAR.229-3(c): The contract price shall be increased by the amount of any **after-imposed Federal tax**, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.

◆ FAR 52.229-3 for Subcontractors

- Limited authority on this one
- *Hegeman-Harris & Co., Inc. v. United States* (1971), the court ruled that a prime contractor could recover increased taxes passed on by subcontractors—but only if the prime was contractually responsible for those costs. This applied when the subcontract either specifically included the taxes or was awarded after the tax increase with those costs priced in. However, the court denied recovery for subcontracts made before the tax increase unless they had an escalation clause or another clear agreement covering such cost changes.

◆ FAR 52.249-10 – Default (Fixed-Price Construction)

- May provide assistance in schedule relief, not cost recovery, for delays caused by unforeseeable events (e.g., material shortages due to tariffs)

◆ FAR 52.216- 2, 3 and/or 4- Economic Price Adjustment (2-Standard Supplies, 3-Semistandard Supplies, 4 – Labor and Materials)

- Enables price adjustments based on meaningful material cost increases (e.g., steel/aluminum) IF this FAR clause is included in the contract.
- ⚠️ If not present in the solicitation, **formally request its inclusion with the source selection authority or contracting officer before bidding.**
- FAR subpart 16.203 specifically allows for economic price adjustments clauses in fixed-price contracts, but the increase must be implemented through FAR clause 51.216-2, 3 or 4

For Federally-Assisted and Federally-Funded Projects

- Federal Highway Administration (FHWA) policy permits states to include FHWA-approved escalation clauses in their contracts, which allow for reimbursement for increased costs with documentation/justification.
- The FHWA must approve the price adjustment index in advance AND clause has to be in the contract.
- A state and, in turn, a contractor, will not be reimbursed for retroactive adjustments to contract prices if an escalation clause is not originally included in the contract.
- If escalation clauses aren't included, states may reimburse increases from non-federal funds to Contractor - but not guaranteed, so its important to check each contract. Reference: [FHWA Price Adjustment Guidelines](#)

✅ Federal Contractor Action Plan

1. Audit All Active and Upcoming Contracts for Escalation Clauses, if Federal contract(s) check for:

- FAR 52.229-3 (Allows for price increase if a new federal tax or tariff is imposed after contract award)
- FAR 52.216.2, 3 and/or 4 (Economic Price Adjustment clauses)
- Delay clauses (FAR 52.249-10)
- Buy American Act (BAA) and Trade Agreements Act (TAA) compliance

✦ Now you can evaluate the increased cost and performance risks that should be included in bid/contracts. Evaluate how long your working capital and bank line will sustain your business operations if cashflow impacted

2. Preserve Documentation

- Keep dated supplier quotes and correspondence
- Maintain records showing **pre- and post-tariff pricing**
- Create a paper trail to support claims / REAs for:
 - Price adjustments
 - Delay-related damages
 - Changed conditions

3. Lock In Material Prices Now

- Negotiate early buys or price guarantees for high-risk materials
- Consider bulk procurement for stable pricing

4. Submit Pre-Bid Questions

- If the bid solicitation lacks price adjustment clauses, formally request them
- This protects against underbidding or inflated contingencies

5. Negotiate subcontracts accordingly and maintain good subcontractor communication

- Experienced federal contracting attorney can advise the necessary flowdown provisions to include in your subcontracts; this is tricky and federal court law often surprises us
- Clarify who bears material cost risks. Bond back subs.
- Negotiate early delivery schedules or escalation clauses with suppliers

Don't leave profit on the table by assuming you can recover costs later — build the protections in now!

Federal contracting is tough. Teaming up with an experienced attorney and surety partner is often the edge that wins you profitable work and protects your bottom line.

Legal Disclaimer: I am not an attorney. The above is not legal advice. If you desire legal advice, consult a competent, licensed attorney. I'm happy to connect you to one.