Anticipating and Protecting from Cost Increases Due to Tariffs

Craig Dirrim, Attorney, Woods Aitken LLP

With the change in administration, there has been much discussion about potential or threatened tariffs, including tariffs on imports from around the globe. These tariffs could potentially impact the costs of imported goods or products, which could directly impact the cost of final products in the U.S.

For non-federal contracts, the risk of tariffs should be carefully negotiated in the contract documents. While contractors may find some relief in the force majeure provisions typically contained in most standard form contract documents, it is uncertain whether or not standard contract language would provide relief under these circumstances, or whether a contractor would bear the risk of increased costs due to unexpected tariffs. For any contracts going forward, we recommend that a specific clause providing for additional costs caused by the imposition of tariffs be included in every contract, similar to what we recommended for cost increases and time extensions for supply chain shortages a few years ago.

Under federal contracts, contractors have no room to negotiate. However, contractors may receive tariff relief under FAR 52.229-3, which deals with state, federal, and local taxes as related to federal contracts.

FAR 52.229-3 specifically deals with after-imposed federal taxes. Under federal contract law, a contractor may be able to recover relief under this section, and should contact an attorney before it enters into a federal contract to determine whether or not it may obtain relief under this clause in the event tariffs are imposed.

In short, with the strong potential of tariffs looming on the horizon, the savvy contractor will carefully study contract documents before execution to determine whether or not the contractor may seek relief for the after-imposed tariffs, and if not, will insist upon a negotiated clause to provide such protection before any contract is signed.

WOODS | AITKEN