

## **EXTENSIONS MAY GO BEYOND CONTRACT TERM**

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Suppose your contract to provide targets for the Air Force was for one base year and two option years, and included FAR clause 52.217-9, Option to Extend the Term of the Contract. This clause said “The total duration of this contract, including the exercise of any options under this clause, shall not exceed 36 months.” Could the Air Force extend the contract beyond 36 months for an additional six months? Answer: Yes it can, if FAR 52.217-8, Option to Extend Services, is included in the contract. The Armed Services Board, of Contract Appeals (“ASBCA”) held that the limitation of a contract to the base period plus options does not prevent the Government from extending services under an appropriate Option to Extend Services clause, for up to six months beyond the base plus option year period. *APAC-Southwest, Inc.*, ASBCA No. 58057, Sept. 27, 2012. The Board relies on a similar Federal Circuit case, *Arko Exec. Servs., Inc. v. U.S.*, 553 F. 3d 1375 (Fed. Cir. 2009).

The Option to Extend Services clause, FAR 52.217-8, states that:

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months....

When the Air Force extended APAC’s contract by six months (in two three month increments) beyond the 36 months specified in FAR 52.217-9, APAC submitted a claim stating that the extensions were invalid, that the work couldn’t be further extended, and seeking higher prices during the last six months. The Board rejected APAC’s arguments, holding, as did the Federal Circuit, that the limitation of the contract to 3 years by FAR 52.217-9 did not preclude government extensions beyond three years pursuant to FAR 52.217-8. The Board agreed with the court that the purpose of FAR 52.217-8 was to allow the government to extend services without negotiating short extensions to existing contracts.

Tips: (1) You may be required to continue your contract for as much as 6 months after its contractual ending date. This must be performed at the rates specified in the contract, unless there has been a change in the wage determinations by the Department of Labor.

(2)The Government may not require performance beyond 6 months past the ending date of the contract, although the Government and the contractor may wish to negotiate an extension and a new price (a so-called “bridge contract”), using the authorities in FAR Part 6.3 for contracting without providing for full and open competition.

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