



APRIL 20, 2020

60 Seconds on Sourcing: Addressing Supplier Continuing Operations as the Pandemic Evolves

Customers have been working with their key suppliers to address the continuation of mission-critical operations and the supplier services necessary to support those customer operations. As customers then move on to assess their overall existing sourcing landscape and possible future sourcing plans to address the viability (and desirability) of current supplier services and planned sourcing projects, they must consider the reality of the possible extraordinary impacts of the pandemic on the workforce of suppliers.

Key Takeaways

- Customers and their key suppliers should be engaged in ongoing discussions that include addressing the possibility of significant impacts on supplier personnel and operations as the effects of the pandemic evolve.
- While they should consider certain key contract provisions, customers and suppliers should also engage in practical planning now to help mitigate the risks and reduce operational impacts.

Contract Provisions and Business Considerations as the Pandemic Evolves

At the beginning of the COVID-19 pandemic, customers' initial steps focused on assessing which mission-critical supplier services were implicated and working with those suppliers, on an expedited basis,

to address any needed changes to service delivery (e.g., work from home) to maintain continuity of operations.

Now that this first wave of discussions has been accomplished, customers are beginning to look at the broader picture, with an eye toward current and future sourcing plans, even as estimates of what the "curve" will look like and the timing of the peak impact of the pandemic seem to vary widely across geographies, and multiple waves of impact seem likely.

Yes, existing agreements will (or should) have terms addressing force majeure events and requirements for business continuity plans and how those plans are implemented, as well as possible termination rights. All of those provisions are important, and it is prudent for parties to start the diligence process early in order to understand their respective obligations and rights under existing agreements, should reference to those provisions become necessary. Business realities need to be addressed, however. Customers want (and need) continued service performance, and suppliers need the ongoing revenue.

Notwithstanding best intentions and business continuity planning, most businesses did not sufficiently prepare for the severe impact of a pandemic. Customers should be actively engaging in discussions with suppliers about how service delivery

This publication may constitute "Attorney Advertising" under the New York Rules of Professional Conduct and under the law of other jurisdictions.

will continue as the virus continues to spread and significantly impacts suppliers' ability to perform.

In particular, customers and suppliers should discuss:

- Supplier business continuity plans, status of implementation and risks encountered.
- Specific supplier plans for service continuity, including ability to
 - Backfill resources/personnel.
 - Perform from alternate geographies.
 - Implement alternative service delivery methods, including automation.
- Alternate service delivery possibilities.
 - Subcontract or otherwise source replacement resources/services from third-party suppliers (at least on a temporary basis).
 - Customers' own ability to perform.
 - Information, materials and resources, including knowledge transfer, needed from the supplier to shift service delivery.

Of course, any significant change in service delivery may have cascading implications for contract terms such as scope, service levels and charges.

For information on the business impacts of COVID-19, please visit our [COVID-19 Resource Center](#), which we continue to update as the situation evolves. If you have questions about COVID-19's impact on your business, please reach out to your Loeb relationship partner or email us directly at COVID19@loeb.com.

Related Professionals

Kenneth Adler	kadler@loeb.com
Sasha Badian	sbadian@loeb.com

This alert is a publication of Loeb & Loeb and is intended to provide information on recent legal developments. This alert does not create or continue an attorney client relationship nor should it be construed as legal advice or an opinion on specific situations.

© 2020 Loeb & Loeb LLP. All rights reserved.

6308 REV1 04-29-2020