

Stimulus Package Pumps Billions Into Gov't Contracts

By **Dorothy Atkins**

Law360 (March 27, 2020, 10:07 PM EDT) -- President Donald Trump signed off on a \$2 trillion stimulus package Friday that pumps billions of dollars into wide-ranging government contracts intended to fight the coronavirus outbreak, but legal experts say questions linger on spending restrictions and long-term regulatory oversight.

Trump signed the Coronavirus Aid, Relief and Economic Security Act hours after lawmakers passed the historic piece of bipartisan legislation, which congressional leaders and Treasury Secretary Steven Mnuchin negotiated for days.

While the stimulus package offers roughly \$250 billion in rebate checks to most Americans, Crowell & Moring LLP partner David B. Robbins told Law360 Friday that the stimulus package also pumps billions of dollars into the economy to fight the outbreak, and much of the work can't be done without government contractors.

"It's a lot of money in a great big hurry," he said.

The relief package comes as government contractors are scrambling to respond to recent policy changes aimed at combating the outbreak, and one of the biggest challenges has been trying to decipher conflicting messages about whether their businesses are considered "essential."

The stimulus package earmarks \$10.5 billion for defense spending and bars the government from transferring money to pay for the president's southern border wall, according to Covington & Burling LLP special counsel Samantha L. Clark.

The \$10.5 billion fund includes \$1 billion to cover purchases over the next two years made under the Defense Production Act of 1950, a Korean War-era law that allows the government to ramp up private production of medical equipment. The new law also temporarily waives a rule requiring contractors who land DPA contracts for more than \$50 million to wait 30 days for congressional review.

Aside from the DPA allocation, the CARES Act designates \$1.45 billion in capital funds to respond to, prevent and prepare for the coronavirus, and approximately \$3.8 billion is allotted for a defense health program, including \$450 million for vaccine research and development.

Additionally, there are funds designated for activating the National Reserve and deploying the USNS Mercy and USNS Comfort Navy hospital ships in New York and California, among other items.

Clark told Law360 on Friday that, overall, the changes appear to be good for defense and industry groups, but she said there are still questions about how the U.S. Treasury Department is going to manage oversight of the funds and how the government will combat potential bad actors who engage in fraud or price-fixing.

The stimulus package also provides \$25 billion for passenger airlines, \$4 billion for air cargo and \$17 billion in loans for businesses that are crucial to national security. However, Clark noted that in order for those businesses to receive funds, the CARES Act says they have to certify that they are "created or organized" in the U.S., which could be problematic for companies with headquarters outside the country.

"We'll have to see how the Treasury Department defines those things," Clark said.

Clark added that throughout the stimulus package, lawmakers allocated funds to beef up information technology services for various wings of the government, including the U.S. Coast Guard, the U.S. Department of Health and Human Services and even the John F. Kennedy Center for the Performing Arts.

"They're trying to make sure everyone has access to IT services," Clark said.

Robbins also pointed out that while some of the benefits of the stimulus package will be delayed, contractors should see an immediate benefit from Section 3610 of the act. That section provides government contractors with funds to pay employees who are unable to work on a government-approved site, or who have to telework, because of the coronavirus.

However, Morrison & Foerster LLP partner Daniel E. Chudd said that provision raises a number of questions as well. For example, it doesn't make relief mandatory, and he said the decision over whether a contract should be modified seems to be left in the hands of contracting agencies.

Chudd added that it's also not clear what constitutes a government-approved work site. Still, he said the change could have a big effect on contractors who keep teams of qualified personnel on standby and ready to work in case the job site reopens.

The billions of dollars in new government contracts could eclipse the approximately \$40 billion a month that the U.S. Department of Defense spent last year on government contracts.

And with the sudden surge in funding, Robbins said there will inevitably be a wave of investigations, audits and enforcement proceedings that follow. That happened after the government bailouts during the Great Recession in 2008 and after Hurricane Katrina, he said.

To further complicate matters, a number of companies who will receive government work for the first time this year likely aren't used to the strings that come with receiving government funds, and that can lead to mistakes that can come back to bite them later, he said.

For example, a company might be used to substituting certain products in ways that would be fine in

the commercial market, but they would need government approval to make the change under a contract, he said.

Robbins said companies can also make mistakes in their compliance reporting, which is why he's advising his clients that it's essential to be in compliance from Day 1.

He also advises his clients to keep good records, so that there are no questions about where the funds went, and they should use detailed accounting codes to track different work done in response to the coronavirus compared to typical work done for the job.

"You've got to be able to justify it when the crisis has ebbed and investigations and audits begin," Robbins said.

Even without the stimulus package, the government has already cut more than \$200 million in contract obligations across 263 actions specifically to combat COVID-19, according to a March 25 report published by George Mason University's Center for Government Contracting.

At the time, there were more than a dozen unassigned contract opportunities, some worth tens of millions of dollars, for diagnostics and vaccine prototypes, the report says.

--Editing by Brian Baresch and Jay Jackson Jr.