

Vendor Financial Viability Provisions – the New Normal?

“Although many companies are already revisiting contractual provisions relating to nonperformance, like force majeure clauses, as the coronavirus (COVID-19) pandemic continues to wreak havoc on public health and the economy, other proactive (but less publicized) contractual measures can facilitate early discovery and mitigation of potential nonperformance,” discuss Barbara Murphy Melby and A. Benjamin Klaber in *Morgan Lewis’ Tech & Sourcing*.

“As part of third-party vendor management or sourcing procedures, it is common practice for many companies to vet their vendors prior to contract signing for financial viability and wherewithal. In some cases, like contracts for critical products or services or larger vendor relationships, companies include contractual provisions that provide for regular information sharing regarding a vendor’s financial status and specific rights, including step-in and termination, if the financial status materially adversely changes. While these types of provisions are not new, in light of the impact of COVID-19 on supply and demand for certain products and services and the corresponding potential impact on certain critical or strategic vendors, they are gaining more attention from third-party vendor management and sourcing organizations. Companies, which previously looked to rights and remedies such as non-exclusivity and early termination without penalty as sufficient to address the potential risk, increasingly are focused on financial viability provisions to allow for early warning of a potential problem and early action, if necessary, to avoid disruption.”

Read the article.