

IMPACTS OF A GOVERNMENT SHUTDOWN: GOVERNMENT CONTRACTORS

Date: 26 September 2023

US Policy and Regulatory Alert

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INTRODUCTION

Current federal funding expires this Saturday. As we approach the deadline, it is looking less likely that Congress will pass a continuing resolution, a short-term stopgap measure, to avoid a government shutdown. Our Government Shutdown Task Force will be continuously monitoring the situation and assisting clients impacted by the shutdown. This is the second alert in a series focused on the potential impacts of government shutdowns. Today's focus: What is the impact on government contractors?

UNIQUE POSITION

Shutdowns are inevitably disruptive for federal contractors, but the impact will vary depending on whether the contract is already funded, whether the work is considered “excepted,” and whether the contractor requires access to federal facilities or approvals from non-excepted federal employees, among other considerations. As a reminder, nonexcepted employees are put on unpaid furlough and are not permitted to use government devices (e.g., laptops, cell phones). Contracts that are already funded are expected to be carried out during a shutdown unless the contracting officer terminates the contract or puts it on “stop-work status.”

There are several issues that come up for contractors when the government shuts down. If federal contractors are asked to continue to work, government workers who accept deliverables or provide approvals may not be working. If a contract expires during a government shutdown, there is no way of renewing it if there aren't any appropriated funds or federal employees to sign. Contract options cannot be exercised, and modifications cannot be made without authorized federal personnel in place. Contractors' access to federal facilities during a shutdown may be impeded.

In addition, solicitation and award of new contracts may come to a standstill. Even if an agency has available funds appropriated outside of the budget cycle in question that are available for obligation during a shutdown, procurement personnel may be furloughed or otherwise barred from conducting any solicitation and award activities relating to nonexcepted functions not involving “the safety of human life or the protection of property.”

“EXCEPTED” FIELDS

In our introductory alert, we explained the difference between “excepted” and “non-excepted” employment status. For contractors that work in “excepted” jobs or fields, running out of money may mean signing a contract without

funding and agreeing to work without pay for an undetermined amount of time. Government contractors who are in non-excepted fields may receive a stop-work order. Unlike furloughed federal employees who have historically received pay at the end of a shutdown, tens of thousands of contractors did not have the same experience in the last two shutdowns. According to the [Washington Post](#), it was estimated that 10,000 companies with government contracts were impacted during the 2018–2019 shutdown. The government did not generally reimburse companies who provided back pay to their employees.

PLAN AHEAD

Contractors deal with a lot of uncertainty during shutdowns, and many must continue to work regardless of the circumstances. The government is vague on how to handle federal contractors, and the contractors largely suffer for it. All federal contractors should check the [Agency Contingency Plans](#) to see how the agency your contract is affiliated with may be impacted. Unfortunately, not all plans have been updated recently, and some plans give very little guidance for contractors. It is important to ask questions and engage now with your government clients and program contracting officers. Check out this [action list](#) created by the Professional Services Council from the last government shutdown for some essential questions to help form a shutdown-ready plan.

During the shutdown, it is generally possible to recover overhead costs, delay costs, and standby costs caused by the shutdown if you can show (with reasonable documentation) that they were actually caused by the shutdown and that you took reasonable measures to minimize costs.

Be on the lookout for more alerts in this series focused on the impacts of government shutdowns, including the impacts on federal grants, the issuance of guidance and regulations, and other important matters.

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