

Client Alert

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Dealing with a Government Shutdown: Six-Step Action Plan for Contractors

By Bradley Wine

There are six steps that every government contractor should take in response to a government shutdown.

STEP 1: INVENTORY AND EVALUATE CONTRACTS

Contractors should review how their contracts are funded. Fully funded contracts are affected least by a shutdown. Furloughed government employees and facility closures could delay performance, increase costs and lead to stop-work orders and/or funding lapses. There are potential exceptions for necessary or emergency operations or multi-year appropriations.

Contractors should be aware of place of performance as well as period of performance. Work performed at a contractor's facility is less likely to be affected, while government facilities may be shut down or employees furloughed, making work performed at federal facilities impossible. Contractors should obtain options and extensions early, as these cannot be exercised during the shutdown. Funding is likely to continue for emergency contracts. Contractors need to assess whether contracts are likely exempt or impossible to perform before contacting the cognizant contracting officer.

STEP 2: COMMUNICATE WITH YOUR CONTRACTING OFFICER

Ask specific questions and get specific guidance. Contractors should maintain a comprehensive record of communications and instructions from cognizant contracting officials. Verify which facilities will be open and who should consider working. Contractors should also verify whether contract performance should continue if funding lapses or costs increases. Do not rely on oral instructions to keep working and advise the contracting officer of impact on work and increased costs. You should notify the government you will later request a recovery of increased expenses (through changes clause or termination clause).

STEP 3: PREPARE EMPLOYEES AND SUBCONTRACTORS

Contingency plans should mitigate and document costs. Reassign idle employees to exempt or unaffected programs, training sessions, or vacation. Employees should not be furloughed before consulting HR. With regard to subcontractors, you should direct them, not the government. Determine whether subcontracts have relevant provisions such as a Limitation of Funds clause.

STEP 4: PROTECT CASH FLOWS

In 1995, the shutdown lasted three weeks and payments were delayed 1-2 weeks. Contractors should prepare for a long time without payment on non-exempt contracts. If possible, collect before the shutdown and advise creditors of possible shutdown. You should consider increasing lines of credit and evaluate cash reserves.

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Consider which subcontractors and vendors to pay and in what order and reallocate business development, advertising and other discretionary budgets to target private-sector business opportunities if possible.

STEP 5: DOCUMENT ALL EXPENSES, ACTIONS AND COMMUNICATIONS

Consider new accounting codes to track shutdown-related expenses and review material/vendor costs. Look at wind-down and ramp-up costs, as well as employee costs and unabsorbed overhead. Also review intervening contractual actions (preferably ratified by government). Track diligently and comprehensively. Document all communications, including instructions or directions for performance and assurances of payment. Record any actions taken to mitigate costs to the government.

STEP 6: DON'T FORGET ANY DEADLINES

Assume that government-related deadlines are unaffected by any shutdown. Unless otherwise advised by a responsible party, comply with deadlines for solicitations, bid protests, claims appeals of contracting officers' final decisions and other litigation deadlines.

We hope this action plan is helpful. Please also review our related webinar on this topic for more details and information by [clicking here](#).

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