

## IF IT COMES – Are you ready for another possible government shutdown?

Given the impending deadline of March 14, 2025, for Congress to pass a budget or another continuing resolution (CR) (and the president signing same), coupled with the recent happenings in Washington, D.C., we thought it would be a good time to revisit and update an alert we originally posted in September 2023 to assist our readers in understanding and preparing for the current budget battle.

Typically, September 30 represents, among other things, the end of the federal government's fiscal year. As such, the government (namely Congress) is required to have an approved budget in place for its next fiscal. Unfortunately, that did not come to pass last September, and instead, Congress had to pass a CR (which, in effect, maintains the status quo but allows the government to continue to operate). At almost the last minute, Congress passed, and then President Biden signed, a CR that extended the budget through March 14, 2025, this coming Friday. As has been reported broadly, at least as of the time of this article being published, no such budget and no temporary continuing budget resolution have been passed by a logjammed Congress — although House Speaker Johnson has proposed a budget bill that slightly increases defense spending and reduces non-defense spending for a vote on Tuesday, March 11. The outcome of that vote will define whether and how the government continues to operate normally.

So, what does this mean to government contractors? It is not the end of your contract (unlike other actions we have seen in recent weeks taken by DOGE and the president in areas such as leases and USAID agreements), but it will likely have an impact on your efforts. There are some critical steps that you should take now and over the coming weeks (depending upon how long a shutdown lasts) to preserve and protect your rights and make a proper record.

### SOME INITIAL QUESTIONS

Initially, and hopefully, you should have heard from your agency contracting personnel by now as to what the status of your contract is. Is it protected, funded, and continuing during a shutdown? If you have not heard anything, you need to confirm with the agency/contracting personnel you are performing work for whether there is money appropriated and available for the work to continue unabated and what the agency's plan is in this regard. Tied to this are questions such as: (a) will the site be accessible — will security personnel and access be in place and allow your team/employees and subcontractors on site? (b) How will communications and directions with the agency be carried out? (c) How will direction from the agency occur during a shut down?

### AGENCY CONTINGENCY PLANS

Many executive agencies have contingency plans in place for the possibility of a government shutdown. Review those plans (which, if prepared, should be available online) to determine if and how your projects are affected. Key to these plans and the overall impacts are not only how the relevant agency and contracting office will (or will not) operate during the shutdown, but more critically how that will impact your teams and projects.

### IMPACTS & NOTICE

Shutdowns inevitably have significant impacts on contractors. Schedules can be negatively impacted as well as cost. Increased costs for storage of materials and equipment, delivery delays, processing of applications for payment, and receipt of payments are often delayed, and the contractor can rapidly become the "bank" having to advance monies to keep things progressing forward. Likewise, the need to carry payroll to keep personnel available can also occur.



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- Real Estate & Construction

Documenting, preferably using separate cost codes, and informing the contracting officer *now* that the shutdown will (or likely will) have an impact on schedule and costs is key. Do not wait on that notice. Even if done as a “place holder,” with a follow-up or periodic updates to the government to allow you to make a record are critical. Notice is key along with back-up support when the time to seek cost and schedule adjustments occurs.

## CONTRACT CLAUSES

Tied to this is the need to review and understand your prime contract and FAR clauses. The last “big” impact to government contracting was COVID-19 (and before that the 2019 shutdown). The difference between the two, is that COVID was arguably a *force majeure* issue, meaning that it was not the fault of anyone (an act of God) and, for the most part, recovery was limited to a non-compensable time extension. In contrast, shutdowns are government-caused and recovery of time *and cost* are real possibilities. Recognizing and understanding that even if your project is not shutdown, you can still be impacted negatively is critical, as is identifying what those impacts may be.

Much of the work is performed by subcontractors. Keeping them “in the loop” and on notice of events and impacts (and also making sure that the subcontractors supply you with the necessary notices and support to passthrough any resulting damages and relief requests) is equally important. Making sure you are also aware of the relevant terms of your subcontracts (items such as no damage for delay, disputes, claims, changes, notice, and the like) and following those requirements can play a key role in not only protecting your team but also the project from any resulting claims or litigation that may ensue.

## PERSONNEL ISSUES

Equally important is understanding what your personnel need and what personnel decisions, such as reductions in force or furloughs may be needed are critical. Following applicable labor and employment laws and providing any necessary notices plays a critical role in mitigating and reducing effects to you and the project.

## CONCLUSION

It is everybody's' hope that another shutdown is avoided. That being said, given Congress's current communication problems and extensive infighting, as of now, it appears highly possible that a shutdown is a real possibility. In contrast, full and proper communication is critical to government contractors to control risk and maximize an ability to recover any resulting losses. The key to all of this is notice and communication. Communicating with the agency and your employees and understanding what each need and expects will help your efforts to mitigate impacts to your work. That communication should include notices, reservations of rights, and verification of oral discussions.

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