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NCMA-WPI Federal Contractor Update



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What is a Government Shutdown

A government shutdown occurs when Congress fails to pass sufficient appropriation bills or continuing resolutions to fund federal government operations and agencies, or when the President refuses to sign such bills or resolutions into law.

In such cases, the current interpretation of the Anti-deficiency Act requires that the federal government begin a "shutdown" of the affected activities involving the furlough of non-essential personnel and curtailment of agency activities and services. Essential employees are still required to work without pay until the government reopens, when they may then receive back pay.

Began December 22, 2018, and became the longest in US history on 12 January 2019 after surpassing the 21-day shutdown of 1995–1996

FY19 National Defense Authorization Act signed into law on 13 August, 2018

Government Shutdown Impacts



Due to the lapse in federal funding, this website will not be actively managed. [More info.](#)
E-Verify and E-Verify services are unavailable. [More info.](#)



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E-Verify is a United States Department of Homeland Security (DHS) website that allows businesses to determine the eligibility of their employees, both U.S. or foreign citizens, to work in the United States.

Approximately 800,000 federal government employees have gone without pay. A portion of these workers are employed as contractors, which means their payments come from a third party. If the government is not working with that third party, those workers may not be paid.

Potential Effects on New Contracts

- Funding lapse typically significantly restricts an affected agency's ability to solicit and award new contracts.
- An agency could potentially utilize funds appropriated outside of the annual budget cycle, such as multiple year or no-year appropriations, that may still be legally obligated during a lapse in annual appropriations to solicit or award new contracts.

Potential Effects on Existing Contracts

The Anti-deficiency Act also might restrict an agency's ability to obligate new funds under existing contracts. This stricture potentially could implicate an agency's ability:

- (i) to exercise options to purchase additional goods or services under existing contracts;
- (ii) to modify contracts in ways that would increase the government's cost under contracts;
- (iii) to allow performance on certain multiyear contracts, whose terms can span more than one year; and
- (iv) to obligate additional funds for cost-reimbursement contracts that are funded incrementally.

Potential Effects on Existing Contracts Cont.

A government shutdown also could result in the termination of a contract under certain circumstances. For example, when additional funds are not obligated after a funding limit is reached under a cost-reimbursement contract, the contract potentially could be terminated.

A lapse in funding also could affect existing contracts that are fully funded:

- The performance of certain fully funded contracts could be delayed by the inability of furloughed federal procurement officers to perform essential contract administration actions, such as mandatory performance inspections or formal acceptance of deliveries and services.
- Even if funds are available to pay for work under a contract, payment could still be delayed because agency personnel with authorization to approve the payments are furloughed.

Potential Legal Mechanisms Under Existing Contracts

In some instances, it may not make fiscal sense for a contractor to perform a contract as originally contemplated during a shutdown. Government contracts and federal acquisition law provide mechanisms by which agencies can adapt to unexpected circumstances—like a shutdown—in ways that minimize costs to the government and further other federal procurement guiding principles.

- **Stop-Work Order clauses**, which are included in certain non-construction contracts, permit agency personnel to order a contractor to “stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree.”
- Contracting officers might unilaterally issue a **change order** within the scope of the contract to address changes that need to occur as a result of the funding lapse.
- The right to **terminate** a contract **for** the government’s **convenience**, which would largely limit the government’s exposure under the contract to payment for the work performed prior to the termination.

The impact that a government shutdown might have on contractors and their employees can vary considerably depending on, among other factors, the **length of the funding lapse, contract terms, and agency contract administration decisions.**