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# Dealing with the Shutdown: Three Common Sense Rules

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## DEALING WITH THE SHUTDOWN

### THREE COMMON SENSE RULES FOR GOVERNMENT CONTRACTORS :

#### COMMUNICATE, MITIGATE AND DOCUMENT

Quite naturally, government contractors, especially small and disadvantaged contractors, are concerned about the Federal Government's current Shutdown and the potential impact on their businesses. While there are hopes that the House and Senate will quickly reconcile their differences over FY 2014 appropriations, there can be no assurances that agency operations will return to normal in the near term. Contractors are rightfully asking whether they should continue to perform during the Shutdown and whether they will be paid in a timely fashion (or ever) for the products and services they deliver. Obtaining reliable information can be a challenge since many government acquisition professionals have been furloughed as a consequence of the Shutdown and, for those that remain on the job, few have any prior experience to lean on. In the interim, there are some common sense guidelines that contractors can and should follow to lessen any adverse impact while assuring compliance with contractual obligations.

#### COMMUNICATE -

- Be proactive to protect your interests.
- Contact Contracting Officers in writing for each of your contracts.
- Request written guidance as to which operations/facilities will be impacted and what activities and personnel have been designated as "essential" and will continue to operate.
- Obtain written confirmation whether access will be denied to Government records/facilities/equipment required in the performance of your contracts.
- Obtain written confirmation whether products/services will be accepted when delivered. Request written details of how and when.
- Obtain written confirmation whether invoices will be accepted and approved.
- Resist requests (particularly oral requests) by the Contracting Officer or other personnel to "just keep working and we will work it out after Shutdown." Do NOT rely on directions from government personnel without appropriate contracting authority.
- Consider asking for a written Stop Work Order.
- Inform the Contracting Officer in writing that the Shutdown will have adverse financial effects on your operations/ability to perform and that you will be requesting reimbursement for those costs (i.e., a request for equitable adjustment).
- Be sensitive to cash flow impacts. Contact your banks and business partners to discuss alternatives and options. If appropriate, negotiate temporary or contingent adjustments to delivery schedules, terms of payment, etc.

#### MITIGATE -

- Make all reasonable efforts to mitigate the cost impact of the Shutdown to your contracts.
- You cannot recover impact costs if you can't demonstrate reasonable efforts to mitigate costs incurred through detailed relevant documentation.
- Consider having affected employees participate in training seminars, have them take vacation or work on non-Government programs.
- Work with affected subcontractors on mitigation of their impact costs (See above). Don't get caught being liable for subcontractor costs and not being able to pass through to Government.

#### DOCUMENT -

- Establish a written methodology to track and account for all costs incurred because of the Shutdown.
- Establish cost collection points (general ledger accounts, job orders, etc.) to account for and document all impact costs.
- Be sure to segregate and document both direct and indirect costs. Segregate labor costs, accumulate supplier/subcontractor costs.
- The Shutdown is not a "contractual activity" and impact costs should be recoverable outside of your current contract vehicles.
- Save all correspondence, both hard copy and electronic. There is no such thing as too much documentation.

The above material does not constitute legal advice. Individual circumstances and contracts may require alternative business and legal strategies and tactics. For specific guidance or more information regarding the Shutdown please contact [Bret Wacker](mailto:bwacker@clarkhill.com) at (202) 772-0906 [bwacker@clarkhill.com](mailto:bwacker@clarkhill.com) or [Peter Dugas](mailto:pdugas@clarkhill.com) at (202) 772-0930 [pdugas@clarkhill.com](mailto:pdugas@clarkhill.com).