January 23, 2019

What to Do if the Government Shutdown Impacts Your Construction Project

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On December 22, 2018, nine executive agencies of the United States federal government shut down non-essential operations due to lack of funding. Shutdowns normally last for a few days and some have lasted for a few weeks. This shutdown bears the unfortunate title of being the longest. As the country enters week five of this government shutdown, the impacts are propagating beyond Washington, D.C. and through all sectors. The construction industry is not immune and state and local construction projects are starting to feel the impact.

The problems arising from the shutdown come in all shapes and sizes. Among others: pending or anticipated awards may be on hold; inspections or regulatory approvals are not being conducted; or there could be delays with payments.

Now, unless you are a Member of Congress, a Senator, or part of the administration, there's likely little you can do to influence when the shutdown ends. What you can do, however, is consider taking a few steps to minimize the impact on your construction project:

-If you haven't already, review your contract documents closely to analyze what type of federal funding and federal approvals might be involved and when. Keep in mind that projects with federal funding may have already been funded for a certain period. As the shutdown drags on, if the funding period runs dry, you'll need to start planning for that possibility.

-Understand what regulatory approvals may be necessary and when. Even though significant portions of the Government are shutdown, agencies can and do have essential personnel that are still working. It may be possible to get the approval you need by convincing someone that is still working that the need for your approval is compelling. Getting to essential personnel to give you a necessary approval is not something that will happen by chance. It will require persistence and planning.

-Check your agreements for force majure clauses. The Force majeure clause is a contractual provision that excuses timely performance due to uncontrollable and unforeseen events. Most Force Majeure clauses cover "Acts of God" such as natural disasters, war, strikes, riots, and acts of government. While force majeure clauses may not be the route for federal prime contracts, state, local and commercial contracts are another story.

-Lastly, document. If you're encountering additional costs, document the costs and the reasons for those costs. You may be able to pursue an equitable adjustment or claim when the dust settles. Having documentation will make that process much smoother.

We don't know how long the shutdown will last, but we do know that taking some steps now will best position your projects for future success.