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Insights: Alerts

It's (Almost) 12:01 a.m. on October 1, 2023, Do You Know Where Your Government Funding Is? Practical Guidance for Commercial Companies That Also Have Government Contracts in Weathering a Shutdown

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On Thursday, September 28, 2023, the government informed its employees that a government shutdown is imminent. The government turns into a pumpkin on Sunday, October 1, 2023, at 12:01 am. While a last-minute funding deal is still possible, it seems unlikely. In any shutdown confusion about rights and obligations for contractors is rampant and this shutdown will not be any different. There are a few practical steps that contractors can take *today* and in the coming days that will help them weather the storm.

- *First*, remain calm! This is not the government's first shutdown. Agencies have plans on how they are to proceed. You can see these plans for various agencies here:
  - Department of Defense
  - General Services Administration
  - Department of Homeland Security
  - Department of Energy
  - Department of Transportation

  We recommend reviewing the relevant agency plans. These plans outline how the government will proceed in the absence of appropriations and can give you insight into how the agency will function during this period.

- *Second*, determine the financial impact. If the government is shutdown, you are not getting paid on your government contracts. Ideally, you already have a line of credit or other financing available to meet financial obligations. If you do not, calling your banker today might be a good idea.

- *Third*, make sure you understand your contracts and the clauses in them. Are there certain requirements you will have to follow in these circumstances? Notices that you need to provide?

- *Fourth*, understand the potential impact to personnel.
  - Try and seek guidance whether your personnel will need to continue working on your agreements during the shutdown. For employees that report to government sites, can they shift that to remote work if site access is not available?
  - The labor and employment considerations are numerous and fraught with peril. For example, will you have to furlough some employees? If so, make sure your decisions are in line with existing policies for such considerations.

- *Fifth*, review your subcontracts and supplier agreements and have a plan. Do you need to issue a stop-work order? Renegotiate payment terms or delivery dates? The shutdown has a cascading impact and it is important to understand how the terms of your subcontracts can be used to your advantage.
- *Sixth*, document, document, and document some more! Maintain records of the shutdown's impact on performance, delays, increased costs, and accounting. These records will be important to defend against any claims in the future. They will also be necessary for requests for equitable adjustments or claims.
- *Seventh*, as you document, track and be prepared to quickly submit requests for equitable adjustments or claims once the shutdown is over.

Finally, have an internal working team tracking these issues and seek appropriate legal and consulting guidance as needed.

Related People



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