

With the budget talks hitting a “wall” and another US government shutdown looming, contractors doing business with the US government need to be ready with concrete plans to lessen the impact to your business, employees and subcontractors.

To best prepare for the worst-case scenario, we encourage you to:

**Communicate early and often** – Engage in regular discussions with your contracting officers, your subcontract contracting persons (if you are a subcontractor) and your team (both employees and your subcontractors). During a shutdown, all guidance will come from the agency’s contracting officer for prime contracts or the contractually appointed subcontracts person for subcontracts. This person is responsible for providing contractors updates on when work officially stops and starts, as well as the status of contracts throughout the shutdown. Be prepared with communications to send to affected employees and subcontractors to let them know what is going on. For example, you need to think about and have prepared your policy on paid time off and leave without pay if a shutdown occurs and share such policy with your employees before a shutdown occurs.

**Do not stop work prematurely** – Do not stop working until you receive an official stop work order in writing. The stop work order must be from the contracting officer and not the technical point of contact on the contract – the same applies if you are a subcontractor. The subcontract should set forth who is the requisite contracting person named in the subcontract handling subcontract actions. It is important to note that work can continue on fully funded contracts, unless (1) such work requires engagement with a government official in order for the work to be done, or (2) the government specifically denies you access to its facilities when such work is required to be done at the government facilities.

**Document everything** – You need to document everything related to shutting down your work on each contract, including expenses before, during and after the shutdown occurs in order to seek reimbursement from the government through the request for equitable adjustment process. It is important (and contractors are obligated) to mitigate costs and document mitigation in order to get reimbursement from the government. See [A-1 Real Estate, Inc. \(HUD Board of Contract Appeals\) \(July 28, 1997\) \(HUDBCA No. 96-A-123-C11\)](#) and [Raytheon STX Corporation \(against Dep’t of Commerce\) \(October 28, 1999\) \(GSBCA No. 14296-COM\)](#). Requests for equitable adjustments and claims for shutdown costs must be timely filed and adequately supported.

These are tumultuous times for government contractors – reminiscent of the earlier shutdown in January of 2018, albeit a short one of only three days. However, for many, this may be your first shutdown experience, and for others, you have been through it before. As the situation continues to evolve, on December 19, Senate Majority Leader Mitch McConnell introduced a Continuing Resolution (CR) to fund the government through February 8, 2019 and the Senate passed the measure that evening. Now, the bill, which denies President Trump the funds for his border wall, awaits passage by the House.

**Nonetheless, even if Congress averts a government shutdown vis-a-vis the FY 2019 budget, for as long as Congress continues to deviate from “regular order” and fund the government (or large portions of the government) through massive funding measures at the end of the year, full or partial shutdowns in the future remain a likely contingency, and companies doing business with the government should be knowledgeable about your options and plan accordingly.**



Please contact us if you need any guidance to be ready for a shutdown.

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## About Our US Government Contracts Team

Our International Trade Practice and Aerospace, Defense & Government Services Industry Group work in concert to provide multidisciplinary legal guidance and compliance solutions to companies across the globe on all aspects of the US government procurement processes, as well as M&A transactions involving US government contracts, including the related foreign ownership issues.

Our experienced and knowledgeable professionals have a keen understanding of the intricacies involved when contracting with US government entities, and can position US government contractors toward success.

We can shepherd your company through a landscape that is continually evolving by providing leading-edge, customized counsel at every step of the government contracting process.

The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations, nor should they be considered a substitute for taking legal advice.

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