

ALERT

OMB Issues Guidance to Agencies Regarding Shutdown Plans

April 8, 2011

News reports today indicate that the current Continuing Resolution funding many Federal Government operations will expire tonight without an agreement on further funding. As the risk of a "shutdown" increased this week, the Office of Management and Budget (OMB) yesterday issued a memorandum to federal agencies that includes guidance regarding the continued performance by agency employees and contractors of contract-related functions. On Saturday, OMB will evaluate the likelihood of an appropriations compromise (or another Continuing Resolution) and decide whether agencies should proceed with their shutdown plans.

OMB's guidance addresses several common questions that affect contractors. In particular, OMB's memorandum points out that contractors may continue to perform under those contracts for which sufficient funds have already been obligated. However, many federal employees who perform contract administration functions related to those contracts (e.g., Contracting Officers and Contracting Officer's Technical Representatives) will not be permitted to work during a shutdown, and other, related agency programs and operations may be interrupted. As a result, OMB's memorandum instructs agencies to "consider whether having the contract move forward is a sensible use of taxpayer funds in light of the lapse of appropriations." OMB gives as an example the performance of a janitorial services contract where the relevant Government building is closed. Also, OMB's guidance observes that many payments to contractors-even under already-funded contracts or "excepted" functions permitted to continue during a shutdown-may not be made during a funding lapse.

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Practice Areas

Government Contracts

With this in mind, contractors should discuss with their Government counterparts what to expect on Monday should a shutdown occur. For a reminder on what you can do today to prepare for a funding lapse, see our previous alert, "Five Steps to Prepare for a Government Shutdown."