

October 1, 2013

What a Shutdown Means For Defense Contractors

As this is being written Tuesday morning, a government shutdown is upon us, with no immediate end in sight. Who, if anyone, will “blink” is anybody’s guess at this point.

Further, the first round of Sequester cuts are barely behind us, and another is looming. What does all this mean? Based on the history of the dozen or so government shutdowns that (as [NBC News tabulated](#)) have occurred since 1976, and an excellent summary by the Associated Press appearing in [Politico](#), Defense Contractors may be confident of these few things:

1. Contracts and Orders (under ID/IQ, and BPA, or other GWAC vehicles) that have been awarded with funds obligated on them will be unaffected for their stated duration – unless the agency concerned has authority to reprogram the funds used, in which case it may terminate or otherwise curtail those vehicles to redirect the funds to other priorities. A “key” factor will be whether the funding is FY 13 money. If so, there very likely will be no effect on the contract. Unfunded vehicles and option periods, however, are unlikely to proceed in accordance with prior “look-ahead guidance.”

Administrative and programmatic costs associated with redirection of funds, however, would make the process terribly expensive in absolute both dollar and programmatic terms. Such actions, therefore, would be unlikely except in the most exigent circumstances – such as to support contingency operations in Southwest Asia.

2. Some disruption may be expected to audits, and inspection/acceptance testing associated with those contract vehicles, based on a [memorandum](#) that the Deputy Secretary of Defense distributed to DoD Employees late last week. Any increased costs associated with such disruption may constitute a compensable change under the Changes Article of the vehicle – unless the government takes the position that the shutdown causing the disruption is a “sovereign act” for which no compensation is required. The [Winstar](#) cases, however would seem to argue otherwise.
3. *All* activities associated with National Security would continue.

It is important to remember, however, that federal employees are paid bi-weekly, and in arrears. Thus, salaries will be paid as usual on or about October 15.

4. A special statute, passed in 2009, requiring that benefits be funded a year ahead made Veterans less subject to the effects of a government shutdown.

Conclusion

The shutdown will not be orderly, owing to the uncertainty associated with its details. We know, in gross, that National Security and Contingency Operations will continue, subject to the provisos mentioned above. Thus, some mild disruption

may be expected in existing contracts, and any major disruptions likely would be fully compensable. New contracts and orders related to National Security and Contingency Operations are possible, although unlikely – at least in the early stages of any protracted shutdown.

On the bright side, IRS audits likely will be stopped.

J. William Eshelman
202.454.2830
eshelman@butzel.com

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