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**REVISED AND UPDATED WHITE PAPER:
THE IMPLICATIONS AND CONSEQUENCES OF A GOVERNMENT
SHUTDOWN AND DEBT CEILING IMPASSE FOR CONTRACTORS**



INTRODUCTION

As the Government shutdown drags on with no end in sight, the adverse effects of a shutdown continue to increase for contractors. Besides the obvious (what do we do with our staff?), cash flow will get tighter and furloughs may be required. Of course, all of this changes by the day, so we encourage you to visit Centre's special Government Shutdown/Debt Ceiling web information portal located at www.shutdownnews.com for the latest information. Some good news has come out over the last few days. *First*, Congress has voted that once the shutdown has ended, all federal workers will receive back pay. President Obama is expected to sign this measure. *Second*, the Department of Defense ("DoD") and the Department of Homeland Security ("DHS") (for the Coast Guard only) has ordered most (approximately 350,000 of 400,000 workers) of its furloughed civilian workforce back to work. This was able to occur as a result of the "Pay Our Military Act"

passed by Congress and signed by the President shortly prior to the beginning of the shutdown. The Pay Our Military Act was written broadly to allow the Secretary of Defense to provide pay to “civilian personnel...providing support to members of the Armed Forces...”¹

What makes this shutdown unusual is that it is not based on a disagreement of funding levels. Members of the House, the Senate, and the President all agree on funding levels for the next fiscal year. The sole disagreement concerns the rolling out of the Affordable Healthcare Act (better known as ObamaCare). In continuing resolutions to fund the Government, the House Republicans have sought to defund the ACA and/or delay the individual mandate that is scheduled to begin on January 1, 2014. The President and the majority in the Senate have been steadfast in their opposition to these proposals. Because every CR has had a provision attached to it not agreeable to the majority in the Senate and the President, the Senate has sent “clean CRs” back to the House. These clean CRs have not been voted on by the House to date.

Besides a shutdown, we are also facing the possibility of the Government hitting the debt ceiling (the borrowing limit) shortly. This occurs when the Government no longer has money to pay for debts already incurred. In order to pay for those outstanding and debts, the Government will need to shut down additional functions. It is possible, however, that revenue will be insufficient to meet outstanding obligations on a rolling basis and/or the Government will be unable to prioritize payments efficiently. Under either of those scenarios, a default will occur. A number of studies have pinned the debt ceiling date to be sometime after October 17, 2013. This White Paper will discuss hitting the debt ceiling and differences between that and a shutdown after discussing the shutdown below.

At Centre, we have been receiving a voluminous number of inquiries about these issues seeking guidance. While only our attorneys can give you legal advice after speaking with you about your specific situation, we are releasing this White Paper to provide a general understanding as to what happens during a government shutdown. We can also provide the documents discussed in this White Paper which allow for further reading at your request. Of course, after reading this, please feel free to contact us (our contact information is at the end) for further information about this or any other issues you may have.²

Initially, we cannot emphasize enough the importance of being in contact with your Contracting Officer (“CO”) or Contracting Officer’s Representative (“COR”) as the shutdown drags on (if the CO and COR are still working). Hopefully your CO can provide you guidance as to whether your contract would be affected by a shutdown and if it is, what actions you should take – such as the proper protocol for winding down and receiving reimbursements for doing so. At

¹ As will be discussed later, this will provide relief to some contractors who require civilian DOD and USCG personnel to supervise their contracts.

² This White Paper only provides general information and may or may not be applicable to your specific situation. If you need legal advice, we strongly recommend you contact an attorney.

Centre, we have heard numerous reports of clients receiving Stop Work Orders (“SWO”). In some instances (presumably in haste), those SWOs were improperly issued because the affected contract did not require annual appropriations or for other reasons. When that occurs, try to contact the CO or COR and explain why this is the case and get it rescinded. If the CO or COR is not there, still send a written communication explaining your position. If nothing else, this will make a claim to recover shutdown costs better received. Further, if another shutdown would occur, perhaps a SWO would not be issued the next time.

WHAT CAUSES A GOVERNMENT SHUTDOWN?³

In short, government shutdowns are caused by funding lapses.⁴ In general, the Government is funded through appropriations from Congress. Article 1, Section 9, clause 7 of the United States Constitution provides that “[n]o money shall be drawn from the treasury, but in consequence of appropriations made by law.” For that reason, no one is permitted to obligate the Government unless an appropriation has been made to fund that obligation. This clause in the Constitution is echoed by Title 31 of the United States Code. More specifically, 31 U.S.C. § 1341 (commonly known as the “Antideficiency Act”) provides in relevant part that:

(a)(1) An officer or employee of the United States Government...may not-

(A) make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation;

(B) involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law...

Consequently, the Government cannot operate without the appropriate funding in place. Though there are some exceptions, without funding, work must cease.

The next question is usually, what happens if a contractor continues to work during a shutdown even though their contract is not funded? Can the contractor get paid later? We’ll detail this more later on, but in a word, the answer is “no.” The basis for this is 31 U.S.C. § 1342 (commonly known as the Anti-Deficiency Act), which provides in relevant part that:

³ At the outset, we note that a Government shutdown does not mean the entire federal government shuts down. As will be detailed later on, essential services necessary for the safety, health, and welfare of the American people (such as air enforcement or air traffic control – at least while the airplanes are still in the air) do still continue. Other exceptions are discussed later.

⁴ A second way the Government couple suffer from a funding lapse is if the debt ceiling is not raised and the Government runs out of money. On its current pace, this is scheduled to happen on or after October 17, 2013 without intervention by Congress. This is will be discuss later herein.

An officer or employee of the United States Government or of the District of Columbia government may not accept voluntary services for either government or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property.

Essentially, if contractors continued to provide goods and/or services gratis with the expectation of future payment, they do so at their own peril because statutorily, the Government is prevented from accepting voluntary services. The penalties for violating the Anti-Deficiency Act can be criminal, so Government employees follow it scrupulously even though no one has ever been convicted for doing so since the Act's inception more than 100 years ago.

To complicate matters further, there are essentially two types of shutdowns. One is a "hard" shutdown (which is being discussed in this White Paper), which implicates all non-essential and non-exempt government employees and contracts. Occasionally there are "soft" shutdowns where the expectation is the shutdown will last for a very short period of time (less than a day or so) and work mostly continues on as normal. While this kind of shutdown would create a whole different set of problems/issues, it is not addressed here.

A BRIEF HISTORY

Because there are few laws or regulations to use as a guide during a shutdown, most of what we know about what may occur during a shutdown is based on recent history – which we will explore here. There have been few occasions that the federal government (the "Government") has been shut down for more than a few days. Further, the last time that the Government was shut down for an extended period in December 1995 and January 1996, the Government was far less reliant on contractors and the shutdown itself did not affect the entire Government because a few spending bills funding parts of the Government had been enacted. As such, what would happen in the event of a lengthy shutdown to contractors today is largely unknown. To make matters more difficult for contractors, there are few laws, rules, and regulations that govern this contingency. The few there are, are discussed here.

Between FY 1977 and FY 1980, there were 6 funding gaps that lasted between 8 and 17 days. However, during that time, the Government (for the most part) continued to operate fairly normally because the Anti-Deficiency Act was essentially ignored. After an appropriations gap in 1980, President Carter requested his Attorney General, Benjamin Civiletti, prepare an opinion as to whether the Government could continue to operate if there is an appropriations gap. The resulting memorandum (referred to as the "Civiletti Memorandum") was a game changer. In short, Civiletti concluded that the Government could not spend money that was not appropriated – with a few exceptions.

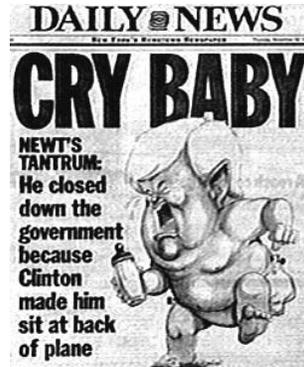
Not surprisingly, after the Civiletti Memorandum, the President and Congress were much more diligent in ensuring that there were fewer and shorter appropriation lapses. Between 1981 and 1995, there were no appropriations lapses lasting more than 3 days. In one instance during the Reagan administration, President Reagan began shutdown procedures and on another, during George H.W. Bush's administration, the Government shutdown over a long Columbus Day weekend.

However, the most infamous shutdown before now occurred during Bill Clinton's first administration.⁵ As you probably know, just as it does now, the Government's budgetary year began on October 1. Unable to agree on a budget in 1995, Congress passed and President Clinton signed a "continuing resolution" to continue funding the Government until midnight on November 13, 1995. In his memoir, *My Life*, President Clinton details a meeting between Al Gore, Dick Arme, and Bob Dole that resulted in an impasse when the parties could not agree on a level for Medicare funding. On Tuesday, November 14, 1995, the Government began the process of shutting down and remained so until November 19, 1995 when the parties agreed to a continuing resolution through December 15, 1995. During this period, nearly 800,000 non-essential workers were furloughed.

On December 15, 1995, the parties could still not agree on a funding bill for the Government resulting in a funding lapse and a Government shutdown. While both sides dug in, Newt Gingrich had his own view of the cause of the shutdown (as told by Tom Delay in his book *No Retreat, No Surrender: One American's Fight*):

[Newt Gingrich] told a room full of reporters that he forced the shutdown because Clinton had rudely made him and Bob Dole sit at the back of Air Force One... Newt had been careless to say such a thing, and now the whole moral tone of the shutdown had been lost. What had been a noble battle for fiscal sanity began to look like the tirade of a spoiled child. The revolution, I can tell you, was never the same.

⁵ Seemingly anticipating events would unfold this way, Attorney General Janet Reno requested that Assistant Attorney General Walter Dellinger provide guidance in light of a 1990 amendment to the Anti-Deficiency Act (which is discussed later). This Memorandum, which is dated August 16, 1995, is referred to as the "Dellinger Memorandum."



While attributing the cause of the shutdown to Newt Gingrich and his seat location on Air Force One may have been unfair, it caused the GOP to lose the “moral high ground.” Without apportioning blame or a “scorecard” as to who won, soon thereafter, the parties came to an agreement and the shutdown ended 21 days later – on January 6, 1996.

WHAT KINDS OF CONTRACTS ARE AFFECTED BY A SHUTDOWN?⁶

There are numerous types of contracts that would generally be exempted from a Government shutdown. As detailed in the Dellinger Memorandum, they include:

1. Contracts Not Funded by 2013-2014 Annual Appropriations: contracts that are obligated on an indefinite or multi-year basis and contracts that are for a fixed price where the funds were already obligated at the time of contract execution will probably not be affected by a shutdown since those contracts do not rely on new funding upon expiration of the continuing resolution.
2. Express Authorization from Congress: one example detailed in the Dellinger Memorandum is the “food and forage” authority given to DoD to authorize contracting for troop clothing, food, and supplies without an appropriation from Congress.
3. Implied Authorization such as supplies necessary to continue allowable emergency services or other approved activities such as the ink or paper for processing outgoing social security checks.
4. Obligations Necessary to Discharge the President’s Constitutional Duties: though this is as limited as possible and depends on the underlying set of facts.

⁶ The information provided herein is not legal advice and should not be construed and relied on as such. Moreover, each situation is different. For each of the general rules outlined here, there are exceptions. Should you wish for a legal opinion, we advise you to contact us or another attorney with expertise in this area who can review your underlying contract and particular situation and guide you.

5. Personal or Voluntary Services for Emergencies as defined in 31 U.S.C. §1342: As will be detailed below, this is a highly discretionary category that requires consultation with your CO.

For ease of reference, we'll refer to these types of contracts detailed above as the "Unaffected Contracts." Even for Unaffected Contracts, work may stop because Governmental feedback/supervision/office space is necessary for the performance of the contract.

On the other hand, with some exceptions, (1) Cost-Type contracts (because of the Anti-Deficiency Act), (2) Time and Materials ("T & M") contracts (because of the Anti-Deficiency Act), and (3) Indefinite Delivery – Indefinite Quantity ("IDIQ") contracts (the Government would not be able to place new orders) will be affected by a Government shutdown when funding runs out. For ease of reference, we'll refer to these types of contracts as the "Affected Contracts."

Jim Phillips, a partner at Centre Law Group, has developed a Contract Matrix that you can use a reference tool:

Contract Type	Variables	Effect of Shutdown	Action
FFP	Contract is fully funded.	None (assuming Government is not necessary for performance). Work should continue and costs recoverable if work stopped.	Contact CO to confirm work would continue. Government could always terminate or suspend under FAR Part 52.
FFP	Contract is incrementally funded.	None (assuming Government is not necessary for performance) until funding limit reached. Work should continue and costs recoverable if work stopped.	Contact CO to confirm work would continue towards funding limitation. Government could always terminate or suspend under FAR Part 52.
T&M	Work is at Government site.	Work may be curtailed if government site is unavailable without liability to contractor unless emergency work.	Contact CO to confirm work would continue. CO should advise whether work is essential based on agency guidance.
T&M	Work is at contractor site.	Work may be curtailed if it is not deemed to be emergency work unless contract already funded.	Contact CO to confirm work would continue. CO should advise whether work is essential based on agency guidance.
Cost Type	Contract is fully funded.	Contractor has right to perform to cost ceiling. If performance stopped, necessary continued work are billed either as direct or indirect costs.	Contact CO to confirm work would continue. Government could always terminate or suspend under FAR Part 52.
Cost Type	Contract is incrementally funded.	Contractor has right to perform to funding limit. Any additional work is at contractor's risk.	Contact CO to confirm work would continue. Government could always terminate or suspend under FAR Part 52.

It is important to keep in mind that for every general rule, there are dozens of exceptions. Moreover, we note that contractors are generally required to keep working until they

hear otherwise. No matter what, the questions to ask are: How is my contract funded? Do I need the Government to keep performing? Also, now that many DoD workers have returned, certain contracts may be able to restart on the basis of the work stoppage was lack of a supervising Government employee. We recommend that all DoD contractors reach out to their COs and CORs as soon as practicable.

If you have an Affected Contract, it is important to do a number of things immediately, including:

1. Take an inventory of your contracts and contact your CO – do not wait for the Government to contact you. Your CO will probably be overwhelmed with inquiries and will probably not seek you out;
2. Determine whether your Affected Contract falls under an exception noted above;
3. Document all wind-down, start-up and maintenance costs; and
4. Create separate billing categories in conjunction with your accounting department for wind-down, wind-up and contingency costs.

The above are general rules to which there are always exceptions. Based on past experience, the kinds of services that are exempt are determined by the agency. However, it is inevitable that whether some contracts continue during a shutdown or not will be determined on a case-by-case basis.

The area that allows for the largest amount of discretion is the exception “for emergencies involving the safety of human life or the protection of property.” While every contract is important to the Government (otherwise there would never have been a procurement), only a narrow category of contracts fall within this exception.

Unfortunately, while this exception was discussed in detail in the Dellinger Memorandum, few answers were offered. Some calls are much easier than others. For instance, if a company has a contract to provide security for Capitol Hill, that contract will be exempt from a shutdown. However, what about meat inspectors? What about air traffic controllers? It is clear that air traffic controllers would be exempt while airplanes were still airborne, but what about once they all landed? A lack of air traffic controllers would surely disrupt the private economy, but not necessarily result in the imminent risk to human life or property. When Congress amended 31 U.S.C. §1342 in 1990, it added the following sentence at the end:

As used in this section, the term “emergencies involving the safety of human life or the protection of property” does not include ongoing,

regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property.

While this language did not change the meaning of the statute (because that language was essentially already employed in the statute), it had the effect of emphasizing Congress' narrow view of this exception. That being said, air traffic controllers have continued to work and the nation's airports have continued to operate normally.

The Office of Management and Budget has created a website listing all agency contingency plans. That website is located at: <http://www.whitehouse.gov/omb/contingency-plans>. We strongly recommend that all contractors view the contingency plan for the agencies they support if they have not already done so.

Even if you have an Unaffected Contract, a contractor may be forced to stop working in the event of a shutdown because the contract requires guidance/approval from government employees or access to a government building that would not be accessible.

Of course, you can contact us and we can look at your contract and provide further guidance.

HOW WORK STOPS

Once again, we are in uncharted waters. It is much less complicated for the Government to shut itself down than shutting down contractor work with all the legal, regulatory, and cost implications involved.

The cleanest and easiest way for a CO to stop work in the event of a shutdown would be to issue a stop work order pursuant to FAR §52.242-15 (though doing so may unfairly affect contracts that are not subject to the shutdown). Another scenario includes broad guidance would be issued for all contractors to follow. Of course, if it is not specific enough, such guidance can easily raise more questions than answers.

Moreover, it is important for contractors to do the following while shutting down: (1) mitigate any damages/losses/expenses; (2) document every cost or expense; and (3) account and document everything that is done. By following these steps, contractors will have a greater chance of recovering the costs associated with shutting down.

Further, it is also important for contractors to know where their employees are. The Government shutdown is worldwide, so for contractors overseas, determinations have to be made with what to do with overseas employees to mitigate costs. In some instances it may make monetary

sense to keep those employees overseas for a short period of time instead of bringing them home on the next available flight without regard to expense.

RAMIFICATIONS FOR EMPLOYEES AND EMPLOYERS

In the past, Government shutdowns have resulted in back pay for furloughed federal employees. However, contractors may not be compensated for lost time, requiring the contractor to pay their employees' salaries without the benefit of the income used to support their salaries. There are exceptions. For instance, in *Raytheon STX Corporation v. Department of Commerce*, GSBCA 14296, the Board of Contract Appeals held that the Government had to compensate Raytheon for wages of contract employees incurred by Raytheon during the 1995-1996 shutdown. The basis for the Board's decision was that because the contract was cost-reimbursable and cost-reimbursable contracts require the Government to bear increased costs, the Government had to pay salaries incurred by Raytheon during the shutdown.⁷ The Government argued that the shutdown was a sovereign act and not a contract act. The Board rejected that defense. In instances where the Government engages in a sovereign act, recovery of increased costs is not permitted. Whether this current shutdown is deemed to be a sovereign act remains an open question: one could argue that the Government is not fully shutting down – there are certain aspects of the Government that are still open. Because the Government is picking winners and losers, albeit broadly, it is not engaging in a sovereign act. On the other hand, is the argument that the Government is not aiming its shutdown at a particular contract, but instead a particular class of contracts? It remains to be seen whether the Government will employ the sovereign act defense in response to the wave of claims that will inevitably come from contractors once the Government reopens. No matter the Government's stance down the road, contractors have to decide what to do with employees not able to work.

The following are some additional options for employers:

1. Reassign employees to other contracts/projects that are still ongoing;
2. Ask employees to take outstanding vacation/leave time;
3. Require employees to take overdue or needed training; and
4. As a last resort, furlough affected employees.

Each situation will, of course, be different depending on each contractor's business situation and the best guess on how long a shutdown will last. **Further, it is important to keep local, state, and federal laws as well as employment contracts in mind when deciding what actions to take with your employees.**

⁷ In this circumstance, Raytheon had agreed to pay, and did pay, two weeks of severance to all furloughed workers. A subcontractor that did not actually expend funds to its employees was unable to recover.

Most importantly, for prime contractors, ensure that you can effectively stop your subcontractor's work. All subcontracts, which are considered commercial contracts (and not subject to the Christian Doctrine), should have termination for convenience clauses or similar type clauses that allow a prime contractor to order the subcontractor to stop working under certain circumstances. Without such a clause, a prime contractor may have to continue to accept a subcontractor's goods/services during the shutdown.

One the other hand, subcontractors should examine their contracts to see whether those clauses are contained in their contracts. If not, they can continue working (though the relationship with the prime contractor may deteriorate quickly).

Some additional considerations for employers will be whether other operations supported by the Affected Contract will be able to continue such as bid and proposal costs or general office overhead and operations and if not – at what cost?

WHAT IS RECOVERABLE?

All is not lost – expenses incurred because of a shutdown may be recoverable (when the shutdown ends). Normal winding down expenses such as unabsorbed overhead, material cost, employee costs (including costs of extending employment contracts) may be recovered. However, consequential damages will not be recoverable.

There may be some flexibility in obtaining shutdown or startup costs using equitable adjustments or ratification of intervening contractual activities.

SOME SPECIFIC ISSUES

IT/Internet contracts pose a specific problem. For instance, if a government agency hosts a website that has some unaffected services and some affected services, is the website still hosted or does it go offline if it cannot be separated out?

Also, some subcontractors working on multiple programs have to ensure they continue working on the correct contracts, and prime contractors need to ensure the proper flow down clauses are in the subcontracts.

Further, because new funds cannot be obligated, contracts, which would be affected by a shutdown, cannot be executed because the Government cannot obligate new funds without funding. Of course, if a procurement is still in the bidding process, it is important to contact the CO to see what happens because of the shutdown.

It is important to note that court deadlines are likely to be unaffected by a shutdown. The Government Accountability Office (“GAO”) has announced on its website that all protest deadlines that occur during the shutdown are extended until it reopens.

The Congressional Research Service also previously released guidance a few years ago. Though helpful, it mostly focuses on the Government and barely mentions contractors. It is available here: <http://www.fas.org/sgp/crs/misc/RL34680.pdf>.

WHAT ABOUT THE DEBT CEILING?

Complicating things is the possibility that we could hit the debt ceiling soon. The Government actually hit its debt limit on May 19, 2013, but the Treasury Secretary has been taking “extraordinary measures” to avoid hitting the ceiling. At some point, in the near future, those measures will no longer be effectual. The Bipartisan Policy Center conducted a study and concluded that date will be between October 18 and November 5. The BPC also examined whether the shutdown would change the expected date and they concluded that, based on expected expenditures, the date change would be minimal.

DEBT CEILING BACKGROUND

In short, Congress sets a ceiling on the Government’s borrowing and any authority to exceed that ceiling must be authorized by Congress. Since 1962, Congress has raised the debt ceiling 74 times (or an average of 1.5 times per year). While in past administrations, raising the debt ceiling has been a fairly routine event, this time it may not be raised due to concerns over, the deficit, the debt, and the Affordable Healthcare Act. The debt ceiling vote is purely a mechanism to allow the Government to borrow sufficient amounts of money to expend funds already authorized by Congress.

The Congressional Research Service provides a succinct history of the debt ceiling: The statutory limit on federal debt began with the Second Liberty Bond Act of 1917, which helped finance the United States’ entry into World War I. By allowing the Treasury to issue long-term Liberty Bonds in addition to more commonly used short-term debt instruments, the federal government held down its interest costs. Not coincidentally, since around that time, United States bonds debt has received an AAA (or equivalent) rating. Many economists argue that an AAA rating is necessary to keep interest rates for citizens and corporations low. If it is more expensive for the United States to borrow money, like a rising tide, the cost of credit for others rises higher.

WHAT IS THE IMPACT FOR CONTRACTORS?

The effect on contractors will be different depending on whether the work on a contract has continued through the shutdown and whether the shutdown has continued. If your work has

already stopped, nothing changes. If your work has not stopped or has restarted, there are consequences; the most obvious of which is that prime contractors may not get paid. Some other less talked about consequences of a failure to raise the debt ceiling that could directly impact contractors includes the following:

- *First*, Government workers could be furloughed making performance of certain contracts impossible. Should your contract require performance on a government site or review by a government employee at specific times, you may be forced to stop performing.
- *Second*, to the extent work supports furloughed employees, the contract may be terminated for convenience or a stop work order may be issued.
- *Third*, while prime contractors may not be paid, subcontractors may still have to be paid depending on the language of the parties' contract. Subcontracts are commercial contracts.
- *Fourth*, the Government may partially shut down or shut down further.
- *Fifth*, certain agencies may issue wholesale terminations of contracts for convenience or stop work orders to prevent late payment penalties or lawsuits.
- *Sixth*, the procurement system could face constraints or a shutdown if GAO or federal court employees are furloughed. This would not allow a contractor to ignore statutes of limitation (which is the deadline to file a case) though currently GAO is closed and extending deadlines until when they reopen.

All contractors should be aware of the Prompt Payment Act (PPA) if they are not already. The PPA provides a statutory interest rate for all late payments to contractors. This interest rate is established twice annually (though it is compounded monthly for the first year). It is entirely possible that contractors will be required to continue to work even if they have no hope of receiving payment in the near future (though an argument can be made that a contractor who knows they will not be paid is required to stop work to avoid being categorized as a knowing volunteer in violation of federal law).

PRIME CONTRACTOR/SUBCONTRACTOR ISSUES

If nothing else, there is a good chance a debt ceiling impasse will prevent prime contractors from being paid on time. If there is no subcontractor relationship, then the prime should ensure it has hoarded enough cash to continue performing.

For prime contractors with subcontractors, they should also: (i) examine their subcontracts to see if payment to the subcontractor is triggered by payment from the Government or by performance; and (ii) see if the subcontractor can get through a period of time without payment from the Government. Each of these circumstances is rife with legal issues.

For subcontractors, it is important to also examine your subcontract to see when payment from a prime contractor would be triggered and examine your cash reserves to see how your company would be affected by non-payment.

CONCLUSION

The Government shutdown and debt ceiling impasse has raised a lot of unresolved issues. Unfortunately, there is no bright line rule (each case is different) and no provision of the FAR that specifically deals with this.

If you are a contractor, it is important to:

- Take an inventory of your current contracts;
- Prime contractors should examine their subcontracts to ensure they can stop a subcontractor's work and determine payment obligations;
- Contact your CO to get an understanding if and how your contract will be affected. If the CO does not know or is unwilling to help, push your request up the chain of command;
- Stay in constant communication with all parties;
- Document everything you do and save all evidence of payments;
- Account for everything you do in winding down and starting up;
- Mitigate your costs whenever possible; and
- Seek recovery of your expenses as soon as possible (there may be short deadlines for doing so depending on how worked was stopped).

What happens to each particular contract depends on the type of contract, how it is funded and whether it falls under an exception noted above. If you are still unsure what to do, we invite you to contact us for further information.

ABOUT THE AUTHOR



Eric has extensive experience in the field of government contracts representing contractors of all sizes in a wide variety of areas including: labor law and Service Contract Act (SCA) compliance, intellectual property issues, trade agreement and export control compliance, subcontracting and teaming agreement issues,

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compliance with the Federal Acquisition Regulations, and employment agreements including non-compete and non-disclosure agreements. Eric has also successfully litigated numerous bid protests and hundreds of cases before various courts, tribunals, and boards including the United States Court of Federal Claims (COFC) and the Government Accountability Office (GAO).

In June 2013, Eric was named a *Virginia Super Lawyers* Rising Star for the second straight year – an honor that is only given to the top 2.5% of attorneys in Virginia who meet certain criteria. Eric is a frequent lecturer to industry and professional groups including the National Contract Management Association, the American Bar Association, and GovSec and has also been quoted in numerous publications including *Investor's Business Daily*, the *Washington Business Journal*, the *Federal Times*, and the *Washington Lawyer* and has appeared as a guest on Federal News Radio.

ABOUT CENTRE LAW GROUP:

Centre Law Group specializes in representing federal government contractors. Centre Law, with its sister company Centre Consulting and training division, the Federal Contracting Institute (FCI), provides an integrated legal, training and GSA consulting solution for companies selling goods or services to the federal government. For more information visit www.centrelawgroup.com.

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