



## PROCUREMENT MEMORANDUM 2011-09 (REVISED FISCAL YEAR (FY) 2024 V.2)

### ACTION

**MEMORANDUM FOR:** Heads of Operating Units  
Senior Bureau Procurement Officials

**FROM:** Olivia J. Bradley  
Senior Procurement Executive  
and Director for Acquisition Management

**SUBJECT:** Acquisition-Related Procedures Associated with a  
Lapse in Appropriations (REVISED V.2)

### Background

The possibility of a lapse in appropriations and the associated shutdown of non-excepted federal operations necessitate prudent planning and the development of a comprehensive approach to management of federal contracts for the duration of the lapse in appropriations and during the following start-up period. A Department of Commerce-wide framework for management of contracts during a lapse in appropriations is being disseminated to ensure that operating units within the Department are best able to meet these challenges.

For purposes of this memorandum, the term “excepted contract” means a contract under which performance may continue during a lapse in appropriations because such performance falls within one of the exceptions referenced herein and the term “non-excepted contract” means a contract under which performance may not continue because such performance does not fall within one of these exceptions.

### Purpose

The purpose of this policy is to establish required actions for the Senior Procurement Executive, Bureau Procurement Officials and contracting officers before, during, and after a lapse in appropriations. This policy is revised to update terminology and the descriptions associated with the determination of contract status.

### Applicability

This policy is applicable to all contracts, task orders, delivery orders, call orders, and purchase orders administered by the Department of Commerce.

### Required Actions

In consultation with contracting officer representatives, program officials and legal counsel, Bureau Procurement Officials (BPO) are responsible for ensuring that the following actions are accomplished prior, during, and after a lapse in appropriations.

## Prior to Shutdown

*Identification of Excepted Personnel* - BPOs shall provide the name and contact information of their primary office contact to the Senior Procurement Executive (SPE). They shall also provide an approximate number of personnel that will be or may be required to perform excepted duties during the lapse in appropriations.<sup>1</sup>

In addition, BPOs must provide to the SPE the names of all purchase cardholders who are excepted from furlough to perform excepted functions to ensure their purchase cards remain active during lapse in appropriations. Purchase cards for all cardholders *except for those identified as excepted from furlough* will be deactivated for the period of the lapse.

*Determination of Contract Status and Associated Exception Numbers* - BPOs shall assess existing contracts, task orders, delivery orders, call orders, and purchase orders to determine whether or not one of the following exceptions apply:

- 1a. The contract was awarded prior to the lapse in appropriations, is funded beyond the expected duration of the lapse, and neither Government personnel nor access to any other Government resource that would create additional Government financial obligations are necessary for contract administration during the lapse;
- 1b. The contract was awarded prior to the lapse in appropriations, is funded beyond the expected duration of the lapse, and the salaries of Government personnel or other cost of Government resources necessary for contract administration are paid by other than current fiscal year appropriations;
2. The contract relates to an activity that is expressly authorized by law to continue in the absence of appropriations. (The Department does not have such authorities, and this exception should not be used without first consulting with the Office of the General Counsel's General Law Division (GenLaw));
3. The contract relates to an activity that is implicitly authorized by law to continue in the absence of appropriations, including assisting in the orderly shutdown activities of the agency;
4. The contract relates to an activity in furtherance of the discharge of the President's constitutional duties and powers. (Consultation with GenLaw is required);
5. The contract is necessary to prevent significant and imminent threats to the safety of human life or property.

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<sup>1</sup> Names and contact information are not required for this count and it may be an estimate.

BPOs must ensure that any contract activity identified as falling within one of the above categories (other than 1a) must also be within the scope of an excepted activity of the relevant Departmental office or operating unit as described in the Department's lapse in appropriations plan, available at <https://www.commerce.gov/furlough-information>. If not, the Departmental office or operating unit is responsible for seeking clearance for the activity and approval for a revision to the plan from the Department through the Departmental office's or operating unit's lapse plan coordinator.

Attachment 1 (CLD and GLD Lapse in Appropriations Contract Analysis Flowchart) provides a flowchart to guide the determination of whether a contractor may continue to perform or must cease performance during a lapse in appropriations. A list of excepted contracts and the count of non-excepted contracts shall be provided to the SPE using Attachment 1A (Template for Continuing Excepted Contracts and Non-Non-Excepted Contract Count) no less than four days prior to the anticipated lapse in appropriations period.

*Initial Notification to Contractors* - Three days prior to the anticipated lapse in appropriations, each BPO shall be prepared to issue the notification provided in Attachment 1B (Initial Notification to Contractors re: Lapse in Appropriations) to their contractor community. The BPO shall issue the notice only after the SPE has provided authorization.

*Establishment of Contract Management Activities for Excepted Contracts* - The BPOs shall develop operating procedures to administer contracts determined that may perform or continue performance during a lapse in appropriations including roles and responsibilities addressing limitations during the period, communication with program officials and contractors, and performance monitoring.

### Day of Shutdown

*Distribution of Notification to Continue Performance* - The contracting officer shall prepare and issue notification to contractors who may continue to perform during a lapse in appropriations using the format or substantially the same format contained in Attachment 2 (Notification for Contractors Required to Continue Performance During the Shut Down). For contracts where delivery dates fall within the period of the lapse in appropriations and for which government personnel will *not* be available for contract administration, the contracting officer shall prepare and issue notification to contractors using the format or substantially the same format in Attachment 6 (Notification for Contractors Required to Delay Delivery Until After the Shut Down).

*Distribution of Notification for Non-Excepted Contracts* - For contracts, task orders, delivery orders, call orders, and purchase orders determined to be non-excepted, contracting officers shall issue the appropriate notification to the contractor using the same or substantially the same language contained in Attachments 3 through 5 as appropriate to the contract type and clauses contained therein. Attachment 3 is Notification for Contracts to be Stopped that Include Federal Acquisition Regulation (FAR) Clause 52.242-15, Stop Work Order, and its Alternate 1, which should be Supplies, Services, or Research and Development Contracts; Attachment 4 is Notification for Contracts to be Suspended that Include FAR Clause 52.242-14,

Suspension of Work, which Should be Fixed Price Construction and A-E Contracts; and Attachment 5 is Notification for Contracts to be Stopped that do not Include Suspension of Work or Stop-Work Clauses.

*Securing Sensitive Information* - BPOs shall ensure that all contract files and documentation, including sensitive information and proprietary data, are secured prior to the period of the lapse in appropriations.

*Identification and Documentation of Start-up Activities* - BPOs shall identify, document, and assign responsibility for actions that are anticipated during the start-up period following the lapse in appropriations.

#### During Shutdown

*Documentation of Contract Actions* - BPOs shall ensure that all personnel responsible for performing duties during the period of lapse in appropriations fully document all contract actions taken such that, in the absence of contract writing system and other system support, subsequent reporting can be accomplished and a record of the action is complete and in accordance with FAR requirements.

*Recordation of Obligations* - Recordation of all obligations is required. BPOs may use or modify as appropriate the Manual Record of Obligation template provided as Attachment 7.

*Required Approvals for Contract Actions* - BPOs and contracting officers are responsible for obtaining required approvals for contract actions including, if applicable, those for generally acceptable acquisition flexibilities and emergency acquisition flexibilities, in accordance with FAR Part 18, *Emergency Acquisitions*, and Commerce Acquisition Manual 1301.70, *Delegation of Contracting Authority*.

*Communication* - BPOs shall ensure that all personnel responsible for performing duties during the period of lapse in appropriations are available to the SPE, program officials and contractors and that required communication is conducted in a responsive and timely manner.

#### Following Shutdown

*Conduct of Start-up Activities* - BPOs shall ensure that start-up activities are addressed within each contracting activity including all necessary electronic documentation of actions taken during the lapse in appropriations.

*Assessment of Non-Excepted Contracts* - Contracting officers, along with program officials, contracting officer representatives, and in consultation with legal counsel as appropriate, shall assess the impact of cessation of performance on non-excepted contracts and identify and affect any changes required.

*Notification to Non-Excepted Contractors* - Contracting officers shall notify non-excepted contractors using the appropriate format or substantially the same formats contained in Attachments 8 to 10, based on contract type and impact of cessation of performance. If

none of the templates provided in Attachments 8 to 10 are appropriate, legal counsel shall be consulted. Attachment 8 Is Notification to Lift Suspension of Work; Attachment 9 is Notification to Resume Performance of Contracts Directed to Cease Performance; and Attachment 10 is Notification to Cancel Stop- Work Order.

*Assessment of Excepted Contracts* - Contracting officers, along with program officials, contracting officer representatives, and in consultation with legal counsel as appropriate, shall assess the impact of performance during the lapse in appropriations on excepted contracts and identify and effect any changes required through appropriate contract action.

### **Effective Date**

The requirements herein are effective immediately until rescinded.

### **Questions**

Please direct any questions regarding this Procurement Memorandum to OAM\_Mailbox@doc.gov.

Attachment 1: Lapse in Appropriations Contract Analysis

Attachment 1-A: Template for Continuing Excepted Contracts and Non-Excepted Contract Count

Attachment 1-B: Initial Notification to Contractors re: Lapse in Appropriations

Attachment 2: Continue Performance Template

Attachment 3: Stop Work Template

Attachment 4: Suspension of Work Template

Attachment 5: Cease Performance Template

Attachment 6: Delay Delivery Template

Attachment 7: Manual Record of Obligations

Attachment 8: Lift Suspension of Work Template

Attachment 9: Resume Performance Template

Attachment 10: Cancellation of Stop Work Template