UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer
Assistant Secretary for Administration
Washington, D.C. 20230

SEP 27 2013

PROCUREMENT MEMORANDUM 2011-09 (Revised)

ACTION

MEMORANDUM FOR: **BUREAU PROCUREMENT OFFICIALS**
HEADS OF CONTRACTING OFFICES

FROM: Barry E. Berkowitz
Senior Procurement Executive
and Director for Acquisition Management

SUBJECT: Acquisition-Related Procedures Associated with a Federal Funding Gap

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

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 federal funding gap. This policy is revised to add a requirement for initial notification to contractors.

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 names and contact information to the Senior Procurement Executive (SPE) including three alternative means of communication, e.g., cell phone, home e-mail address and home phone, for all contracting personnel who will be or may be required to perform duties during the period of the funding gap.

In addition, BPOs must provide the names of all purchase cardholders to the SPE who are determined excepted to ensure their purchase cards remain active during the period of funding gap. Purchase cards for all cardholders *except for those identified as excepted* will be deactivated for the period of funding gap.

Determination of Contract Status and Associated Exemption Numbers – BPOs shall assess existing contracts, task orders, delivery orders, call orders, and purchase orders to determine whether or not one of the following exemptions applies:

1. The contract is necessary to assist in the orderly shutdown;

2a. The contract is funded beyond the date of the shutdown, and Government personnel are not necessary for contract administration during a funding gap;

2b. The contract is funded beyond the date of the shutdown, and the salaries of Government personnel necessary for contract administration are paid by other than current FY funds;

3. The contract is necessary to protect in some significant degree the safety of human life or the protection of property;

4. The contract is necessary for national security purposes or otherwise authorized by law to continue operations.

Attachment 1 (CLD and GLD Funding Gap Contract Analysis Flowchart) provides a flowchart to guide the determination of whether a contractor may continue to perform or must cease performance during a funding gap. A list of continuing contracts with exemptions and the count of non-exempt contracts shall be provided to the SPE using Attachment 1A (Template for Continuing Contracts with Exemptions and Non-Exempt Contract Count) no less than four days prior to the anticipated funding gap period.

Initial Notification to Contractors – Three days prior to the anticipated funding gap period, each BPO shall issue the notification provided in Attachment 1B (Initial Notification to Contractors re: Lapse in Appropriations) to his or her contractor community.

Establishment of Contract Management Activities for Exempt Contracts – The BPOs shall develop operating procedures to administer contracts determined to be exempt including roles and responsibilities addressing limitations during the period, communication with program officials and contractors, and performance monitoring.

<u>Day of Shutdown</u>

Distribution of Notification to Continue Performance for Exempt Contracts – The contracting officer shall prepare and issue notification to contractors whose contracts have been determined to be exempt 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 funding gap 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-Exempt Contracts – For contracts, task orders, delivery orders, call orders, and purchase orders determined to be non-exempt, 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 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 funding gap.

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 funding gap.

<u>During Shutdown</u>

Documentation of Contract Actions – BPOs shall ensure that all personnel responsible for performing duties during the period of funding gap 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 Procurement Memorandum 2006-07 Emergency Acquisition Flexibilities (Attachment 8).

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

<u>Following Shutdown</u>

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 funding gap.

Assessment of Non-Exempt 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-exempt contracts and identify and affect any changes required.

Notification to Non-Exempt Contractors – Contracting officers shall notify non-exempt contractors using the appropriate format or substantially the same formats contained in Attachments 9 to 11, based on contract type and impact of cessation of performance. If none of the templates provided in Attachments 9 to 11 are appropriate, legal counsel shall be consulted. Attachment 9 is Notification to Lift Suspension of Work; Attachment 10 is Notification to Resume Performance of Contracts Directed to Cease Performance; and Attachment 11 is Notification to Cancel Stop-Work Order.

Assessment of Exempt 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 period of funding gap on exempt contracts and identify and affect any changes required through appropriate contract action.

Effective Date
The requirements herein are effective immediately until rescinded.

The point of contact for acquisition questions Virna Winters, 202-482-3483 or **vwinters@doc.gov**. For legal questions, please contact Lauren Didiuk, OGC/Contract Law Division, at 202-482-6281 or **ldidiuk@doc.gov** .

Attachments (13)

cc: Contract Law Division, OGC
General Law Division, OGC
Chief Financial Officers
Acquisition Council