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**GSA Acquisition Alert-2011-02**

MEMORANDUM FOR ALL GSA CONTRACTING ACTIVITIES

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SUBJECT: Contracting Procedures in the Event of a Government Shutdown

1. **Introduction:** This Acquisition Alert provides guidance to GSA contracting activities in the event of a Government shutdown during which a lapse of appropriations occurs. The Anti-deficiency Act prohibits agency officials from incurring obligations in the absence of appropriations.
2. **Background:** Section 124 of the Office of Management and Budget (OMB) Circular A-11, Preparation, Submission, and Execution of the Budget, requires agencies to develop and maintain plans for orderly shutdown in the event of the absence of appropriations. In compliance with this OMB Circular, GSA provides guidance in GSA Order 4220.1G, dated April 8, 2011, Operations in the absence of appropriations.

3. **Procedures:**

(a) The GSA Order

Guidance for the purchase of goods and services under lapsed appropriations is provided in paragraph 2g of the Attachment to the GSA Order. The Attachment states that "goods and services may not be purchased under lapsed appropriations except when required to support excepted activities or when purchased with funds that are exempt from a lapse in appropriations" and provides guidance on a limited number of contract types and on the exercise of options.

"Excepted operations" are described more fully in paragraphs 1 and 3 of the Attachment to the GSA Order. Contracting activities should read the Order and, using the attached decision trees, determine if their contracts: (1) support excepted operations, in whole or in part, (2) have funding available, and (3) require that any necessary contract actions should be taken. The Standard Procedures (below)

set forth this analysis in detail. After performing this analysis, a Contracting Activity may contact the Office of General Counsel if it has specific questions.

(b) Standard Procedures:

(1) Using the applicable decision tree, Contracting Officers shall review all contracts to determine whether the funding authority is annual appropriations, multi-year appropriations, or no year funding.

a. The following list provides some of the revolving funds that support various parts of GSA. Note that the ability to use the money in each fund varies according to the rules particular to that fund.

- i. Working Capital Funding, 40 USC § 3173 (typically used by OCIO, OCFO)
- ii. Consumer Information Fund, 40 USC § 323 (typically used by Consumer Information Center)
- iii. Acquisition Services Fund, 40 USC § 321 (used by FAS)
- iv. Federal Building Fund, 40 USC § 592 (used by PBS)

(2) Using the applicable decision tree, review the contract to determine if it supports excepted operations.

(3) For contracts for non-excepted operations

- If the contract is fully funded, further action may not be necessary unless the shutdown reduces or eliminates entirely the need for the work performed by the contractor.
- Options:
  - If the contract option is scheduled to be exercised during the expected period of the shutdown the option may not be exercised unless it is determined that the additional goods or services are needed to continue or support excepted activities or if the options may be exercised without an obligation of funds or if funded by an exempt funding source. Contracting personnel should consult with program and legal personnel before making a final decision not to exercise an option when this could expose the government to financial liability or other damages.
  - Contracting officers should review base periods, option periods, and option notice requirements and identify any contracts that may expire during the expected shutdown period. A list of these contracts, with expiration dates noted, shall be provided to the contracting officer's

- manager. Contracting Officers shall confer with the Office of General Counsel prior to allowing such contracts to expire, in order to analyze whether exercise of an option is possible and what actions should be taken prior to the exercise of that option.
  - If the contract option is scheduled to be exercised and funding is sourced from revolving funds based on multi-year appropriations or from no year funding, the option may be exercised.
  - If the contract is funded by annual appropriations, or by revolving funds, different restrictions apply depending on which revolving fund supports the contract. For contracts funded by the Federal Buildings Fund, whose authority to expend funds is based on annual obligational or spending authorizations, no new obligations can occur. The Acquisition Services Fund does not have these annual obligational or spending authorization limits, and therefore new obligations can occur subject to the existence of a sufficient balance in the Acquisition Services Fund.
  - If no new obligations can occur, a stop-work or termination for convenience does not have to be issued if the contract (1) included FAR 52.232-18, Availability of Funds, and the contractor has not received written notice from the contracting officer of the availability of funds, or (2) included a clause stating that funds are not presently available for performance beyond a date no later than the end date of the last funding bill and stating the Government has no legal liability for performance past that date unless funds are available and the contractor has received written notice from the contracting officer of the availability of funds. If the contract did not include such provisions, a stop-work or termination for convenience should be issued. See FAR Subpart 12.403(d) for commercial item contracts. See FAR Subpart 42.13, Suspension of Work, Stop-Work Orders, and Government Delay of Work for stop-work procedures and FAR Part 49 for termination procedures. See FAR Part 12 for commercial item contracts termination procedures.
  - If the contract is funded by multi-year appropriations, including revolving funds based on multi-year appropriations, or no year money, obligation may occur to extend the life of the contract
- (4) For all contracts, if part or all of the contract will not be needed during the shutdown period, consider as appropriate:
- a) issuing a stop-work, or
  - b) terminating for convenience, or
  - c) bilateral modification to reduce the scope of the contract.

- (5) Contractor questions. All contractor questions regarding the impact of the shutdown shall be directed to the contracting officer. The contracting officer shall review the terms of the contract/order before responding to a contractor's questions regarding the impact of government shutdown or building closures on the contractor's work obligations. If a contractor's employee asks questions (for example about compensation) of any government employee, the contractor employee shall be directed to the contractor's management.

All questions concerning this Acquisition Alert should be directed to Joseph Neurauter, Senior Procurement Executive, at [joseph.neurauter@gsa.gov](mailto:joseph.neurauter@gsa.gov).