

September 25, 2015

NOTICE TO ALL UNITED STATES MARSHALS SERVICE CONTRACTORS

POTENTIAL LAPSE OF FUNDING

Funding for the Department of Justice, United States Marshals Service (USMS) under its current appropriations act expires on September 30, 2015. As of this date, no new appropriations act or continuing resolution has been passed. Unless such legislation is enacted before the end of FY2015, there will be no annual appropriations available to fund activities of the USMS for Fiscal Year 2016 (FY 2016) on October 1, 2015.

The effect of a lapse of funding on a particular contract, order, and other procurement commitment (hereafter, Contract) is dependent on the source of funding and terms of the particular Contract and the activities the Contract supports. It is therefore not possible to provide comprehensive guidance covering all circumstances and situations.

The purpose of this Notice is to (1) notify USMS contractors of the potential lapse of funding; (2) assist contractors in their contingency planning; (3) provide general substantive guidance regarding when performance on a contract continues during a funding lapse; and (4) provide contractors the procedures the USMS will follow to notify contractors whether performance will continue should there be a lapse of funding for FY 2016.

General Substantive Guidance

For informational purposes, the USMS provides the following general guidance regarding whether contract performance typically continues in the event of a funding lapse.

- In general, where a contract is subject to availability of funds, work on the contract may not be performed unless the contract, or some portion of it, involves “excepted” activities, typically those required to prevent imminent harm to persons or property. Otherwise performance typically will not continue, and contractors will be instructed to refrain from any activity that results in the incurrence of obligations on the part of the government.
- This general rule is sometimes reflected in the contract in a clause addressing a lapse of funding (which may be referred to in some contracts as “Federal Non-Work Days”), under which contractors are directed to cease work unless specifically directed otherwise in writing by the Contracting Officer.
- Even if a contract is not dependent on annual appropriations (such as those funded with “multiple-year” or “no year” money), the activities the contract supports may not be funded, and for this reason the USMS may direct that work on the contract cease.

- If a contract is one involving delivery dates that are imminent, government personnel responsible for receiving delivery or performing inspections may not be available during the period of the funding gap. Accordingly, even where contract performance has not ceased, contractors may be directed to suspend any attempts to deliver until you are notified otherwise by the contracting officer. The Government will not be liable for any costs you may incur if you attempt delivery during the period of the funding gap.

General Procedures

- Contractors whose contracts contain a funding lapse clause (which may be referred to in some contracts as “Federal Non Work Days”) should adhere to that clause, and the contractor should cease all activity that will result in obligation to the government, unless otherwise authorized in writing by the Contracting Officer.
- Contractors whose contracts do not contain a funding lapse clause should be prepared to continue performance, unless expressly notified otherwise in writing by the Contracting Officer.

The determination of whether a particular contract involves “excepted” activities will be made by the USMS component for which the specific activity is being performed, in coordination with the Contracting Officer. Accordingly, for additional information specific to USMS component contracts, please contact the specific USMS component. Some USMS components may have circumstances which mandate different guidance. Contractors should refer to the component weblinks, provided below for that guidance.