

Government Shutdown Action Matrix for Federal Construction Projects¹

	Shutdown Response	Contractor Notice to Contracting Officer (Prior to Shutdown)
Construction Projects Funded by Existing Appropriations including Multi-Year Appropriations (Many fixed-price construction contracts will fall under this category.)		
If all or a portion of work under a federal construction contract <i>can</i> be performed without access to a government site or government personnel:	Contractor should continue to perform those tasks that it is capable of performing and track any extra costs or schedule impacts under a separate cost code.	Contractor should provide notice – A Sample Notice is Provided as Attachment A
If work under a federal construction contract <i>cannot</i> be performed without access to a government site or government personnel:	Contractor should stop work and track any extra costs or schedule impacts under a separate cost code.	Contractor should provide notice – A Sample Notice is provided as Attachment B
Construction Projects Funded by Annual Appropriations Where Existing Funding has been Exhausted (Many Continuing Resolution FY2011 funds and certain types of contracts such as Cost-Reimbursement will be impacted.)		
Fixed-Price Contracts:	For these contracts where no existing appropriation has been signed into law, all work must stop.	Contractor should provide notice – A Sample Notice is provided as Attachment C
Cost-Reimbursement Contracts:	For these contracts where no existing appropriation has been signed into law, all work must stop.	Contractor should provide notice – A Sample Notice is provided as Attachment C
Exempt Emergency Activity (Activity necessary to protect life and property or otherwise authorized by law to continue during shutdown including some military and national security projects.)	Contractor should continue to perform pursuant to the terms of its contract.	Pursuant to Department of Justice guidance, the head of the agency must make this determination. Contractors that think their project qualifies as an exempt activity may wish to consider sending notice – A Sample Notice is provided as Attachment D
Construction Projects Where it is Unclear Whether an Existing Appropriation Exists	Contractor should continue to work if it is provided access to a relevant government site or government personnel but should seek legal counsel to determine available rights and remedies.	Contractor should provide notice – A Sample Notice is provided as Attachment E

¹ This Matrix, prepared by Dirk Haire and Farah Shah of construction law firm Smith, Currie & Hancock LLP, is provided as a general description of circumstances that construction contractors may face in connection with a partial government shutdown. This material does not constitute legal advice. By providing this information, neither AGC nor Smith, Currie & Hancock LLP provide any assurances that this advice will be relevant to any particular contract or situation that an individual contractor may face in connection with an individual contract. This Matrix does not create an attorney-client relationship between Smith, Currie & Hancock LLP and any person or company.

Author Dirk Haire currently serves as the AGC of America FAR Committee Chair. For more information or specific questions regarding the government shutdown, please contact **Dirk Haire** at (202) 461-3114 ddhaire@smithcurrie.com or **Farah Shah** at (202) 461-3103 fashah@smithcurrie.com.

AGC of America
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
Quality People. Quality Projects.



SAMPLE NOTICE A¹

To Contracting Officer:

Based on the previous opinions of U.S. Attorneys General, we are advising you as follows in connection with the Government's lapse in appropriations.

It is our understanding that Contract _____ is funded by an existing appropriation that is not affected by the lack of FY2011 appropriation. In this regard, we advise you that we will continue performance in accordance with the terms and conditions of the Contract. To the extent we are unable to perform work under the Contract due to the Government's actions or inactions during the lapse in appropriations, such disruptions are Government-caused delay and we will seek a time extension and monetary damages as permitted under the Contract.

If you do not agree with the above statements, please direct us in writing how to proceed in the alternative.

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SAMPLE NOTICE B¹

To Contracting Officer:

Based on the previous opinions of U.S. Attorneys General, we are advising you as follows in connection with the Government's lapse in appropriations.

It is our understanding that Contract _____ is funded by an existing appropriation that is not affected by the lack of FY2011 appropriation. However, performance in accordance with the terms and conditions of the Contract is impossible because we cannot gain access to the relevant government site or personnel. In this regard, we advise you that we will stop work due to the government's failure to provide access to the relevant government site or personnel. Accordingly, we will seek a time extension and monetary damages as permitted under the Contract.

If you do not agree with the above statements, please direct us in writing how to proceed in the alternative.

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SAMPLE NOTICE C¹

To Contracting Officer:

Based on the previous opinions of U.S. Attorneys General, we are advising you as follows in connection with the Government's lapse in appropriations.

It is our understanding that Contract _____ is funded by an annual appropriation that has lapsed or otherwise lacks appropriated funding. In this regard, we advise you that we will stop work due to the lapse in appropriations for this Contract. Accordingly, we will seek a time extension and monetary damages as permitted under the Contract as a result of this Government-caused delay.

If you do not agree with the above statements, please direct us in writing how to proceed in the alternative.

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SAMPLE NOTICE D¹

To Contracting Officer:

Based on the previous opinions of U.S. Attorneys General, we are advising you as follows in connection with the Government's lapse in appropriations.

We understand that an existing appropriation does not exist for Contract _____. We are uncertain if Contract _____ constitutes exempt activity necessary to protect life and safety or is otherwise authorized by law to continue performance in the event of a partial government shutdown. In this regard, we advise you that we will stop performance of work due to the lack of an appropriation pending your direction that performance should continue due to proper authorization or exemption. To the extent we are unable to perform work under the Contract due to the Government's actions or inactions during the lapse in appropriations, such disruptions are Government-caused delay and we will seek a time extension and monetary damages as permitted under the Contract.

If you do not agree with the above statements, please direct us in writing how to proceed in the alternative.

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SAMPLE NOTICE E¹

To Contracting Officer:

Based on the previous opinions of U.S. Attorneys General, we are advising you as follows in connection with the Government's lapse in appropriations.

We have been provided with insufficient information to determine whether Contract _____ is funded with an existing appropriation that is not affected by the lack of a FY2011 appropriation. In this regard, we advise you that our Contract requires us to continue performance and we will continue performance in accordance with the terms and conditions of the Contract until you direct us in writing that appropriated funds do not exist for this Contract. To the extent we are unable to perform work under the Contract due to the Government's actions or inactions during the lapse in appropriations, such disruptions are Government-caused delay and we will seek a time extension and monetary damages as permitted under the Contract.

If you do not agree with the above statements, please direct us in writing how to proceed in the alternative.

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