

GOVERNMENT SHUTDOWN - FREQUENTLY ASKED QUESTIONS (FAQ)

Q1: Could you please clearly define what is considered essential? The amount of funding that is placed on the contracts and the period of performance before a shutdown is executed so we can ensure the right folks to support are available to answer concerning questions.

Response: *There are specific exceptions that a contract must meet in order to be considered essential. They are the following:*

Contracts Decision Tree

Is the contract fully funded using current or prior year appropriations or are other funds available to fund it (no year or multi-year)?

*If **YES**, will contract require government supervision?*

*If **NO**, contract can continue if contract is a sensible use of taxpayer funds.*

*If **YES** and an excepted individual will be available to oversee it in between excepted activities (and overseeing the contract does not interrupt, interfere with, or delay the individual's performance of an excepted function), the contract may continue during the furlough, provided the furlough is brief.*

*If **NO**, is the contract necessary to support one of the following excepted functions?*

- A. A statute or other legal requirement expressly authorizes an agency to obligate funds in advance of appropriations; or*
- B. The function addresses emergency circumstances, such that the suspension of the function would imminently threaten the safety of human life or the protection of property; or*
- C. The function is necessary to the discharge of the President's constitutional duties and powers (e.g., Commander-in-Chief or conducting foreign relations).*

*If **NO**, contract cannot continue.*

*If **YES**, will contract require government oversight?*

*If **NO**, contract can continue.*

*If **YES**, there must be excepted individuals available to oversee it, so the contract may continue during the furlough.*

If the contract is fully funded then the contract can continue, otherwise it must meet one of the above to be considered essential. Essential employees are those employees that the agency deems necessary to oversee such contracting requirements that meet those exceptions stated above. Otherwise all other non-essential contract

actions should have had a stop work order issued and employees not supporting essential contracts should be furloughed during a lapse of appropriations/government shutdown.

Q2: Should the various stakeholders deemed essential still continue to reconcile purchase card transactions, submit Continuous Learning Points/Achievement Requests through FAITAS; or review and approve invoices in IPP? If so, then the next Approving Official/Approver may be furloughed so the work is still halted. Again, this goes to define what is considered essential and what those essential people are allowed to do during the furlough.

Response: *No, See the answer to Q1 above regarding essential contracts and essential employees.*

Q3: Will IAS be up if and when we have another furlough? IAS in the past has not been up and running during past furloughs. If so, we need to consider who is essential to approve requisitions coming through the system or is the system up only for procurement personnel to process only essential requirements without a requisition in IAS. If IAS will be up in the event of future furloughs will there be guidance provide from the Department as to what is required (i.e., AD-700 and other pertinent documentation) provided and at what level of personnel can authorize/approve the funds to be used since we have a lapse of appropriation.

Response: *IAS will be up if we have another furlough (or any furlough in future) as it was this past one. For reference and contact details see the announcement we sent last furlough:
https://ias.usda.gov/attachments/news/2018_12_26.pdf*

Q4: What happens to apportioned unobligated amounts provided under the CR during a lapse? Background—apparently a requisition was submitted on 12/21 and did not make it through to Procurement before we were furloughed and during the furlough that office was looking for it as they thought it would continue through the process since it was originally under the prior CR funding. We have it now since we are back.

Response: *You may continue with the requirement now that the shutdown is over and the funding is available.*

Q5: FNS has several contracts that are set to expire where we are awaiting final deliverables but due to the nature of those contracts (require interface with a COR), they were issued stop-work orders. Will we be able to issue no cost mods to extend the POP to ensure that the government receives a quality deliverable? Do we have the authority to do this now or will we have the ability to do so after funding is restored without competition.

Response:
For contracts that were issued stop-work orders, first lift the work stoppage order, communicate with the contractor with a mutually agreeable mod to extend the POP, negotiate a dollar amount or “no cost”, and/or continue with whatever required action/milestone of the contract/TO/DO that was supposed to go in effect before the shutdown to ensure continuity of service or proper closure of the contract. It is important that the file is properly documented with mutual agreement.

Q6: Are contractors allowed to continue operating IAS during the shutdown?

Response:

The only basis to allow the contract to continue would be to prevent imminent harm to life or property, or otherwise meet the standard for 'excepted' activities. The CO should be consulted to limit the contractors' scope of work to basic activities. See OMB memo for further guidance <https://www.whitehouse.gov/wp-content/uploads/2017/11/m-18-05-Final.pdf>.

Given the typical nature of past shutdowns/non-shutdowns the direction makes sense. Allowable, non-excepted contractor work should also be included. Numbers 6 and 7 in the memo, state that non-excepted work can be performed by contractors as long as government supervision is not needed and the obligation happened prior to shutdown. In the case of IAS, design/development work can be done without government/PSD supervision. Government/PSD intervention happens when fed approval is only needed to move to the next stage in the lifecycle. Firm fixed priced contracts, which are fully funded, should also continue if the government's oversight is not necessary. For it to be clearly allowable, utilizing the guidance of the memo as much as possible is necessary, for the sake of productivity, scheduling, keeping on valued contractors, and for many other reasons.

Q7: How do we handle contracts which expired during the shutdown? *This includes year-long service contracts where a follow-on contract wasn't established, contracts with options that were not executed, and service contracts funded with FY18 money that do not exceed a year where the contract ended during the shutdown and services are still needed.*

Response: *A stop work order should have been issued to any contract that was not deemed essential. If the intent is to exercise the option, then remove the stop work order and exercise the next option under FY19. That in turn gives time to establish a follow-on if necessary.*

Q8: Can food be purchased using the government purchase card? *In accordance to the Purchase Card Policy, the purchase card cannot be used to purchase food. FSIS is seeking a waiver to use the purchase card for sample collection at large, high-profile events.*

Response:

USDA (and federal) policy provides that food generally cannot be purchased with a government purchase card. The general USDA guidelines were written in the context of food for employee personal consumption which is very restrictive. GAO has carved out exceptions usually in the context of necessity or job related events. This inquiry centers on USDA employees purchasing food not for personal use but as part of the employee's inspection duties. There should be no reason your agency couldn't authorize its USDA employees to purchase food with a purchase card in the circumstances you outlined with the specific caveat that the purchases are part of the employee's assigned duties.

If FSIS is going to allow this use of the purchase card FSIS shall develop and enforce the oversight processes necessary to assure that their purchase cards are being used appropriately in regard to food purchases. Please provide the HCA (Tiffany) a copy of guidance issued by FSIS on this issue. Our purchase card liaison during the shutdown is Shontrea Bazemore and she has already engaged with another mission area regarding issues

associated with purchase cards during the shutdown. You may also consider contacting legal and finance if you believe it necessary.

Q9. Lease Payments: Can you tell me specifically if agencies are allowed to increase obligations after 12/21 (please note the original obligation was made in October 2018) in order to make these payments? I need some additional guidance re: handling of lease payments funded with appropriations during the shutdown. **Also, in the act of protecting property, can these payments be determined as exceptions?** Please note the guidance provide by OCP is reflected below.

Response:

1) *Real Property*

a) *Leases*

- i) *To avoid costs of termination, leases will generally continue unless it becomes known that the shutdown time and or reduced level of appropriations results in the lease becoming obsolete.*