

September 10, 2019

Hon. Russell Vought  
Director (Acting)  
Office of Management and Budget  
Executive Office of the President  
1650 Pennsylvania Ave, NW  
Washington, DC 20503

**Subject: Industry Recommendations for Mitigating the Effects of a Lapse in Appropriations**

Dear Director Vought,

On behalf of the Professional Services Council (PSC), I am pleased to provide PSC's recommendations for mitigating the negative consequences of a lapse in federal appropriations. We welcomed the agreement between the President and Congress to raise the Budget Control Act (BCA) caps and suspend the debt ceiling for two years, which President Trump signed into law as the Bipartisan Budget Act on August 2. However, Congress must still enact all 12 appropriations bills or pass a Continuing Resolution to avoid a lapse in appropriations during Fiscal Year 2020. Failing to do so would risk another government shutdown with serious, negative consequences for both the government and the contractor community. We believe there is an opportunity now to take steps to mitigate these consequences, which we outline in our recommendations attached. We would welcome the opportunity to discuss these recommendations with you or your staff, or to answer any questions you may have.

While our recommendations primarily focus on the perspectives of the government contracting industry that supports the federal government, acting on these recommendations would realize benefits not just for contractors, but for their agency customers and the taxpayers they serve. Perhaps most importantly, they would benefit the individuals employed by agencies and by contractors who often experience the harsh realities of a government shutdown most directly.

During and after the government shutdowns that ensued when federal appropriations lapsed in 2018 and 2019 (as well as previous shutdowns), PSC collected data and anecdotes from our member companies about their shutdown experiences. Based on this information, in October 2018, we provided OMB with a white paper outlining recommendations for improving guidance and communication to contractors in advance of a lapse in appropriations. [An updated version of that white paper is attached.](#)

Regrettably, these recommendations were not effectually implemented before the lapse in appropriations that led to the 35-day partial government shutdown during the Winter of 2018-2019. We believe the white paper's recommendations remain valid and that there is still an opportunity to effectuate them now and before any potential lapse in funding.

Additionally, on May 6, 2019, PSC testified, alongside PSC member companies and other government contractor representatives, before a hearing of the House Oversight and Reform Subcommittee on Government Operations examining the adverse impacts of the partial shutdown felt uniquely by federal contractors. The testimony and discussions from this hearing substantially drew upon and encompassed the shutdown experiences of contractor companies as conveyed to PSC by our members. [A summary of these recommendations is also attached.](#)

While there are many actions that contractors can and should take before, during, and after a potential lapse of funding—steps that PSC continually communicates to our member companies—much of the process remains wholly within the purview and control of government, namely Congress, OMB and the individual federal agencies. We believe that actions by each of these parties can help mitigate, or even altogether avoid, the worst, and often unnecessary, consequences of a federal government shutdown.

Consistent with this principle, we welcomed OMB’s June 27, 2019 update to its “Frequently Asked Questions During a Lapse in Appropriations,” which states that “In preparing contingency plans for potential future lapses in appropriations, agencies should .... [proceed] with a view towards allowing funded and excepted activities to continue in an effective manner.”<sup>1</sup> Q9/A9 of the FAQ further clarified that federal employees may be excepted from furlough in order to make payments for work performed under previously awarded contracts where available funds have been obligated. We wholeheartedly agree, and ask that such guidance be required in agency contingency plans. We also strongly support ensuring the timely approval and payment of invoices.

While some of our recommendations would necessitate enactment of legislation or changes to current regulations, many—including changes to agency contingency plans—require only relatively small administrative steps that would yield benefits and stability for both government and industry that far exceed the effort needed to implement them.

Thank you in advance for your attention to these recommendations. Should you have any questions or need more information, please do not hesitate to contact me ([berteaud@pscouncil.org](mailto:berteaud@pscouncil.org)) or PSC EVP & Counsel Alan Chvotkin ([chvotkin@pscouncil.org](mailto:chvotkin@pscouncil.org)). We may both be reached by phone at 703-875-8059.

Sincerely,



David Berteau  
President & CEO  
Professional Services Council

Attachments: [PSC White Paper: Recommendations for Guidance Related to Contractor Performance and Communication in the Event of Lapse in Appropriations and Government Shutdown, \(9/10/19\)](#)

[PSC Summary of Recommendations from the May 6, 2019 Hearing of the House Oversight and Government Reform Subcommittee on Government Operations, “Government Shutdowns: Contract Killers,” \(7/15/19\)](#)

CC: Hon. Margaret Weichert, Deputy Director for Management, OMB  
Hon. Michael Wooten, EdD, Administrator, Office of Federal Procurement Policy  
Ms. Lesley Field, Deputy Administrator, Office of Federal Procurement Policy

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<sup>1</sup> “Frequently Asked Questions During a Lapse in Appropriations,” Office of Management and Budget, June 27, 2019. Available at: <https://www.whitehouse.gov/wp-content/uploads/2019/06/FINAL-Agency-Lapse-FAQs-6.27.19.pdf>

September 10, 2019

**White Paper: Recommendations for Guidance Related to Contractor Performance and Communication in the Event of a Lapse in Appropriations and Government Shutdown**

As directed by the Office of Management and Budget (OMB), federal agencies are required to prepare contingency plans for executing an “orderly” government shutdown in the event of a lapse in appropriations, with an emphasis on which functions may continue and which must stop.<sup>1</sup> The Professional Services Council (PSC) recommends expanding OMB guidance and agency contingency plans to direct that federal agencies:

- 1) provide specific, clear instructions about what work can and cannot continue in the event of a lapse in appropriations by including language in contract documents (and even solicitations) for all work performed by contractors (whether under contracts, task orders, delivery orders, purchase orders, or other mechanisms); and
- 2) communicate proactively with contractors in advance of a potential lapse in appropriations, to reinforce or supplement any guidance provided via contractual language.

Taking these steps will help ensure a consistent, accurate application of policy and associated operational posture in the event of a lapse in appropriations. Such direction will also facilitate allowable continuity of program operations, and help minimize unnecessary cost, confusion and disruption for both government and industry.

During recent federal government shutdowns, the dialogue between agencies and industry has been that “contractors should stop working unless specifically told they can continue.” In our view, to support the government, the correct interpretation is that “contractors should continue performing the work they were contracted to do unless instructed to stop, or if there is no way they can continue to perform.” This view is consistent with OMB’s June 27, 2019 Shutdown FAQs, which states, “in the situation in which performance under an already-issued contract or grant is not impacted by such a lapse, the contractor or grantee may continue to proceed with its work during the lapse period.”<sup>2</sup> Even when the government stops working, contractors can help maintain continuity of operations by continuing to work, if necessary funding and oversight remains available.

There are multiple strategies, guidance documents, memos and presentations on preparing for a government shutdown, from both government and industry. There are multiple clauses that are included in contracts that refer to “limitations of funding” and “stop-work.” There are various forms of funding (such as multi-year or no-year funding) and contract types (such as fixed-price or cost-plus). But

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<sup>1</sup> See OMB Circular A-11, Section 124, June 2019 edition. Available at: <https://www.whitehouse.gov/wp-content/uploads/2018/06/s124.pdf>.

<sup>2</sup> See “Frequently Asked Questions During a Lapse in Appropriations,” Office of Management and Budget, June 27, 2019. Available at: <https://www.whitehouse.gov/wp-content/uploads/2019/06/FINAL-Agency-Lapse-FAQs-6.27.19.pdf>

the required actions by contractors in the event of a lapse in appropriations are rarely discussed until after a government shutdown occurs.

While everyone can and should prepare for a lapse in federal funding, and the resulting shutdown actions, the reality is that the decision to “officially” shut down and/or stop work is so serious and politically charged that triggering agency shutdown plans is often not done until the last minute. This leaves little time for government agencies and contractors to effectively execute these plans, however well designed, and even less time for government officials and contractors to communicate with employees, subcontractors, or other stakeholders.

Every agency and department of the federal government has an Agency Contingency Plan<sup>3</sup> to guide their own staff on next steps if there is a lapse in appropriations. While there is always a federal official who is empowered to act, actually acting is often more problematic. If federal employees are told to come to work simply to leave their laptops and mobile phones, and instructed not to send emails or return calls or perform other work, and the building is then closed, who advises contractors on the status of their work? How do contractors let their employees, subcontractors, and vendors know what to do? Just as importantly, is the person making this decision or issuing direction to contractors properly informed and authorized to give that direction?

Our experience is that in the initial hours and days after a shutdown, there is more chaos than necessary, and oftentimes the direction given is inaccurate or inconsistent with requirements in law or agency shutdown plans. Often, due to the chaos, the default position is to direct contractors stop work as it seems like the “safe” decision to make.

#### **Recommendations:**

- 1) **Provide specific, clear instructions about what work can and cannot continue in the event of a lapse in appropriations by including language in contract documents (and even solicitations) for all work performed by contractors (whether under contracts, task orders, delivery orders, purchase orders, or other mechanisms).** Providing such information goes beyond the standard FAR “Limitation of Funds” or “Stop Work” clauses. Those clauses are necessary but provide no clarity to either the government or industry about what will happen in the immediate event of a lapse in appropriations.

Include language in the contract that clarifies what the contractor should do if the government shuts down, and who is authorized to provide such guidance to the contractor if the named contracting officer is not available. This would not eliminate the government’s obligation to issue a stop-work order, but it would better enable all stakeholders to be prepared for a lapse in appropriations before it comes to pass.

For example, according to DoD’s February 2018 contingency plan<sup>4</sup>:

“A contractor performing under a contract (or contract option) that was awarded prior to the expiration of appropriations may continue to provide contract services, whether in support of excepted activities or not, up to the limit of the funds obligated on the contract prior to the lapse

<sup>3</sup> See Office of Management and Budget “Agency Contingency Plan” webpage:

<https://www.whitehouse.gov/omb/agency-contingency-plans/>

<sup>4</sup> “Guidance for Continuation of Operations During a Lapse in Appropriations,” February 8, 2018. Available at:

<https://www.dcpas.osd.mil/Content/documents/EC/GuidanceContinuationOperationsDuringLapseAppropriations-Feb2018.pdf>.

in appropriations. However, new contracts (including contract renewals or extensions, issuance of task orders, exercise of options) may not be executed, nor may increments of funding be placed on incrementally funded contracts or to cover cost overruns, unless the contractor is supporting an excepted activity. No funds will be available to pay such new contract or place additional increments of funding on contracts until Congress appropriates additional funds.

**The expiration of an appropriation does not require the termination of contracts (or issuance of stop work orders) funded by that appropriation unless a new obligation of funds is required under the contract and the contract is not required to support an excepted activity.”** (Emphasis added.)

To this end, agencies could provide greater clarity about performance requirements and expectations in the event of funding lapse simply by including guidance language in the contract, such as:

***In the event of a lapse in appropriations, the contractor shall continue to provide services under this fully funded (contract/task order/delivery order).***

If the agency needs to provide specific guidance on which services will or will not continue during a lapse in appropriations, it can state that in the contract.

As another example, the DHS 2018 shutdown guidance<sup>5</sup> states:

“Contractors performing under a fully funded contract may continue to perform unless government oversight or day-to-day interaction with non-exempt government employees is critical to the contractor’s continued performance during that period.”

In this scenario, an example of a clause that could be included in a contract might provide:

***In the event of a lapse in appropriations, the contractor shall continue to provide services under this fully funded (contract/task order/delivery order), unless direct government oversight, day-to-day interaction with non-exempt government employees, and/or access to government facilities is a mandatory requirement of contract performance.***

As another example, under a Time and Materials contract for fifteen full-time employees, it is the government’s requirement to have seven critical personnel continue working during the lapse in appropriations and the other eight to stop work until appropriations are restored or other direction is provided by the CO or an authorized official. Language to include within this T&M contract could provide:

***In the event of a lapse in appropriations, the following positions are considered essential and shall continue work under this fully funded contract: Program Manager (1), Senior Systems Engineers (2), System Administrator (1), Cyber Security Analysts (3). The remaining positions shall stop work until government appropriations are restored.***

[Attached is a template which includes this sample contract language.](#)

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<sup>5</sup> “Procedures Relating to a Federal Lapse in Appropriations,” December 17, 2018. Available at: [https://www.dhs.gov/sites/default/files/publications/DHS%20Procedure%20Related%20to%20a%20Lapse%20in%20Appropriations%20%2812-20-2018%29%20-%20FINAL%20...\\_0.pdf](https://www.dhs.gov/sites/default/files/publications/DHS%20Procedure%20Related%20to%20a%20Lapse%20in%20Appropriations%20%2812-20-2018%29%20-%20FINAL%20..._0.pdf).

- 2) **Communicate proactively with contractors in advance of a potential lapse in appropriations, to reinforce or supplement any guidance provided via contractual language.** Contractors continually seek and welcome communication from the government in the days preceding a potential lapse in funding. This would be particularly helpful to everyone if, in addition to adopting the first recommendation above, Contracting Officers connect with contractors to simply say, “in the event of a lapse in appropriations, refer to section [X] of your contract.” Agencies’ proactive, timely communication with their contractors to reinforce or supplement any guidance provided via contractual language is exceedingly helpful and should be strongly encouraged.

### **Benefits to Government and Industry**

- Government acquisition professionals would not be deluged with as many requests for “what do I do in the event of a shutdown?” as the deadlines approach.
- If a Continuing Resolution is anticipated (rather than a full shutdown), industry could readily review contract clauses in advance through guidance provided by associations such as PSC. Likewise, government counterparts, including CORs and Program Managers, would be reminded that the often last-minute decision (CR or Shutdown, what will it be?) is covered in contracts and the continuation of work is governed by the contract clauses.
- Prime contractors could include the government’s contractual shutdown direction information via flow-down in their subcontracts and in their employment agreements for project-specific work.
- Having such terms in a contract from the start will prevent wasted time and resources sorting out who should work and who should not and the associated financial impacts for government contractors and their employees. During a government shutdown, while many civil servants are furloughed, furloughing contractor employees may not be necessary. A contractor’s employees are almost never eligible for back pay, causing financial hardship for them and their families due solely to confusion about the implementation and ramifications of a shutdown.
- While there is no need to change the FAR immediately, standard clauses should be included in the FAR; pending such revisions, providing such ‘what if’ language to Contracting Officers to use when solicitations are being prepared would be beneficial to all.
- If agency guidance changes in the future, these contract clauses could be modified quickly through unilateral individual contract amendments (or a mass modification).
- Contractor compliance with related federal laws, such as minimum wage, WARN Act, etc., is enhanced.

We believe this is a very important issue for our industry and we would welcome the opportunity to provide additional information or discuss these recommendations. Please contact [policy@pscouncil.org](mailto:policy@pscouncil.org) for more information.

### **Sample Contract Language Providing Guidance in the Event of a Lapse in Appropriations**

#### Example A:

Contractors are performing under an existing, fully funded contract (or contract option, task order, or delivery order) that was awarded prior to the expiration of appropriations, and/or a new obligation of funds is not required.

#### Suggested Contract Language:

*In the event of a lapse in appropriations, the contractor shall continue to provide services under this fully funded (contract/task order/delivery order).*

#### Example B:

Certain services may continue during a lapse in appropriations, while others may not, even where funding may be available, based on other factors such as availability of oversight by government personnel. For example, per DHS 2018 shutdown guidance, “Contractors performing work under a fully funded contract may continue to perform work unless government oversight or day-to-day interaction with non-exempt government employees is critical to the contractor’s continued performance during that period.”

#### Suggested Contract Language:

*In the event of a lapse in appropriations, the contractor shall continue to provide services under this fully funded (contract/task order/delivery order), unless direct government oversight, day-to-day interaction with non-exempt government employees, and/or access to government facilities is a mandatory requirement of contract performance.*

#### Example C:

Under a Time and Materials contract for a team of fifteen full-time employees, it is the government’s desire to have seven critical personnel continue working during the lapse and the other eight to stop work until appropriations are restored.

#### Suggested Contract Language:

*In the event of a lapse in appropriations, the following positions are considered essential and shall continue work under this fully funded (contract/task order/delivery order): Program Manager (1), Senior Systems Engineers (2), System Administrator (1), Cyber Security Analysts (3). The remaining positions shall stop work until government appropriations are restored.*

### **Sample Language for Communication with Contractors in Advance of an Anticipated Lapse in Funding:**

*In the event of a lapse in appropriations, refer to section [X] of your contract.*

## **About the White Paper Authors**

The **Smart Contracting Working Group (SCWG)** within PSC's Acquisition and Business Policy Council was formed to look for opportunities to improve the federal procurement system that would benefit both government and industry. Commonsense policies and consistently applied procedures for how and when the government acquires services can greatly enhance the effectiveness and efficiency of the federal acquisition system. In many areas, improvements to government business and buying policy—whether through statute, regulations, or agency guidance—will lead to positive outcomes that far exceed the magnitude of the changes themselves.

The **Acquisition and Business Policy Council (ABPC)** is PSC's principal body for developing positions and acting on major, cross-cutting acquisition policy issues. Its focus encompasses wide-ranging issues such as multiple award and schedules contracts, the role of contractors, federal acquisition workforce development, commerciality, contract type and competitiveness, requirements development and evaluation strategies, alternative acquisition models, internal and external communication, and industrial base health and competition. The ABPC fosters formal and informal partnerships with policymakers and allied stakeholders, and works toward an outcome-oriented federal services acquisition process through focused advocacy, timely programming, and other avenues.

The **Professional Services Council (PSC)** is the voice of the government technology and professional services industry. PSC's more than 400 member companies represent small, medium and large businesses that provide federal agencies with services of all kinds, including information technology, engineering, logistics, facilities management, operations and maintenance, consulting, international development, scientific, social, environmental services, and more. Together, the trade association's members employ hundreds of thousands of Americans in all 50 states and across the globe.

July 15, 2019

**PSC Summary of Recommendations from the May 6, 2019 Hearing of the  
House Oversight and Government Reform Subcommittee on Government Operations,  
“Government Shutdowns: Contract Killers”<sup>1</sup>**

- 1) [Ensure Timely Contract Administration](#)
- 2) [Improve Contract Guidance and Communication](#) (See attached PSC White Paper)
- 3) [Improve Communication and Guidance for Unemployment Insurance](#)
- 4) [Help Employees Maintain Medical Insurance](#)
- 5) [Enhance Data Collection Requirements](#)
- 6) [Ensure Security Clearances Will Not Be Jeopardized](#)
- 7) [Ensure Past Performance Ratings are Not Unfairly Impacted](#)
- 8) [Address Credit and Community Banking Issues](#)
- 9) [Extend Fairness and Value for Donated Leave](#)
- 10) [Ensure Contract Continuation](#) (exchange)
- 11) [Expand the Definitions of Essential Work](#)
- 12) [Provide Rent Abatement for Business on Federal Properties](#)
- 13) [Address Credit issues and Scoring for Furloughed Employees](#) (exchange)

**Congressional Actions (in order of priority)**

- 1) [Prioritize a Budget Control Act \(BCA\) Deal and Enact Full Year, On-Time Appropriations in FY20](#)
- 2) [Trigger Automatic Continuing Resolutions Before a Lapse in Appropriations](#)
- 3) [Provide Parity for Contractors Regarding Back Compensation](#)

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<sup>1</sup> Full witness testimony and additional hearing materials available at:  
<https://oversight.house.gov/legislation/hearings/government-shutdowns-contract-killers>

## 1) Ensure Timely Contract Administration

David Berteau, President & CEO, Professional Services Council: Companies had already paid their employees for completed and/or ongoing work. Failure by the government to pay the related invoices seriously impacted company cashflows. Large, medium and small businesses were all impacted, but small businesses with contracts at shuttered agencies were disproportionately impacted. The federal government should ensure that in the event of a future lapse in appropriations, federal employees are required to pay such outstanding invoices from the beginning of the lapse in appropriations. The Office of Management and Budget revised its shutdown guidance to permit or allow such payments, including for work covered by previously obligated funds. Such guidance should be mandated in future shutdowns.<sup>2</sup>

Alba Alemán, CEO, Citizant: Because the government had furloughed those responsible for approving and paying invoices, we did not receive payment for services rendered throughout the shutdown – in some cases for work performed as far back as October 2018. Government payments stopped even for projects that were not shut down, though we were contractually required to continue our support. Citizant's unpaid invoices continued to pile up well into March 2019, putting us more than \$4 million in debt. To mitigate the cash flow crisis faced by contractors, Congress could mandate that processing and paying invoices are essential activities that must continue during any future shutdown. This financial function is essential to our nation's economic security, as well as the viability of small businesses and the lives of millions of government contractor employees.

Tony Crescenzo, CEO, IntelliDyne: Congress should keep government personnel supervisors and contracting officers on-site for all contracts so productive work by federal contractors will continue... Federal contractors also experience negative financial impacts owing to the inability to receive timely reimbursements from the government for hardware and software receivables during shutdowns. During shutdown periods, the government may not have the ability to pay for money already spent by the contractor. Contractors must then either bear the financial burden of paying suppliers without corresponding reimbursement or risk jeopardizing their supply chain, the relationships and credit facilities by failing to pay suppliers on time.

## 2) Improve Contract Guidance and Communication ([See attached PSC White Paper](#))

David Berteau, President & CEO, Professional Services Council: The administration should improve contract guidance and communication by: (A) Providing specific, clear instructions about what work can and cannot continue in the event of a lapse in appropriations by including language in contract documents (and even solicitations) for all work performed by contractors (whether under contracts, task orders, delivery orders, purchase orders, or other mechanisms); and (B) Communicating proactively with contractors in advance of a potential lapse in appropriations, to reinforce or supplement any guidance provided via contractual language.

It is much easier and faster to issue a stop work order than it is to issue an order to start work again. Agencies could put a clause in the contract that says if a stop work order is issued as a result of a lapse in

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<sup>2</sup> See "Frequently Asked Questions During a Lapse in Appropriations," Office of Management and Budget, June 27, 2019. Available at: <https://www.whitehouse.gov/wp-content/uploads/2019/06/FINAL-Agency-Lapse-FAQs-6.27.19.pdf>

appropriations, upon restoration of those appropriations—other things being equal—work is authorized to start without further action by the government.

Roger A. Krone, CEO, Leidos: Everyone thinks the shutdown ended on the 25<sup>th</sup> of January. The shutdown ended on the 25<sup>th</sup> of January for government employees. The shutdown remained for our employees until we got a letter from the contracting officer authorizing us to come back to work. That took weeks. So where it may have been 35 days for government employees, it could be another 14 days or more for the contractors because the contracting officer had to come to work, get through the pile of paper, figure out what contracts were covered by the stop work order, and then prioritize those and authorize the contractors to come back.

Alba Alemán, CEO, Citizant: The Head of Procurement at DHS specifically sent a letter to all contracting officers saying unless you issued a stop work order, you can—as long as you don't need guidance from the government—keep doing your job. The problem is they sent the notice a day after the shutdown and they were no longer able to read their emails, so they didn't know that, and they shut us down temporarily. And then we got a copy of the memo because one customer that was working sent it to us. We sent it to them and then they logged in and said, “You have to keep working.”

Just add clarity around the rules and regulations, and the processes around the shutdown or stop work orders and restart so that everybody is clear in advance of a shutdown and knows how to operate.

### **3) Improve Communication and Guidance for Unemployment Insurance**

Ed Grabowski, President, Local 2061 International Association of Machinists and Aerospace Workers: As far as my experience with unemployment insurance, most of our members were too confused of what they were eligible for it because they were furloughed, they weren't actually fired and did not receive a layoff notice. I don't know of anyone that filed for unemployment compensation because it was too complex.

David Berteau, President & CEO, Professional Services Council: Each state sets its own rules when it comes to unemployment eligibility and the process of both applying and verifying eligibility for unemployment insurance. And workers from the same office in the same company in this area, for example, could have different jurisdictions where they are eligible: Maryland and Virginia, the District, even West Virginia and Delaware. And the rules are very, very different. There are federal standards that exist today and, of course, allow for the federal reimbursement for unemployment... you can change the times associated with those standards.

Wesley Ford, President, TKI Coffee: For the staff that I laid off that wanted unemployment, they had no problems obtaining it. These layoffs were brutal both financially and to morale of the remaining staff... Now what I don't know yet, and I won't know if this is problem for another three to six months, [is] whether unemployment insurance rates are going to go up as a result of the filings.

Tamela Worthen, Security Officer, Smithsonian: Unemployment does not pay all of what you make on your job, so there's always a shortage. And then you have to apply for two jobs within that week to be able to maintain it.

#### **4) Help Employees Maintain Medical Insurance**

Ed Grabowski, President, Local 2061 International Association of Machinists and Aerospace Workers: We were fortunate in one aspect, because all of our employers kept our medical insurance in force. However, the employees had to meet their portion of medical insurance premiums for coverage to remain current. This was often accomplished by using personal leave time or by writing personal checks to the employers. That was but one expense associated with health care. We have employees and their dependents that suffer from serious medical concerns. Even after meeting the premiums, these individuals and families also had to pay for deductibles, out of pocket co-payments, and expensive pharmaceuticals.

#### **5) Enhance Data Collection Requirements**

David Berteau, President & CEO, Professional Services Council: In October 2014, the Government Accountability Office (GAO) issued a report entitled "2013 Government Shutdown: Three Departments Reported Varying Degrees of Impacts on Operations, Grants, and Contracts."<sup>3</sup> The report highlighted that while each agency faced uncertainty, the impacts varied significantly... GAO recommended that OMB instruct agencies to document lessons learned in planning for and implementing a shutdown, as well as resuming activities following a shutdown should a funding gap longer than five days occur in the future.

#### **6) Ensure Security Clearances Will Not Be Jeopardized**

David Berteau, President & CEO, Professional Services Council: Contractor employees in the departments of Justice, Homeland Security, and other federal agencies, such as NASA, did not receive scheduled paychecks. Throughout these and other departments and agencies, many individuals hold security clearances and must meet certain financial standards to continue to have access to classified information required for their contracted work. An employee's inability to cover their bills could lead to changes in rent, mortgage, or credit card payments (or other debts) in accounts now monitored—or accounts that will be reviewed and considered—by adjudicators for security clearance determinations. PSC believes the Director of National Intelligence and the Director of OPM have the necessary authority to issue this guidance currently to ensure clearances are not jeopardized solely because of the shutdown impact.

Ed Grabowski, President, Local 2061 International Association of Machinists and Aerospace Workers: It is hard to convey the anxiety we all experience leading up to, during, and after the shutdowns. The financial effects for some are lasting and damaging. Earlier I mentioned that the security clearances many of us hold provide a gateway to our employment. When individuals that hold sensitive clearances experience financial difficulty it can place their clearance in peril, and the loss of a clearance can result in loss of employment for the individual.

#### **7) Ensure Past Performance Ratings are Not Unfairly Impacted**

Michael Niggel, CEO, Advanced Concepts & Technologies: Contractors like ACT I, as well as government employees affected by the shutdown, have no control over shutdown contract issues and should not be penalized based on shutdown issues. Contract performance issues caused by the shutdown should not negatively impact government employees' and contractors' performance reviews. Historically, we have

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<sup>3</sup> Available at: <https://www.gao.gov/products/GAO-15-86>

earned the top customer rating of “exceptional” in the Government’s Contractor Performance Assessment Rating System (CPARS). This shutdown and any future shutdowns should not result in lower customer performance ratings based on issues generated by shutdowns that would jeopardize any company’s ability to win future contracts due to unfair poor performance ratings.

The final lingering impact is our concern over performance ratings, if we will be downgraded because of the shutdown period. We're concerned about poor performance rating when we now have the highest rating, but we could get anything that jeopardizes our future business.

## **8) Address Credit and Community Banking Issues**

Michael Niggel, CEO, Advanced Concepts & Technologies: We were worried about potential performance issues and the customers’ reactions when we were not allowed to come to work at DHS sites. Therefore, we sat down early and had discussions with, and explained our plans to, our bank, which is a small community bank...Given our size and the fact that this shutdown only affected 20-25 percent of our sales and employees, we were confident that we could go 4 to 6 weeks on our line of credit, or maybe a little more with help from [our bank]. But small businesses who are smaller and had a much bigger percent of their sales and employees impacted could not survive a 35-day shutdown. Very small firms working in 1 or 2 shutdown agencies had to furlough everyone just to survive.

Tony Crescenzo, CEO, IntelliDyne: The government should build a reimbursement contingency into contracts that either guarantees line of credit loans with banks working with organizations that have non-essential contracts or reserve funds, approximately five percent of the contract value, to minimize the effect of shutdowns.

## **9) Extend Fairness and Value for Donated Leave**

David Berteau, President & CEO, Professional Services Council: PSC recommends that the government allow employers to establish leave-sharing programs to aid employees affected by the government shutdown, without subjecting the employee to additional taxation on the donation.<sup>4</sup>

Roger A. Krone, CEO, Leidos: We had 893 employees who were furloughed. About 400 of those employees used up all of their vacation and then went to what we call “negative status.” We let them take vacation. They are not hurt. It will take them years to build back their paid-time-off, which is vacation and sick leave combined. It will take them years to build back that base of paid-time-off that they had prior to the shutdown.

Tony Crescenzo, CEO, IntelliDyne: Vacation and paid-time-off can be donated in medical emergencies. That is without tax implication for employers. In the 2013 shutdown, we had 17 employees who had not ever worked for us before. Literally on day one, they were furloughed, and they had no leave. It would be a lot easier if you could pass legislation that would allow government contractors during a shutdown to allow tax-free leave donations for colleagues who are affected.

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<sup>4</sup> See PSC Letter to IRS on Donated Leave Time, January 22, 2019. Available at: [https://www.pscouncil.org/a/Resources/2019/PSC Letter to IRS on Donated Leave Time.aspx](https://www.pscouncil.org/a/Resources/2019/PSC%20Letter%20to%20IRS%20on%20Donated%20Leave%20Time.aspx)

### **10) Ensure Contract Continuation (exchange)**

Chairman Gerry Connolly: If there has been authority to suspend the expiration of a contract pending the opening of the government, would you have been kept whole or without prejudice with respect to reauthorizing the contract you lost?

Michael Niggel, CEO, Advanced Concepts & Technologies: During the shutdown, there was no contracting officer available in our enterprise. They were not able to execute our option, so we basically were off contract and could not show up in the offices.

Connolly: As we look at things we can do, certainly one of them is to have some kind of provision in law that says during a shutdown the expiration is cancelled so that, you know, you don't lose a contract simply because contract officers aren't there.

Niggel: Or the option automatically extends.

### **11) Expand the Definitions of Essential Work**

Tony Crescenzo, CEO, IntelliDyne: Agencies should expand the definition of "essential work" to include contracts designated for the "common good," those reasonably necessary to prevent greater eventual losses and risk continuity of security. Congress can either through policy or some regulatory lever ensure that the parties responsible for the cybersecurity infrastructure for a particular agency, whether those parties be government employees or contract employees, would be exempt from shutdown.

### **12) Provide Rent Abatement for Business on Federal Properties**

Wesley Ford, President, TKI Coffee: My landlord is the federal government. Right after the most recent shutdown, I wrote my landlord requesting rent abatement because of the impacts of the numerous shutdowns. It was during this process that I came to understand that my landlord has no real understanding of what it's like to operate a small business that relies on the stability of the federal government. I asked for rent abatement rather than deferral for one simple reason: my lost revenues would never be replaced.

### **13) Address Credit issues and Scoring for Furloughed Employees (exchange)**

Congresswoman Jennifer Wexton: We're looking at legislation that would require that credit reporting bureaus correct the score and not downgrade your credit for shutdown-related delinquencies and payment. Would that help you, in terms of correcting your credit score and giving you the ability to refinance?

Tamela Worthen, Security Officer, Smithsonian: That would definitely help.

## **Congressional Actions (in order of priority)**

### **1) Prioritize a Budget Control Act (BCA) Deal and Enact Full Year, On-Time Appropriations in FY20**

David Berteau, President & CEO, Professional Services Council: Congress must prioritize a spending deal that will raise the budget caps for Fiscal Years 2020 and 2021. Such an agreement is PSC's top priority, as it is essential to timely enactment of FY20 appropriations, to full funding for all federal agencies, and to avoiding the devastating impact of sequestration on the missions and functions of both defense and non-defense agencies.

Michael Niggel, CEO, Advanced Concepts & Technologies: Provide a two-year increase in the Budget Control Act (BCA) caps for Fiscal Years 2020 and 2021 to provide stability and continuity for small business and small banks to grow.

### **2) Trigger Automatic Continuing Resolutions Before a Lapse in Appropriations**

David Berteau, President & CEO, Professional Services Council: While continuing resolutions are damaging for the government, the contractor community and the American people, they are at times necessary and are preferable to a lapse in appropriations. PSC supports the concept in pending legislation that would trigger an automatic continuing resolution in the event of a lapse in appropriations. We believe this approach offers the potential for a reasonable approach to mitigating the negative impacts of government shutdowns on our national security, U.S. citizens, and federal agency missions.

Roger A. Krone, CEO, Leidos: Many ideas have been proposed by others – the “automatic CR” solutions, biennial appropriations, designating more government functions and personnel as “essential” etc. In general, we should enact legislation that prohibits a potential shutdown from being used as leverage on budgeting process.

Alba Alemán, CEO, Citizant: By far the most important thing you can do to support federal missions, the contractor community, and our economy would be to craft legislation that makes a shutdown the tool of last resort. Citizens elect you to represent them, to negotiate on their behalf, and to make compromises. Shutdowns have become weapons of failed negotiations and have eroded our political system. As we have just experienced, they risk the welfare and even the lives of millions of Americans. We require civil discourse, collaboration, and compromise from our elected officials in order to reach agreement on important legislative and budgetary matters. Please put an end to this abuse of power and trust.

Wesley Ford, President, TKI Coffee: Legislation needs to be enacted that will prevent our elected officials from using a government shutdown as leverage in negotiations.

### **3) Provide Parity for Contractors Regarding Back Compensation**

David Berteau, President & CEO, Professional Services Council: PSC urges the Congress to act now to ensure equal treatment for all affected contractor employees with regard to back compensation. We are simply asking that Congress provide the same redress for government contractors that is provided for federal civilian employees... Such legislation is still timely and would be a lifeline for many contractor employees still facing a financial hardship brought on through no fault of their own. Full parity with federal employees will allow industry to build workforces to meet future government mission needs.

Roger A. Krone, CEO, Leidos: Unlike federal civilian employees, legislation has not been enacted to provide contractor employees with back pay to cover the financial impact of their being laid-off. These contractors work side-by-side with their government counterparts. They are dedicated to their missions and motivated by the same goals of public service and safety. They deserve to be treated the same as their federal civilian counterparts. I urge Congress to provide for the same redress for government contractors as it does for federal civilian employees.

I ask that we work together to find a way to enact legislation that will recognize the importance of their contributions and the human impact of a shutdown on this critical national resource and treat them just as their federal workforce counterparts are treated. That means parity in the restoration of pay and mitigation of other impacts on benefits, such as leave. The goal should be parity in the treatment of federal and contractor employees.

Jaime Contreras, Vice President, SEIU 32BJ: Unlike directly employed federal workers, subcontracted workers are not guaranteed back pay. The shutdown left federally contracted security officers, cleaners and food service workers, who already earn substantially less than most direct federal employees, without pay for more than a month... I urge you to use all budgetary, legislative and oversight tools at your disposal to make good on wages lost by workers during the shutdown, and to ensure their lives are not thrown into turmoil by any future budget impasse.

Alba Alemán, CEO, Citizant: To help us preserve our workforce, Congress could pass legislation that would guarantee back pay to contractor employees, most of whom are essential to the proper functioning of federal agencies. Many of our employees have security clearances and specialized knowledge that are difficult to replace. Guaranteed back pay would reduce our employees' anxiety and make them more likely to stay in the government contracting industry. In addition, our creditors would be more willing to help us cover payroll and payments to our vendors, if they knew some financial adjustment was forthcoming.

Ed Grabowski, President, Local 2061 International Association of Machinists and Aerospace Workers: Though we work side by side with our civil service counterparts, there is no guarantee of back pay for us. The first two shutdowns lasted only one day, but still caused members on certain contracts to lose pay. The last, which totaled 35 days, created enormous problems for our members and the local community as a whole... The fact is, the government may shut down, but life's challenges remain ongoing. Without a guaranteed income for 35 days, our members still had to meet all of their financial obligations such as mortgage payments, rent, auto loan payments, utilities, food and the aforementioned medical costs. Some had to take out short-term loans in order to make ends meet. In some cases, the only hope they have of repaying these loans without a financial penalty is to receive back pay for wages lost during the shutdown.

Michael Niggel, CEO, Advanced Concepts & Technologies: Provide for uniform, clear guidance and communications to federal agencies and contracting officers to act swiftly in approving Requests for Equitable Adjustments (REAs) from federal contractors (especially small businesses).

Mark Hall, Executive Vice President and Chief Strategy Officer, ServiceSource: Congress passed legislation to provide back pay to federal employees. Federal contract workers, especially AbilityOne employees, deserve equitable treatment and should be eligible for back pay like their federal counterparts.

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