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Glenn M. Hackbarth, J.D., Chairman  
Michael Chernen, Ph.D., Vice Chairman  
Mark E. Miller, Ph.D., Executive Director

DATE: September 30, 2013  
TO: CURRENT MEDPAC TASK ORDER CONTRACTORS  
FROM: Tim Gulley, Contracts Officer  
RE: LAPSE IN APPROPRIATIONS, FY2014

As you may be aware, at this date there is some uncertainty regarding the status of appropriations to fund the United States government for fiscal year (FY) 2014. While we remain optimistic that a solution to the impasse that has put the government's FY2014 funding in doubt will be worked out, we nevertheless want to provide guidance to those entities with whom we have existing contracts regarding how they should proceed to operate in the event that a solution is not forthcoming, and that a partial or full government shutdown results for some duration of time beginning October 1, 2013. It is important to be aware that this memorandum pertains only to a potential lapse in appropriations, and does not address the separate issue of a failure to raise the United States government's debt ceiling in mid-October 2014. We will provide separate guidance, as necessary, at a later date to address that issue.

It is our understanding that contractors who are performing work for MedPAC using funds appropriated as part of the FY2013 budget can continue to perform said work, subject to two caveats, discussed below. FY2013 funds have already been appropriated and authorized by the Congress, and have been obligated by MedPAC via legal contracts. We do not expect that any resolution achieved before October 1, or lack of such resolution, will affect these obligations.

However, there are two important caveats of which MedPAC contractors should be aware.

First, said work can only be performed up to such time as an intervention (review of interim deliverables, decision, contract modification, *et cetera*) is required of a MedPAC employee / project officer. If the project officer is not on duty as a result of a lapse in appropriations at the time such an intervention is needed, the contractor must stop work under the contract, and not proceed until the required intervention can be obtained. Contractors performing individual research products could conceivably continue to work until the submission of a draft report, while contractors working more interactively with MedPAC staff may have to stop work almost immediately. If you are unsure of the category into which your organization falls, please contact me or the MedPAC Contracting Officer's Technical Representative immediately. In the event of a government shutdown due to a lapse in appropriations, we will notify you when we resume operating.

Second, contractors who are able to continue working in some fashion are still bound by the terms of the applicable contract, including requirements for billing MedPAC for work performed no less than every 30 days. However, these contractors should be aware that in the event of a prolonged lapse of appropriations, or in the event of sporadic short-term lapses in appropriations, MedPAC's contracts staff may not be on duty, and thus you may expect indeterminate delays in reimbursement for invoices submitted. We will make every effort to pay these invoices expeditiously as soon as we are able, once we resume operations.

Contractors who work with MedPAC via single year contracts (i.e., those who would require FY 2014 funds to continue operating, **MUST CEASE YOUR MEDPAC-RELATED WORK IMMEDIATELY** upon announcement of a government closure due to a lapse in appropriations. Your operation may **NOT** impose a financial liability for MedPAC for which we have not been appropriated funds to discharge.

Please see attached question and answer from Office of Management and Budget's instructions to agencies issued September 17, 2013, for the basis for this guidance.

If you have any questions, please contact me via e-mail at ([tgulley@medpac.gov](mailto:tgulley@medpac.gov)), or by phone at 202-220-3714.

## **Attachment**

From Office of Management and Budget memorandum M-13-22, Planning for Agency Operations during a Potential Lapse in Appropriations, September 17, 2013.

**Q6: The agency has previously awarded a contract or grant, and the contractor or grantee is in the midst of performance. In addition, the agency has determined that, due to a lapse in the appropriation that funds the Federal employees who supervise or support the performance of the contract or grant, those Federal employees cannot continue these activities during the funding lapse. In the absence of such supervision or support, may the contractor or grantee nevertheless continue performance?**

**A6:** If the continued supervision or support, during the lapse period, is not critical to the contractor's or grantee's continued performance during that period, then the contractor or grantee may continue to proceed with its work. This is the case, for example, if an agency had obligated funds representing the entire price for a good or service under a contract or task order before the funding lapse began. In that example, the agency would not have to issue an affirmative direction to the contractor or grantee to continue performance, such as a notice to proceed. Instead, the contractor or grantee could continue to engage in performance. (It is always prudent to be in communication with the contractor or grantee to avoid a misunderstanding.)

However, depending on the duration of a funding lapse, the absence of available Federal employee oversight may lead an agency to reconsider whether the contract or grant activity should continue to be performed. In particular, if the continued supervision or support, during the lapse period, is critical to the contractor's or grantee's continued performance during that period, then- where consistent with law and the terms of the contract or grant- the agency should instruct the contractor or grantee to suspend performance.

The same would be true if continued performance depends on the participation of other Federal agencies or the availability of other Federal facilities that would be precluded by the lapse of appropriations.