Subpart 1032.7—Contract Funding

Source: 81 FR 80609, Nov. 16, 2016, unless otherwise noted.

Parent topic: PART 1032—CONTRACT FINANCING

1032.770 Incremental funding during a Continuing Resolution.

1032.770-1 Scope of section.

This section provides policy and procedure for using incremental funding for fixed-price, time-and-material and labor-hour contracts during a period in which funds are provided to Treasury Departmental Offices or Bureaus, under a continuing resolution (CR). HCAs may develop necessary supplemental internal procedures as well as guidance to advise potential offerors, offerors and contractors of these policies and procedures. Additionally, Bureaus who receive non-appropriated funds may utilize and tailor these policies and procedures to fit their needs.

1032.770-2 Definition.

“Continuing Resolution” means an appropriation, in the form of a joint resolution, that provides budget authority for federal agencies, specific activities, or both to continue operation until the regular appropriations are enacted. Typically, a continuing resolution is used when legislative action on appropriations is not completed by the beginning of a fiscal year.

1032.770-3 General.

The Anti-Deficiency Act, 31 U.S.C. 1341 and FAR 32.702, states that no officer or employee of the Government may create or authorize an obligation in excess of the funds available, or in advance of appropriations unless otherwise authorized by law. A CR provides funding for continuing projects or activities that were conducted in the prior fiscal year for which appropriations, funds, or other authority was previously made available. Each CR is governed by the specific terms in that specific CR (*e.g.* duration of the CR) and under certain CRs, the funding amounts available for award of contract actions are inadequate to fund the entire amounts needed for some contract actions.

1032.770-4 Policy.

(a) A fixed-price, time-and-materials or labor-hour contract or order for commercial or non-commercial supplies or severable or non-severable services may be incrementally funded when—

(1) Funds are provided to a Treasury Departmental Office or Bureau under a CR. This includes funds

appropriated to a bureau, funds appropriated to another entity that will be directly obligated on a Treasury contract, and funds in a revolving fund or similar account that will be reimbursed by a customer agency funded by a CR;

(2) Sufficient funds are not being allocated from the responsible fiscal authority to fully fund the contract action that is otherwise authorized to be issued;

(3) There is no statutory restriction that would preclude the proposed use of funds;

(4) Funds are available and unexpired, as of the date the funds are obligated;

(5) Assurance is provided by the responsible financial authority that full funding is anticipated once an Appropriation Act is enacted; and

(6) The clause prescribed by 1032.770-7 is incorporated into the contract or order.

(b) Incremental funding may be limited to individual line item(s) or a particular order(s).

1032.770-5 Limitations.

(a) This policy does not apply to contract actions that are not covered by the CR.

(b) If this policy is applied to non-severable services or to supplies, the contracting officer shall take into consideration the business risk to the Government if funding does not become available to fully fund the contract. If the contracting officer determines the use of incremental funding for non-severable services or supplies is in the best interest of the Government the contracting officer shall ensure the contractor fully understands how the limitations of the Government's liabilities under the contract might impact its ability to perform within the prescribed contract schedule.

1032.770-6 Procedures.

(a) An incrementally funded fixed-price, time-and-materials or labor-hour contract shall be fully funded once funds are available.

(b) The contracting officer shall ensure that sufficient funds are allotted to the contract to cover the total amount payable to the contractor in the event of termination of convenience by the Government.

(c) Upon receipt of the contractor's notice under paragraph (c) of the clause at 1052.232-90, Limitation of Government's Obligation, the contracting officer shall promptly provide written notice to the contractor that the Government is—

(i) Obligating additional funds for continued performance and increasing the Government's limitation of obligation in a specified amount;

(ii) Obligating the full amount of funds needed;

(iii) Terminating for convenience, as applicable, the affected line items or contract; or

(iv) Considering whether to allot additional funds; and

(A) The contractor is entitled by the contract terms to stop work when the Government's limitation of obligation is reached; and

(B) Any costs expended beyond the Government's limitation of obligation are at the contractor's risk.

(d) Upon learning that the contract will receive no further funds by the date provided in the notice under paragraph (c) of the clause at 1052.232-70, Limitation of Government's Obligation, the contracting officer shall promptly give the contractor written notice of the Government's decision and terminate the affected line items or contract, as applicable, for the convenience of the Government.

1032.770-7 Clause.

The contracting officer shall insert the clause at 1052.232-70, Limitation of Government's Obligation, in

(a) Solicitations and resultant contracts when incremental funding of fixed-price, time-and-material or labor-hour contract via a CR is anticipated; or

(b) Contracts or orders when incremental funding of a fixed-price, time-and-material or labor-hour contract is authorized and the Treasury Departmental Office or Bureau is operating under a CR (see 1032.770-4); and

(c) The CO shall insert the information required in paragraphs (a) and (c) of the clause.