PART 3432—CONTRACT FINANCING

Authority: 5 U.S.C. 301.

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3432.000 Scope of part.

3432.006 Reduction or suspension of contract payments upon finding of fraud.

3432.006-3 Responsibilities.

Subpart 3432.4—Advance Payments for Other Than Commercial Acquisitions

3432.402 General.

3432.407 Interest.

Subpart 3432.7—Contract Funding

3432.706 Contract clauses.

3432.706-2 Clauses for limitation of cost or funds.

Parent topic: SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

3432.000 Scope of part.

3432.006 Reduction or suspension of contract payments upon finding of fraud.

3432.006-3 Responsibilities.

(b) Department personnel must report immediately and in writing any apparent or suspected instance where the contractor's request for advance, partial, or progress payments is based on fraud. The report must be made to the contracting officer and the Assistant Inspector General for Investigations. The report must outline the events, acts, or conditions which indicate the apparent or suspected violation and include all pertinent documents. The Assistant Inspector General for Investigations will investigate, as appropriate. If appropriate, the Office of the Inspector General will provide a report to the SPE.

Subpart 3432.4—Advance Payments for Other Than Commercial Acquisitions

3432.402 General.

The HCA is delegated the authority to make determinations under FAR 32.402(c)(1)(iii). This authority may not be redelegated.

3432.407 Interest.

The HCA is designated as the official who may authorize advance payments without interest under FAR 32.407(d).

Subpart 3432.7—Contract Funding

3432.706 Contract clauses.

3432.706-2 Clauses for limitation of cost or funds.

(c) The contracting officer must insert the clause at 3452.232–70 (Limitation of cost or funds) in all solicitations and contracts where a limitation of cost or limitation of funds clause is utilized.

(d) The contracting officer must insert the provision in 3452.232–71 (Incremental funding) in a solicitation if a cost-reimbursement contract using incremental funding is contemplated.

(e)

(1) The contracting officer must insert the clause at 3452.232–72 (Limitation of Government's obligation) in solicitations and resultant incrementally funded fixed-price contracts or contract line items (CLIN(s)) of such contracts only if—

(i) Sufficient funds are not available to the Department at the time of contract award or exercise of option to fully fund the contract, option, or CLIN(s); and

(ii) The contract (excluding any options), any exercised option, or CLIN(s)—

(A) Is for severable services; and

(B) Does not exceed one year in length; and

(C) Is incrementally funded using funds available (unexpired) as of the date the funds are obligated; or

(D) Congress has otherwise authorized incremental funding.

(2) When a partially funded contract contains the clause at 3452.232–72 (Limitation of Government's obligation) upon learning that the contractor is approaching the price of the contract or the limit of the funds allotted to the contract or specified CLIN(s) or upon receipt of the contractor's notice under paragraph (b) of the clause at 3452.232–72, the contracting officer must promptly obtain funding information pertinent to the continuation of the applicable CLIN(s) or contract and notify

the contractor in writing. This notification must provide that—

(i)

(A) Additional funds have been allotted, in a specified amount;

(B) The contract or applicable CLIN(s) is not to be further funded;

(C) The contract or applicable CLIN(s) is to be terminated; or

(D) The Government is considering whether to allot additional funds;

(ii) The contractor is entitled by the contract terms to stop work on applicable CLIN(s) when the funding limit is reached; and

(iii) Any work beyond the funding limit will be at the contractor's risk.

(3) Upon learning that a partially funded contract will receive no further funds, the contracting officer must promptly give the contractor written notice of the decision not to provide funds.

(4) The contracting officer must ensure that sufficient funds are allotted to the contract or applicable CLIN(s) to cover the total amount payable to the contractor in the event of termination for the convenience of the Government.

(5) The Government must not accept supplies or services under an incrementally funded contract or CLIN(s) once funding limits are reached until the contracting officer has given the contractor notice, to be confirmed in writing, that funds are available.

(6) Government personnel encouraging a contractor to continue work in the absence of funds will incur a violation of Revised Statutes section 3679 (31 U.S.C. 1341) that may subject the violator to civil or criminal penalties.

(7) An incrementally funded fixed-price contract and/or CLIN(s) must be fully funded as soon as funds are available.

(8) The contracting officer must insert the information required in the table in paragraph (l) of the clause at 3452.232–72. Since the funds allotted must cover costs of termination of the applicable CLIN(s) for the Government's convenience, the contractor must provide the last date of performance subject to the contracting officer's concurrence. The contracting officer may revise the contractor's notification period in paragraph (b) of the clause from “ninety” to “thirty” or “sixty” days, as appropriate.