



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

APR 17 2014

Department of the Interior Acquisition Policy Release (DIAPR) 2014-01

Subject: Funding Contract Actions

References: Anti-Deficiency Act, 31 U.S.C. 1341
Federal Acquisition Regulation (FAR) 32.7 – Contract Funding

1. Purpose:

This DIAPR provides mandatory guidance for funding contract actions, including using incremental funding and awarding contracts subject to the availability of future appropriations. This DIAPR applies to all actions awarded for the Department of the Interior, unless a specific statutory exception applies. For actions awarded on behalf of other agencies, the funding agency's policy or regulations apply. This DIAPR applies to actions awarded throughout the fiscal year, including while continuing resolutions are in effect.

2. Effective Date:

Upon signature.

3. Background and Explanation:

The Federal budget process creates a complex environment for funding program requirements. When awarding and managing the contracts that support those requirements, acquisition personnel must be cognizant of both acquisition laws and appropriations laws. The uncertainty of the budget process, in terms of when a budget will be finalized for any given fiscal year, also adds complexity. This policy will describe DOI's agency-specific policies for funding contract actions.

The rules regarding incremental funding and using the availability of funds clause apply throughout the fiscal year, regardless of whether a full budget has passed. The fact that the Government is operating under a Continuing Resolution does not, on its own, authorize different contract funding procedures than the basic appropriations law and FAR principles described in this policy. Acquisition personnel shall refer to the sections below to determine whether it is permissible to use a method other than full funding.

4. Definitions:

Non-severable services are services that are entire in nature and constitute a single undertaking. For these types of services, the government does not receive value until the entire task has been

performed. An example would be a contract for a scientific study with a final report on the results as the contract deliverable.

Severable services are continuing and recurring in nature, meaning that tasks can be separated into individual, divisible units that each provide value to the government. An example would be a contract for janitorial services, where cleaning services are performed on a daily basis.

Incremental funding means the partial funding of a contract or an exercised option, with additional funds anticipated to be provided at a later time.

5. Action Required:

Bureau Procurement Chiefs shall ensure that adequate controls are in place in their bureau to provide for proper funding of all contract actions as described in the sections below.

Preference for Fully Funding Contract Actions

Contract actions should be fully funded on the date of signature to the maximum extent practicable. Full funding is defined as follows:

1. For new awards other than indefinitely delivery vehicles: The total price or ceiling price for the base period or task must be obligated to the contract at award.
2. For awards of indefinite delivery vehicles (IDV): The total amount of any guaranteed minimum (if applicable) must be obligated at award. The obligation may be against an order under the IDV.
3. For modifications to existing contracts: The total amount of any increase to either the price or ceiling price must be obligated at award.

In situations where budget authority is not available for the full desired period or project, acquisition personnel should make every effort to structure the contract in accordance with available funding by using options for additional quantities, tasks, or time. Recognizing that fully funding contract actions may not always be practicable, even with the use of optional periods and tasks, incremental funding may be permissible in certain circumstances.

Incremental Funding

To determine whether or not a contract can be incrementally funded, use the following matrix:

If you are buying:

And the contract type is:

	Fixed-Price Type	Cost-Type, Labor Hours, or T&M
Severable Services	Cannot incrementally fund	May be able to incrementally fund
Non-Severable Services	Cannot incrementally fund	Cannot incrementally fund
Products	Cannot incrementally fund	Cannot incrementally fund

The first consideration to determine whether a contract may be incrementally funded is the type of product or service that is being purchased. Contracts for products or non-severable services cannot be incrementally funded, regardless of contract type. If the contract is for severable

services, then incremental funding may be possible. The second consideration is the contract type. Time and materials, labor hours, or cost-type contracts for severable services may be incrementally funded. Fixed price type contracts cannot be incrementally funded.

The rules above outline the circumstances for which incremental funding is permissible. However, the fact that a contract falls into a category where incremental funding is permissible does not automatically mean that incremental funding should be used. Contracting Officers shall always apply their best business judgment to determine whether incremental funding is in the best interest of the government.

All contract actions that are incrementally funded must contain appropriate language that limits the government's liability in the event that the contract is not fully funded. Acquisition personnel shall refer to FAR and DIAR for further guidance.

Awarding without Funding (Subject to the Availability of Funds)

In very limited circumstances, Contracting Officers may award a contract or modification without obligating funds at award by inserting contract language stating that the award is subject to the availability of future appropriations. The FAR places specific conditions and limitations on using this approach. (See FAR 32.703-2.)

Only contracts meeting all of the FAR criteria may be awarded subject to the availability of future appropriations. However, the fact that awarding without funding is permissible does not automatically mean that this method should be used. Contracting Officers shall use their best business judgment to determine whether awarding subject to the availability of funding is in the best interest of the government.

Mandatory Clause. For any contract action awarded without funding (subject to the availability of funding), the clause FAR 52.232-18, Availability of Funds, must be used. (Except for one-year indefinite quantity or requirements contracts where FAR 52.232-19, Availability of Funds for the Next Fiscal Year, applies. See FAR 32.706-1(b) for the full prescription. This clause is only for the indefinite delivery vehicle (IDV); FAR 52.232-18 must still be included in each order or call against that IDV that is awarded without funding.)

Performance Prior to Funding. Performance cannot begin at the time of award if a contract action is awarded subject to the availability of funds. Work must be delayed (or stopped in the case of exercising an option) until funding is obligated to the contract. In accordance with FAR 32.704(c), government personnel may be subject to civil or criminal penalties for encouraging a contractor to continue work in the absence of funds.

Purchase Requests for Future Year Needs

DOI policy requires a purchase request for most contract actions. Purchase requests for actions that need to be awarded in a future fiscal year may be created using language stating that the commitment is "subject to the availability of funds." When it is time to award the contract action, the contracting office should refer to this policy for funding the contract action.

Special Considerations under Continuing Resolutions

Period of performance of contract actions under Continuing Resolutions

A Continuing Resolution (CR) generally grants budget authority for a specific period of time at the previous year's funding level. While overall obligations against a given appropriation cannot exceed the amount of the CR, there is no restriction on the period of performance for contracts awarded during the CR. Contracts can be awarded for periods of time that exceed the CR period if funds are available.

However, the CR will not provide adequate funding for all contracts for their full performance period, which can create challenges for contracts which must be funded while a CR is in effect. Acquisition personnel shall comply fully with this policy when considering incremental funding (or any other means of partially funding a contract) during a CR. The fact that a CR is in effect does not, on its own, authorize different contract funding procedures than the basic appropriations law and FAR principles described above, including those related to incremental funding and using the availability of funds clause.

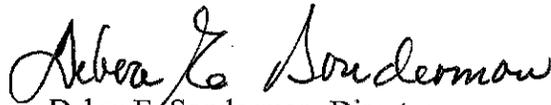
In order to minimize the impact of CRs, and fiscal year-end issues generally, acquisition personnel are encouraged to design contracts with periods of performance that do not begin on October 1 or any time early in the first quarter of the fiscal year.

Types of contract actions allowed under CRs

Under a CR, obligations are only allowed for requirements which were included in the previous year's budget. However, this does not prevent the award of new contracts during a CR. Both new contracts and modifications may be awarded and funded with funds from the CR, if the requirement being met was in the previous year's budget. For example, a new contract for janitorial services that replaces a contract that was in place for the previous five years could be funded during a CR.

6. Additional Information:

Questions about this DIAPR may be directed to Megan Olsen, Senior Procurement Analyst, PAM, at (202) 513-0692 or by e-mail at megan_olsen@ios.doi.gov.



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