

Subchapter 3032.7 Contract Funding**3032.702 Policy.**

(c) All contracts and requirements using private sector financing shall be approved by the Office of Chief Procurement Officer (OCPO). The HCA shall submit the action, including legal counsel review and approval for legal sufficiency, to the OCPO for approval.

(d) The minimum guaranteed quantity specified under indefinite delivery indefinite quantity contracts must be fully funded and obligated at the time of contract award.

(e) Time-and-material and labor-hour contracts are not fixed-price contracts (FAR 16.600) and are generally severable. A fixed-price, time-and-material or labor-hour contract or order for severable services may be incrementally funded only if, during a Continuing Resolution (CR) or a short-term apportionment immediately following a CR, the Department or Component is not allocated sufficient funds to fully fund a contract action that is otherwise authorized to be awarded and meets the following:

(1) Approved one level above the contracting officer;

(2) The funds to be obligated are not restricted by a statutory prohibition against incremental funding;

(3) The contract or order is incrementally funded using funds available, unexpired, as of the date the funds are obligated;

(4) The contract or order includes the information below to ensure the contractor accepts the limitations of the Government's liabilities under the incrementally funded contract or order; and

(5) The responsible financial officer agrees in writing to provide full funding promptly upon receipt of an apportionment under the Appropriations Act that replaces the CR.

(f) Non-severable services shall not be incrementally funded. Supplies shall not be incrementally funded.

(g) Incremental funding for a fixed-price, time-and-material or labor-hour contract or order may be limited to individual line items or applied to the whole contract or order.

(h) Funds added to an incrementally funded contract or order shall be from the same fiscal year as the original funding, unless specific statutory authority allows use of funds from a different fiscal year.

(i) The contracting officer shall ensure that of the available funds, a sufficient amount is reserved in the amount obligated on the contract or order to cover the total amount payable to the contractor in the event of termination for the convenience of the Government.

(j) The following language shall be included in the terms and conditions of each contract or order that is incrementally funded:

Incremental Funding Requirements

(a) Contract line items are incrementally or fully funded as shown in the below table. The sum of \$ * is available for payment and obligated on this contract (*or order*). (*Amounts shown below are for illustration only. They must be replaced by actual amounts in each award. The contractor must complete the righthand two columns.*)

CLIN	CLIN Price	Amount Currently Funded	Funds Required for Full Funding	Funds Reserved for Termination	Funds Required for Performance
0001	\$1,000,000	\$550,000	\$450,000		
0002	\$450,000	\$450,000	\$0		
0003	\$2,250,000	\$1,200,000	\$1,050,000		
Contract Totals	\$3,700,000	\$2,200,000	\$1,500,000		

(b) For items identified in the chart above as not fully funded, the contractor agrees to perform up to the point at which the total amount payable by the Government, including reimbursement of authorized termination costs in the event of termination of those items for the Government's convenience, does not exceed the total amount currently allotted to the items not fully funded under the contract. The contractor is not authorized to continue work on those item(s) beyond that point.

(c) The Government may add funds to this contract as funds become available. There is no fixed schedule for providing additional funds.

(d) If the additional funds are less than the amount required for full performance of this contract (or order), the parties will agree as to the period of performance covered by the funds. The modification adding funds that do fully fund the contract (or order) shall retain the language of this section, appropriately updating the data in paragraph (a).

(e) The contractor will notify the contracting officer in writing at least *thirty (or insert ninety or sixty)* days prior to the date when, in the contractor's best judgment, the work will reach the point at which the total amount payable by the Government, including any cost for termination for convenience, will approximate 85 percent of the total amount then obligated on the contract for performance of the applicable items. The notification will state the estimated date when that point will be reached. If after such notification additional funds are not obligated by the date identified in the contractor's notification, or by an agreed substitute date, the contracting officer will terminate any item(s) for which

additional funds have not been provided, pursuant to the clause of this contract authorizing termination for the convenience of the Government, such as the clause entitled "Termination for Convenience of the Government" or paragraph (1) entitled "Termination for the Government's Convenience" of the clause at FAR 52.212-4, "Commercial Terms and Conditions - Commercial Items."

(f) In the event of incrementally funded line items, the total amount payable by the Government includes allowable costs, profit, and estimated/negotiated termination settlement costs for those items. The Government will not be obligated in any event to reimburse the contractor in excess of the amount obligated on the line items of the contract regardless of anything to the contrary in any other clause.

(g) The contractor agrees that, even though such data are not normally available to the Government, in the event the Government must terminate for its convenience, the contractor shall provide cost data as defined in FAR 15.402 regarding its performance under the contract to support its termination settlement proposal.

(h) The Government may at any time prior to termination allot additional funds for the performance of the contract line item(s) identified in paragraph (a).

(i) The termination provisions of paragraphs (e) through (h) do not limit the rights of the Government under the clause entitled "Default" or "Termination for Cause." The provisions of this section are limited to the work and availability of funds for the contract line items set forth in paragraph (a). This language no longer applies once the contract is fully funded.

(j) Nothing in this section affects the right of the Government to terminate this contract pursuant to the clause of this contract entitled "Termination for Convenience of the Government" or paragraph (1) entitled "Termination for the Government's Convenience" of the clause at FAR 52.212-4, "Commercial Terms and Conditions-Commercial Items."

(k) Nothing herein shall be construed as authorization of voluntary services whose acceptance is otherwise prohibited under 31 U.S.C. 1342.

(l) Upon receipt of the contractor's notice under paragraph (e) of the Incremental Funding Requirements contract language above, the contracting officer shall promptly provide written notice to the contractor that the Government is,--

- (1) Allotting additional funds for continued performance and increasing the Government's limitation of obligation in a specified amount;
- (2) Terminating the contract; or
- (3) 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.

(m) If the contracting officer is notified that the contract will receive no further funds by the date identified by the contractor, the contracting officer shall,--

(1) Promptly give the contractor written notice of the Government's decision and, terminate for the convenience of the Government; or

(2) If the contracting officer has documented reason to believe that funds will be received at a future date, negotiate a mutually acceptable funding schedule.

3032.702-70 Procurement requests.

(a) Acceptance of electronically submitted fund documents. The contracting officer shall accept certified funds submitted electronically via Component approved financial and procurement systems. The contracting officer may require a hardcopy procurement request only from units exempt from the use of Component approved financial and procurement systems.

(b) The requisitioning office/program office is responsible for nominating a qualified Federal employee to serve as a contracting officer's representative (COR), who is trained and certified according to the DHS Acquisition Workforce Policy, number 064-04-003, Federal Acquisition Certification for Contracting Officer's Representatives and Appointment and Revocation or any successor. A procurement request submission for a new procurement lacking a COR nomination package (see HSAM 3004.803-70) unless otherwise exempted by HSAM 3042.270-1 may result in rejection as an incomplete acquisition/procurement request, unless the complete COR nomination package was submitted prior to the procurement request.

(c) *Treasury Account Symbol (TAS).*

(1) The DHS Office of the Chief Financial Officer issued guidance to Component Budget Directors and Chief Financial Officers on March 18, 2008 mandating inclusion of the Fiscal Year and Treasury Account Symbol on all Procurement Requests (PR) prior to submission to the contracting office for action. The guidance stipulates that as of April 15, 2008, a PR will not be considered complete unless and until this funding information is included in the PR. Failure to include the Fiscal Year and Treasury Account Symbol on the PR constitutes grounds for the contracting office to reject the PR until such time as the information has been entered. See 3032.702-71 for policy regarding a PR that is submitted before funds are available.

(2) Treasury Account Symbols were selected as the format for submission in order to be consistent with the Office of Management and Budget (OMB) guidance requiring agencies to migrate to Treasury Account Symbols for agency financial-reporting purposes (OMB Memorandum M-09-19 dated June 1, 2009, Guidance on Data

Submissions under the Federal Funding Accountability and Transparency Act). Accordingly, TAS submissions are necessary for DHS Congressional Notification requirements (see HSAM 3005.303-70).

3032.702-71 Procurement requests prior to availability of funds.

(a) The Federal Acquisition Regulation does not prohibit a contracting officer from initiating action in response to a procurement request in advance of receipt of certified funds. However, the contracting officer should initiate preaward action only if there is a reasonable expectation that funds will be committed and certified to result in an obligation under an award of a contract or order. If funds are not available, the contracting officer shall not award a contract or order unless:

(1) The requirements of FAR 32.703-2, Contracts conditioned on the availability of funds, are met, and

(2) The appropriate clause cited at FAR 32.706-1, Clauses for contracting in advance of funds, is incorporated into the action (either FAR 52.232-18, Availability of Funds, or 52.232-19, Availability of Funds for the Next Fiscal Year). See HSAM 3032.703-70 for policy on release of a solicitation prior to funds being provided.

3032.702-72 Use of private sector financing.

All proposed contract actions, including orders under GSA FSS contracts and orders under indefinite delivery contracts, that use private sector financing shall be approved by the Office of Chief Procurement Officer (OCPO). The HCA shall submit the action, including legal counsel review and approval for legal sufficiency, to the OCPO for approval.

3032.703-3 Contracts crossing fiscal years.

(b) The HCA, with authority to redelegate to no lower than one level above the contracting officer, is authorized to approve the award of contracts, options, or orders under contracts for severable services for a period beginning in one fiscal year and ending in the next, provided the period of the basic contract, option or order does not exceed one year. Documentation of the approval shall be retained in the contract file.

3032.703-70 Issuing a Solicitation before funding is made available.

(a) *Policy.* The Federal Acquisition Regulation does not prohibit release of a solicitation before funds are made available. A solicitation may be released prior to funds being provided only if there is a reasonable expectation that the requirement will be funded prior to award and the procedures of paragraph (b) are satisfied. The requirements of FAR 32.703-2 and FAR 32.706-1, Clauses for contracting in advance of funds apply if the action is intended to be awarded without funds.

(b) *Procedures.* A solicitation may be released before funds are committed for the action if:

- (1) Based on information provided by the Component, the Contracting Officer determines in writing:
 - (i) The resulting action is expected to be funded prior to award; and
 - (ii) The program/requirement has been included in the President's budget as submitted to Congress;
- (2) The solicitation clearly places offerors on notice that there are currently no funds for the solicitation requirement and a contract or order can be awarded only if funds become available; and
- (3) For requirements expected to exceed \$1 million,
 - (i) The program manager or program representative at the O-6/GS-15 level or above, provides the contracting officer a written statement that funds are expected to be available for the proposed acquisition; and
 - (ii) The statement is approved by the appropriate component finance office.