

# Subpart 32.7 - Contract Funding

Parent topic: [Part 32 - Contract Financing](#)

## 32.700 Scope of subpart.

This subpart (a) describes basic requirements for contract funding and (b) prescribes procedures for using limitation of cost or limitation of funds clauses. Detailed *acquisition* funding requirements are contained in agency fiscal regulations.

## 32.701 [Reserved]

## 32.702 Policy.

No officer or employee of the Government *may* create or authorize an obligation in excess of the funds available, or in advance of appropriations (Anti-Deficiency Act, [31 U.S.C.1341](#)), unless otherwise authorized by law. Before executing any contract, the *contracting officer shall*-

- (a) Obtain written assurance from responsible fiscal authority that adequate funds are available or
- (b) Expressly condition the contract upon availability of funds in accordance with [32.703-2](#).

## 32.703 Contract funding requirements.

### 32.703-1 General.

- (a) If the contract is fully funded, funds are obligated to cover the price or target price of a fixed-price contract or the estimated cost and any fee of a cost-reimbursement contract.
- (b) If the contract is incrementally funded, funds are obligated to cover the amount allotted and any corresponding increment of fee.

### 32.703-2 Contracts conditioned upon availability of funds.

(a) *Fiscal year contracts.* The *contracting officer may* initiate a *contract action* properly chargeable to funds of the new fiscal year before these funds are available, provided that the contract includes the clause at [52.232-18](#), Availability of Funds (see [32.706-1\(a\)](#)). This authority *may* be used only for operation and maintenance and continuing services (*e.g.*, rentals, utilities, and supply items not financed by stock funds)-

- (1) Necessary for normal operations; and
- (2) For which Congress previously had consistently appropriated funds, unless specific statutory

authority exists permitting applicability to other requirements.

(b) *Indefinite-quantity or requirements contracts.* A one-year indefinite-quantity or requirements contract for services that is funded by annual appropriations *may* extend beyond the fiscal year in which it begins; provided, that-

(1) Any specified minimum quantities are certain to be ordered in the initial fiscal year (see [37.106](#)) and

(2) The contract includes the clause at [52.232-19](#), Availability of Funds for the Next Fiscal Year (see [32.706-1\(b\)](#)).

(c) *Acceptance of supplies or services.* The Government *shall* not accept *supplies* or services under a contract conditioned upon the availability of funds until the *contracting officer* has given the contractor notice, to be confirmed *in writing*, that funds are available.

### **32.703-3 Contracts crossing fiscal years.**

(a) A contract that is funded by annual appropriations *may* not cross fiscal years, except in accordance with statutory authorization (*e.g.*, [41 U.S.C.6302](#), [31 U.S.C.1308](#), [42 U.S.C.2459a](#), [42 U.S.C.3515](#), and paragraph (b) of this subsection), or when the contract calls for an *end product* that cannot feasibly be subdivided for separate performance in each fiscal year (*e.g.*, contracts for expert or consultant services).

(b) The head of an *executive agency*, except NASA, *may* enter into a contract, exercise an *option*, or place an order under a contract for severable services for a period that begins in one fiscal year and ends in the next fiscal year if the period of the contract awarded, *option* exercised, or order placed does not exceed one year ([10 U.S.C. 3133](#) and [41 U.S.C.3902](#)). Funds made available for a fiscal year *may* be obligated for the total amount of an action entered into under this authority.

### **32.704 Limitation of cost or funds.**

(a)

(1) When a contract contains the clause at [52.232-20](#), Limitation of Cost; or [52.232-22](#), Limitation of Funds, the *contracting officer*, upon learning that the contractor is approaching the estimated cost of the contract or the limit of the funds allotted, *shall* promptly obtain funding and programming information pertinent to the contract's continuation and notify the contractor *in writing* that-

(i) Additional funds have been allotted, or the estimated cost has been increased, in a specified amount;

(ii) The contract is not to be further funded and that the contractor *should* submit a proposal for an adjustment of fee, if any, based on the percentage of work completed in relation to the total work called for under the contract;

(iii) The contract is to be terminated; or

(A) The Government is considering whether to allot additional funds or increase the estimated cost-

(B) The contractor is entitled by the contract terms to stop work when the funding or cost limit is reached; and

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

(2) Upon learning that a partially funded contract containing any of the clauses referenced in paragraph (a)(1) of this section will receive no further funds, the *contracting officer shall* promptly give the contractor written notice of the decision not to provide funds.

(b) Under a cost-reimbursement contract, the *contracting officer may* issue a *change order*, a direction to replace or repair defective items or work, or a termination notice without immediately increasing the funds available. Since a contractor is not obligated to incur costs in excess of the estimated cost in the contract, the *contracting officer shall* ensure availability of funds for directed actions. The *contracting officer may* direct that any increase in the estimated cost or amount allotted to a contract be used for the sole purpose of funding termination or other specified expenses.

(c) 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.

## **32.705 Unenforceability of Unauthorized Obligations.**

Many *supplies* or services are acquired subject to supplier license agreements. These are particularly common in *information technology acquisitions*, but they *may* apply to any supply or service. For example, *computer software* and services delivered through the internet (web services) are often subject to license agreements, referred to as End User License Agreements (EULA), Terms of Service (TOS), or other similar legal instruments or agreements. Many of these agreements contain indemnification clauses that are inconsistent with Federal law and unenforceable, but which could create a violation of the Anti-Deficiency Act (31 U.S.C. 1341) if agreed to by the Government.

## **32.706 Contract clauses.**

### **32.706-1 Clauses for contracting in advance of funds.**

(a) Insert the clause at [52.232-18](#), Availability of Funds, in *solicitations* and contracts if the contract will be chargeable to funds of the new fiscal year and the *contract action* will be initiated before the funds are available.

(b) The *contracting officer shall* insert the clause at [52.232-19](#), Availability of Funds for the Next Fiscal Year, in *solicitations* and contracts if a one-year indefinite-quantity or requirements contract for services is contemplated and the contract-

(1) Is funded by annual appropriations; and

(2) Is to extend beyond the initial fiscal year (see [32.703-2\(b\)](#)).

### **32.706-2 Clauses for limitation of cost or funds.**

(a) The *contracting officer shall* insert the clause at 52.232-20, Limitation of Cost, in *solicitations* and contracts if a fully funded cost-reimbursement contract is contemplated, whether or not the contract provides for payment of a fee.

(b) The *contracting officer shall* insert the clause at 52.232-22, Limitation of Funds, in *solicitations* and contracts if an incrementally funded cost-reimbursement contract is contemplated.

### **32.706-3 Clause for unenforceability of unauthorized obligations.**

The *contracting officer shall* insert the clause at 52.232-39, Unenforceability of Unauthorized Obligations in all *solicitations* and contracts.