

## Subpart 1232.7—Contract Funding

Parent topic: [PART 1232—CONTRACT FINANCING](#)

### 1232.770 Incremental funding during a Continuing Resolution.

#### 1232.770-1 Scope of section.

This section provides policy and procedures for using incremental funding for fixed-price, time-and-material and labor-hour contracts during a period in which funds are provided to the DOT and its operating administrations under a continuing resolution. Heads of the contracting activities may develop necessary supplemental internal procedures and guidance to advise offerors and contractors of these policies and procedures.

#### 1232.770-2 Definition.

*Continuing Resolution (CR)* 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.

#### 1232.770-3 General.

The Anti-Deficiency Act, 31 U.S.C. 1341, and FAR 32.702, state 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 some contract actions are inadequate to fund the entire amounts needed.

#### 1232.770-4 Policy.

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

(1) Funds are provided to DOT or operating administration under a CR. This includes funds appropriated to DOT or an operating administration, funds appropriated to another entity that will be directly obligated on a DOT contract, and funds in a revolving fund or similar account that will be

reimbursed by a customer agency funded by a CR;

(2) The responsible fiscal authority has not allocated sufficient funds 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 appropriations act is enacted; and

(6) The clause prescribed by 1232.770-7 is incorporated into the contract or order.

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

## **1232.770-5 Limitations.**

This policy does not apply to contract actions using funds that are not covered by the CR.

## **1232.770-6 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 for convenience by the Government.

(c) Upon receipt of the contractor's notice under paragraph (c) of the clause at 1252.232-71, Limitation of Government's Obligation, the contracting officer shall promptly provide written notice to the contractor that the Government is—

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

(2) Obligating the full amount of funds needed;

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

(4) Considering whether to allot additional funds; and

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

(ii) 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 1252.232-71, 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.

## **1232.770-7 Clause.**

(a) The contracting officer shall insert the clause at 1252.232-71, Limitation of Government's Obligation, in—

(1) Solicitations and contracts for severable services when incremental funding of a fixed-price, time-and-material, or labor-hour contract due to a CR is anticipated; or

(2) Contracts or orders for severable services when incremental funding of a fixed-price, time-and-material, or labor-hour contract is authorized and DOT or its operating administrations are operating under a CR (*see* 1232.770-4).

(b) The contracting officer shall insert the information required in paragraphs (a) and (c) of clause 1252.232-71. Contracting officers are authorized, in appropriate cases, to revise paragraph (a) of clause 1252.232-71 to specify the work required under the contract, in lieu of using contract line item numbers, as well as revise paragraph (c) of the clause to specify a different notification period and percentage. The 30-day period may be varied up to 90 days, and the 75 percent can be varied from 75 up to 85 percent.