

Federal Acquisition Regulation

32.704

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.

[48 FR 42328, Sept. 19, 1983, as amended at 51 FR 2665, Jan. 17, 1986]

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 32.705-1(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 32.705-1(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.

[48 FR 42328, Sept. 19, 1983, as amended at 67 FR 13054, Mar. 20, 2002]

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. 11a, 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. 2410a and 41 U.S.C. 2531). Funds made available for a fiscal year may be obligated for the total amount of an action entered into under this authority.

[63 FR 58601, Oct. 30, 1998]

32.704 Limitation of cost or funds.

(a)(1) When a contract contains the clause at 52.232-20, Limitation of Cost; 52.232-21, Limitation of Cost (Facilities); 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