

3.3.1-14 Limitation of Funds (February 2003)

(a) The parties estimate that performance of this contract will not cost the TSA more than:

- (1) The estimated cost or price specified in the "Schedule" or,
- (2) If this is a cost-sharing contract, the TSA 's share of the estimated cost specified in the "Schedule".

The Contractor agrees to use its best efforts to perform the work specified in the "Schedule" and all obligations under this contract within the estimated cost, which, if this is a cost-sharing contract, includes both the TSA 's and the Contractor's share of the cost.

(b) The "Schedule" specifies the amount presently available for payment by the TSA and allotted to this contract, the items covered, the TSA's share of the cost if this is a cost-sharing contract, and the period of performance it is estimated the allotted amount will cover. The parties contemplate that the TSA will allot additional funds incrementally to the contract up to the full estimated cost to the TSA specified in the "Schedule", exclusive of any fee. The Contractor agrees to perform, or have performed, work on the contract up to the point at which the total amount paid and payable by the TSA under the contract approximates but does not exceed the total amount actually allotted by the TSA to the contract.

(c) The Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that the costs it expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of:

- (1) the total amount so far allotted to the contract by the TSA or,
- (2) if this is a cost-sharing contract, the amount then allotted to the contract by the TSA plus the Contractor's corresponding share. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the "Schedule".

(d) Sixty days before the end of the period specified in the "Schedule", the Contractor shall notify the Contracting Officer in writing of the estimated amount of additional funds, if any, required to continue timely performance under the contract or for any further period specified in the "Schedule" or otherwise agreed upon, and when the funds will be required.

(e) If, after notification, additional funds are not allotted by the end of the period specified in the "Schedule" or another agreed-upon date, upon the Contractor's written request the Contracting Officer will terminate this contract on that date in accordance with the provisions of the "Termination" clause of this contract. If the Contractor estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and the Contracting Officer may terminate this contract on that later date.

(f) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause--

- (1) The TSA is not obligated to reimburse the Contractor for costs incurred in excess of the total amount allotted by the TSA to this contract; and
- (2) The Contractor is not obligated to continue performance under this contract (including actions under the "Termination" clause of this contract) or otherwise incur costs in excess of (i) the amount then allotted to the contract by the TSA or, (ii) if this is a cost-sharing contract, the amount then allotted by the TSA to the contract plus the Contractor's corresponding share, until the Contracting Officer notifies the Contractor in writing that the amount allotted by the TSA has been increased and specifies an increased amount, which shall then constitute the total amount allotted by the TSA to this contract.

(g) The estimated cost shall be increased to the extent that:

(1) the amount allotted by the TSA or,

(2) if this is a cost-sharing contract, the amount then allotted by the TSA to the contract plus the Contractor's corresponding share, exceeds the estimated cost specified in the "Schedule."

If this is a cost-sharing contract, the increase shall be allocated in accordance with the formula specified in the "Schedule."

(h) No notice, communication, or representation in any form other than that specified in subparagraph (f)(2) above, or from any person other than the Contracting Officer, shall affect the amount allotted by the TSA to this contract. In the absence of the specified notice, the TSA is not obligated to reimburse the Contractor for any costs in excess of the total amount allotted by the TSA to this contract, whether incurred during the course of the contract or as a result of termination.

(i) When and to the extent that the amount allotted by the TSA to the contract is increased, any costs the Contractor incurs before the increase that are in excess of

(1) the amount previously allotted by the TSA or,

(2) if this is a cost-sharing contract, the amount previously allotted by the TSA to the contract plus the Contractor's corresponding share, shall be allowable to the same extent as if incurred afterward, unless the Contracting Officer issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.

(j) Change orders shall not be considered an authorization to exceed the amount allotted by the TSA specified in the "Schedule", unless they contain a statement increasing the amount allotted.

(k) Nothing in this clause shall affect the right of the TSA to terminate this contract. If this contract is terminated, the TSA and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.

(l) If the TSA does not allot sufficient funds to allow completion of the work, the Contractor is entitled to a percentage of the fee specified in the "Schedule" equaling the percentage of completion of the work contemplated by this contract, if applicable.

(End of clause)

PRESCRIPTION

Shall be used in RFI/RFP's and contracts if an incrementally funded cost reimbursement contract is contemplated.