ADS Chapter 603

Forward Funding, Non-Program Funds

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ADS 603 – Forward Funding, Non-Program Funds

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ADS 603 – Forward Funding, Non-Program Funds

603.1 OVERVIEW
Effective Date: 01/23/2004

This ADS chapter provides guidance on forward funding for appropriations for Operating Expenses (OE), Operating Expenses of the Office of the Inspector General (IG OE), and Credit Administrative Expense (AE) accounts. This guidance also applies to program funds authorized for administrative purposes. (See **ADS 602**, Forward Funding of Program Funds, for guidance on program funds.) The Bureau of Policy and Program Coordination (PPC), Office of Resource Allocation (RA) must approve exceptions to the forward-funding guidance of this chapter.

603.2 PRIMARY RESPONSIBILITIES
Effective Date: 01/23/2004

1) PPC/RA is responsible for developing and interpreting policy on forward funding and approving exceptions.

2) Obligating Officials and Obligation Managers are responsible for ensuring that funding decisions comply with the policy directives and required procedures in this chapter.

603.3 POLICY DIRECTIVES AND REQUIRED PROCEDURES
Effective Date: 01/23/2004

a. Bona Fide Needs Rule. Under the bona fide needs rule, an appropriation is available only to meet a legitimate or bona fide need arising in (or in some cases arising prior to but continuing to exist in) the fiscal year(s) covered by the appropriation. To forward fund (i.e., obligate current-year funds to cover the cost of goods and/or services to be provided or received in a subsequent fiscal year), the operating unit must have a current need or an exception to the bona fide needs rule.

To determine a current fiscal-year need, the operating unit must consider the fiscal year of performance or delivery and time between contract award and performance or delivery. For example, if the Agency needs information technology services in FY 2006 that requires signing the contract in FY 2005, then an FY 2005 bona fide need exists.

b. Severable and Non-severable Contracts. The GAO decisions on the bona fide needs rule distinguish between non-severable and severable contracts. A non-severable or entire contract represents a single undertaking that cannot be separated into components. With a non-severable contract, the office receives value only when the contractor performs the entire service. Under the bona fide needs rule, operating units can fully fund a non-severable contract in the fiscal year in which USAID signs the contract, even though performance may extend into future fiscal years.

Severable contracts represent services that are continuing and recurring in nature. Severable contracts can be separated into components that can be independently performed to meet a separate need. Under a severable contract, the office receives value as the contractor renders the service. Generally, under the bona fide needs rule, offices may not fund severable contracts across fiscal years and must charge severable services to the fiscal year(s) in which the contractors render the services. Similarly, for supplies, offices must use current funds for current needs. While delivery may not occur until the following fiscal year, a present need, e.g., a need for replacement stock, must exist.

c. Exceptions to the Bona Fide Needs Rule

(1) Inclusion in the Congressional Budget Justification (CBJ)

The basis of the rule is that Congress appropriated money only for the need of the current fiscal year (s) specified in the appropriations. However, if the CBJ notifies Congress of the intent to use funds for certain future-year needs, then, in enacting the appropriations bill, Congress has authorized the use of funds for that purpose.

(2) Contract Exceptions

- **One-Year Authority**. **41 U.S.C. 253L** and **FAR 32.703-3(b)** permit funding one-year contracts for services crossing into the next fiscal year. In other words, a contract signed May 2005 may fund performance through May 2006.

- **Five-Year Authority**. **41 U.S.C. 254c** and **FAR 17.104** authorizes multiyear contracts of up to five years for both services and materials if the Procurement Executive determines that: 1) the need for the property or services is reasonably firm and continuing over the period of the contract, and 2) a multiyear contract serves the best interests of the United States by encouraging full and open competition or promoting economy in administration, performance, and operation of the Agency's programs. Offices have the flexibility to fund the obligations up front, incrementally, or using the bona fide needs rule.

(3) USAID Two-Year Forward Funding Authority

Beginning with the FY 2004 appropriations, OE funds have two-year forward funding authority. Offices may use current-year OE funds to forward fund contracts and agreements through September 30 of the following fiscal year. For example, contracts and agreements entered into with FY 2005 funds may have commitments for the expenditure of funds through FY 2006.

To use this two-year authority, offices must obligate OE funds by September 30 of the current fiscal year. The two-year forward-funding authority applies only to OE funds; it does not apply to IG OE, AE, and program funds authorized for administrative expenses.

(4) Notwithstanding Authority.

Under "notwithstanding any other provision of law" or similar language, the bona fide needs rule does not apply.

603.3.1 Categories of Costs
Effective Date: 01/23/2004

The policies in 603.3.1.1 through 603.3.1.9 address the most common types of costs funded with OE. The general policy permits forward funding under the two-year forward-funding authority described in 603.3.c.3 above for costs that otherwise would be restricted to current-year funding.

603.3.1.1 Salaries and Benefits of Direct-Hire Personnel
Effective Date: 01/23/2004

Offices must use current-year funds to cover actual/accrued obligations for both U.S. and Foreign Service National (FSN) direct-hire personnel for the period from October 1 through September 30. Forward funding is prohibited without the approval of PPC/RA.

603.3.1.2 Service Contracts
Effective Date: 01/23/2004

a. Service Contracts (Severable): Offices may obligate funds for services to be provided through September 30 of the following fiscal year. Offices may include funds to cover termination-for-convenience costs, if the contract may require termination at the end of the following fiscal year. Offices may fully fund non-severable costs at the time the contract is signed.

b. Service Contracts (Non-Severable): Offices may fully fund costs at the time the contract is signed, regardless of the period of performance.

c. Service Contracts (Part Severable/Part Non-Severable). The severable portion must follow the rules in 603.1.2.a. The non-severable portion must follow the rules in 603.3.1.2.b.

603.3.1.3 Personal Services Contracts (PSCs) – U.S., FSN, and TCN
Effective Date: 01/23/2004

a. Offices may obligate severable costs, such as salaries and benefits, under a PSC through September 30 of the following fiscal year. Offices must fully obligate non-severable costs, such as assignment to post and repatriation, at the time the contract is signed.

b. Generally, OE-funded PSC contracts are considered severable. In select circumstances, they may be non-severable, such as when the office needs services for the length of a particular activity (i.e., a reconstruction effort). In such cases, PPC/RA must approve the request to fully fund the contract.

603.3.1.4 Involuntary Separation Payments for Direct-Hire Personnel

Effective Date: 01/23/2004

Due to the unpredictable nature of this payment, advance obligation beyond the end of the fiscal year is prohibited.

a. U.S. Direct-Hire Personnel: The Financial Management (FM) office records obligations when payments are made. Obligations occur at specific times, often into the next fiscal year, using funds from the new fiscal year, as civil-service severance payments are made periodically.

b. FSN Direct-Hire Personnel: If payments occur over a period of time, the guidelines in 603.3.1.1 apply. If the payment is lump sum, the Mission Controller records the obligation when the employee formally receives the notice of separation.

603.3.1.5 Voluntary FSN Separation Payments

Effective Date: 01/23/2004

Missions must obligate annually funds required to cover cumulative accrued liability through the end of that fiscal year for voluntary separation deposits into the U.S. Treasury account. Each year, Missions must re-compute the amounts that would be due to FSN personnel by the end of the current fiscal year under voluntary separation. Missions must use current-year funds to obligate additional amounts due.

603.3.1.6 Travel

Effective Date: 01/23/2004

a. Post Assignment Travel. Offices may obligate the full cost of travel and transportation (including transportation of effects) with current-year funds for travel in the current or following fiscal year.

b. Retirement Travel. Offices may obligate the estimated cost of retirement travel for Foreign Service (FS) personnel with current-year funds for travel in the current or following fiscal year. All FS officers are entitled to retirement travel and have a specific period of time after retirement during which travel may begin (depending on whether retirement is from Washington or an overseas post). If travel has not occurred within the prescribed period, the office must deobligate the funds.

c. Temporary Duty and Other Operational Travel. Offices may obligate the full cost of travel with current-year funds for travel in the current or following fiscal year.

603.3.1.7 Rental of Space (Office, Residential, or Other)
Effective Date: 01/23/2004

Offices may obligate funds on a monthly, quarterly, or annual basis, as required. Offices may obligate for periods beyond September 30 of the current fiscal year only if, according to the lease, the rent payment for such periods is required on or before September 30 of the following fiscal year.

603.3.1.8 Supplies, Materials and Equipment
Effective Date: 01/23/2004

Offices may forward fund supplies, materials, and equipment for requirements through September 30 of the following fiscal year.

603.3.1.9 Utilities, Phones, and Other Recurring Costs
Effective Date: 01/23/2004

Offices may forward fund utilities, phones, and other recurring costs through September 30 of the following fiscal year. Offices have the discretion to record one obligation at the beginning of the fiscal year, each quarter, or each month, to cover anticipated costs.

603.3.2 Application to Multi-Year and No-Year Appropriations
Effective Date: 01/23/2004

The policies in 603.3.1.1 through 603.3.1.9 apply to two-year or other multi-year appropriations. For example, offices may fund a severable contract for the entire two-year period under a two-year appropriation.

No-year funds, e.g. recoveries prior to FY 2002 under section 511 of the Appropriations Act, are available as a legal matter without regard to the bona fide needs rule. However, Agency policy directs offices to use the funds in the same manner as the regular appropriation would have otherwise funded the activity.

For example, if the obligation would be otherwise OE-funded and the OE account is a one-year appropriation, the recoveries would be treated as one-year funds, as a general rule. Offices must send requests for exceptions to PPC/RA.-

603.3.3 Application to Continuing Resolutions (CR)
Effective Date: 01/23/2004

The policies in 603.3.1.1 through 603.3.1.9 apply during a continuing resolution (CR). A CR is a temporary appropriation, pending enactment of a regular appropriation for the entire fiscal year(s). While an office must obligate under a CR during the CR period, a CR is available for the bona fide needs of the entire fiscal year or years. Therefore, the office may fund a particular obligation for the entire fiscal year, or, in the case of multi-year appropriations, for the fiscal years, not just the CR period.

For example, under a three-day CR for FY 2005, an office must fund a severable PSC contract during the three-day period but may fund contract performance beyond the three-day period. The ability to incur such obligations, however, is subject to the availability of funds for obligation for the CR period.

If there is a funding lapse (no appropriation and no CR), PPC, in coordination with the Office of General Counsel, will issue instructions on operations.

603.4 MANDATORY REFERENCES

603.4.1 External Mandatory References

a. **FAR 17.104, Multi-Year Contracting**

b. **FAR 32.703, Contract Funding Requirements**

c. **31 U.S.C. Sec. 1502 (a), "Bona fide needs rule"**

d. **41 U.S.C. 253L, Severable services contracts for periods crossing fiscal years**

e. **41 U.S.C. 254c, Multi-Year Contracts**

603.4.2 Internal Mandatory References

a. **ADS 602, Forward Funding of Program Funds**

603.5 ADDITIONAL HELP

603.6 DEFINITIONS

The ADS Glossary includes the definitions listed below. See the **ADS Glossary** for all ADS terms and definitions.

Continuing Resolution (CR)
A CR is an "appropriation" for the entire fiscal year(s), pending enactment of a regular appropriation, but subject to time limitations as to how long it remains in effect. (Chapter 603)

Forward Funding
Obligating, from current-year funds, to cover the cost of goods and/or services to be received/provided in a subsequent fiscal year. See Chapter 602 for definition as it relates to program funds. (Chapter 603)

Obligating Official
USAID official with the delegated authority to sign obligating documents. This

includes the authority to negotiate, execute, amend, and administer agreements obligating USAID funds. The Obligating Official may be an Agreement Officer, Contracting Officer, Executive Officer, Assistant Administrator, Deputy Assistant Administrator, or other official. (Chapters 603, 621)

Obligation Manager
The individual responsible for managing a specific obligation. The Obligation Manager may be the Cognizant Technical Officer, Activity Manager, Strategic Objective Team Leader, Executive Officer, or other official. (Chapters 202, 303, 603, 621)

Personal Service Contracts (PSCs)
PSCs are severable, as the contract is for services, not an end-product, and the organization would receive a benefit from the services provided even if the contract were terminated early. (Chapter 603)

Severable/Non-severable Contract
A severable contract, if terminated, still provides a benefit from the amounts paid/obligated. For example, an organization with a service contract to wash 1,000 windows during the next six months receives the benefit of 10 clean windows if the contract is terminated after only 10 windows are washed (and presumably would not have to pay for the unwashed windows).

A non-severable contract, if terminated, provides no benefit. For example, an organization with a research contract receives no benefit if the contract is terminated before the study is completed. Some contracts may be severable in part. For example, an organization may have a contract to purchase 20 LAN servers (non-severable) and maintain the servers for 18 months (severable). (Chapter 603)

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