

232.703 Contract funding requirements.

232.703-1 General.

(1) A fixed-price contract may be incrementally funded only if—

(i) The contract (excluding any options) or any exercised option—

(A) Is for severable services;

(B) Does not exceed one year in length; and

(C) Is incrementally funded using funds available (unexpired) as of the date the funds are obligated; or

(ii) The contract uses funds available from multiple (two or more) fiscal years and—

(A) The contract is funded with research and development appropriations; or

(B) Congress has otherwise authorized incremental funding.

(2) An incrementally funded fixed-price contract shall be fully funded as soon as funds are available.

[71 FR 18673, Apr. 12, 2006]

232.703-3 Contracts crossing fiscal years.

(b) The contracting officer 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 1 year (10 U.S.C. 2410a).

[64 FR 28110, May 25, 1999]

232.703-70 Military construction appropriations act restriction.

Annual military construction appropriations acts restrict the use of funds appropriated by the acts for payments under cost-plus-fixed-fee contracts (see 216.306(c)).

[61 FR 7744, Feb. 29, 1996]

232.704 Limitation of cost or funds.

232.704-70 Incrementally funded fixed-price contracts.

(a) Upon receipt of the contractor's notice under paragraph (c) of the clause at 252.232-7007, Limitation of Government's Obligation, the contracting officer shall promptly provide

written notice to the contractor that the Government is—

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

(2) Terminating the contract; or

(3) 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.

(b) Upon learning that the contract will receive no further funds, the contracting officer shall promptly give the contractor written notice of the Government's decision and terminate for the convenience of the Government.

(c) The contracting officer shall ensure that, in accordance with paragraph (b) of the clause at 252.232-7007, Limitation of Government's Obligation, sufficient funds are allotted to the contract to cover the total amount payable to the contractor in the event of termination for the convenience of the Government.

232.705 Contract clauses.

232.705-70 Clause for limitation of Government's obligation.

Use the clause at 252.232-7007, Limitation of Government's Obligation, in solicitations and resultant incrementally funded fixed-price contracts. The contracting officer may revise the contractor's notification period, in paragraph (c) of the clause, from "ninety" to "thirty" or "sixty" days, as appropriate.

Subpart 232.8—Assignment of Claims

232.803 Policies.

(b) Only contracts for personal services may prohibit the assignment of claims.

(d) Pursuant to Section 3737(e) of the Revised Statutes (41 U.S.C. 15), and in accordance with Presidential delegation dated October 3, 1995, Secretary of Defense delegation dated February 5, 1996, and Under Secretary of Defense

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(Acquisition, Technology, and Logistics) delegation dated February 23, 1996, the Director of Defense Procurement determined on May 10, 1996, that a need exists for DoD to agree not to reduce or set off any money due or to become due under the contract when the proceeds under the contract have been assigned in accordance with the Assignment of Claims provision of the contract. This determination was published in the FEDERAL REGISTER on June 11, 1996, as required by law. Nevertheless, if departments/agencies decide it is in the Government's interests, or if the contracting officer makes a determination in accordance with FAR 32.803(d) concerning a significantly indebted offeror, they may exclude the no-setoff commitment.

[56 FR 36409, July 31, 1991, as amended at 61 FR 50454, Sept. 26, 1996; 65 FR 39706, June 27, 2000]

232.805 Procedure.

(b) The assignee shall forward—

(i) To the administrative contracting officer (ACO), a true copy of the instrument of assignment and an original and three copies of the notice of assignment. The ACO shall acknowledge receipt by signing and dating all copies of the notice of assignment and shall—

(A) File the true copy of the instrument of assignment and the original of the notice in the contract file;

(B) Forward two copies of the notice to the disbursing officer of the payment office cited in the contract;

(C) Return a copy of the notice to the assignee; and

(D) Advise the contracting officer of the assignment.

(ii) To the surety or sureties, if any, a true copy of the instrument of assignment and an original and three copies of the notice of assignment. The surety shall return three acknowledged copies of the notice to the assignee, who shall forward two copies to the disbursing officer designated in the contract.

(iii) To the disbursing officer of the payment office cited in the contract, a true copy of the instrument of assignment and an original and one copy of the notice of assignment. The disbursing officer shall acknowledge and return to the assignee the copy of the

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notice and shall file the true copy of the instrument and original notice.

232.806 Contract clause.

(a)(1) Use the clause at 252.232-7008, Assignment of Claims (Overseas), instead of the clause at FAR 52.232-23, Assignment of Claims, in solicitations and contracts when contract performance will be in a foreign country.

(2) Use Alternate I with the clause at FAR 52.232-23, Assignment of Claims, unless otherwise authorized under 232.803(d).

[62 FR 34126, June 24, 1997]

Subpart 232.9—Prompt Payment

232.903 Responsibilities.

DoD policy is to assist small disadvantaged business concerns by paying them as quickly as possible after invoices are received and before normal payment due dates established in the contract (see 232.906(a)).

[70 FR 75413, Dec. 20, 2005]

232.904 Determining payment due dates.

(d) In most cases, Government acceptance or approval can occur within the 7-day constructive acceptance period specified in the FAR Prompt Payment clauses. Government payment of construction progress payments can, in most cases, be made within the 14-day period allowed by the Prompt Payment for Construction Contracts clause. While the contracting officer may specify a longer period because the period specified in the contract is not reasonable or practical, such change should be coordinated with the Government offices responsible for acceptance or approval and for payment. Reasons for specifying a longer period include but are not limited to: the nature of the work or supplies or services, inspection or testing requirements, shipping and acceptance terms, and resources available at the acceptance activity. A constructive acceptance period of less than the cited 7 or 14 days is not authorized.

[70 FR 75413, Dec. 20, 2005]