

409th CSB PARC TIPS

Training in a Practical Sense

PARC TIPS Number: 11-001

Date: 18 August 2011

SUBJECT: Availability of Funds

REFERENCE: FAR 1.602-2(a), FAR 32.703, FAR 52.232-18 Availability of Funds, FAR 52.232-19 Availability of Funds for Next Fiscal Year, and AFARS 5101.602-2

DISCUSSION/GUIDANCE:

1. One of the basic principles in contracting is stated clearly in FAR 1.602-2(a), “Contracting Officers shall ensure that sufficient funds are available for obligation”. This requirement is also reiterated in FAR 32.702, “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. Before executing any contracts, the contracting officer shall – (a) obtain written 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.”
2. There may be instances where we need to begin the procurement process prior to funds being available. However, under no circumstance shall a contractor perform services or deliver products without funds being obligated on that effort. If the procurement is in the same fiscal year, under no circumstances can a contract be awarded without funds being available. (Note: This prohibition does not apply to a basic requirements contract but does apply to any order issued thereunder.)
3. In those instances where funds are not available for an effort in the CURRENT fiscal year, solicitations may still be issued but they must be made in accordance with AFARS 5101.602-2:
 - a. Before issuing a solicitation, the KO must ensure the following:
 - i. The effort must be for a high priority requirement,
 - ii. There is a high probability that the requirement will not be cancelled,
 - iii. The PR&C includes a statement signed by the resource manager stating “This requirement is included or provided for in the financial plan for fiscal year _____. The accounting classification will be _____. This statement is not a commitment of funds.”
 - iv. The solicitation must include the following statement in the solicitation issued pursuant to this authority. “Funds are not presently available for this acquisition. No contract award will be made until appropriate funds are made available.”
 - b. Again, a contract shall not be awarded nor shall a prospective contractor be notified of a pending award until funds have been certified to be available.
4. In those instances where the government is soliciting and awarding without funds when the obligation is properly chargeable to the NEXT fiscal year, the following applies:

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- a. The contracting officer shall ensure that FAR 52.232-18 or 52.232-19 is incorporated into the solicitation and award. The use of the specific clause is dependent on the contract; Indefinite Delivery/Indefinite Quantity (ID/IQ) or Requirements contracts shall include 52.232-19 and all other contracts shall use 52.232-18.
- b. The general conditions that must be met in order to use these clauses are:
 - i. The contract action must be properly chargeable to funds in the new FY,
 - ii. Efforts are using Operation and Maintenance (O&M) funds and are continuing services necessary for normal operations and
 - iii. For which Congress previously had consistently appropriated funds.
- c. Essentially, these clauses tell the contractor that funds are not currently available for the contract action and the Government is not liable for payment to the contractor until the contractor is notified of funds availability. If the contractor performs prior to this notification they put themselves at risk for non-payment. Keep in mind that contractor performance and Government acceptance of services without funds availability is contrary to the Anti-Deficiency Act.
- d. **Contracting Officers should remind contractors, upon award of a contract with the SAF clause, they should not perform services until funds have been made available.**

FOR QUESTIONS PLEASE EMAIL THE 409th CSB PARC POLICY AND COMPLIANCE OFFICE AT: [DL-409CSB-HQ-CMD-PARC Policy@eur.army.mil](mailto:DL-409CSB-HQ-CMD-PARC%20Policy@eur.army.mil)