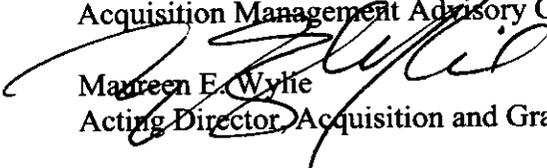




UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
ACQUISITION AND GRANTS OFFICE

9/18/08

MEMORANDUM FOR: Heads of Contracting Offices  
Field Delegates  
Purchasing Agents  
Acquisition Management Advisory Committee

FROM:   
Maureen E. Wylie  
Acting Director, Acquisition and Grants Office

SUBJECT: Partially Funding Firm-Fixed-Price Contracts  
During a Continuing Resolution

AGO POLICY NO.: AGO-INFO-08-017

The purpose of this issuance is to provide AGO policy on funding Firm-Fixed-Price (FFP) Contracts during periods of a Continuing Resolution (CR). This policy has been developed in conjunction with the DOC Office of General Counsel. It is based on the recent guidelines in Office of Federal Procurement Policy (OFPP) Memorandum for Chief Acquisition Officers and Senior Procurement Executives dated 2/6/2007 and is not inconsistent with GAO appropriation rulings.

NOAA and other federal agencies have been constrained by the extended duration of CRs in recent years. Notwithstanding any CR, agencies are mandated to ensure compliance with the Anti-Deficiency Act in funding their contracts. This Act prohibits any officer or employee of the government from creating or authorizing an obligation in excess of the funds available, or in advance of appropriations, unless otherwise authorized by law.

The Anti-Deficiency Act generally requires that FFP contracts be fully funded at the time the contract is awarded or an option is exercised; however, recent policy issued by OFPP provides agencies some latitude in funding these contracts under certain conditions. This latitude is based on the contract containing the FAR provision FAR 52.232-18, Availability of Funds. Given this guidance, AGO has established the following policy to enable NOAA program offices and external clients to more effectively utilize the limited funding allocated under a CR:

- a. Absent specific authority, CR funding is only available to fund ongoing projects and activities, not new initiatives or projects. New FFP contracts can be of two types: (1) An award of a successor contract (to an incumbent or otherwise) that continues to fund an ongoing project or activity, or (2) An award that initiates a project or activity. Any new FFP contract of the first type, or FFP option exercise that would be performed during a CR must provide at least partial funding for obligation on the contract. The funding obligated to the new contract or option must be consistent with the terms of the

CR and the amount of funds it makes available. When a CR is passed prior to depletion of funds, the program office will work closely with its servicing AGO Division to determine how much funding will be made available and ensure that the funding is provided in advance of the start date of the contract or option period.

Contracts of the second type may not be funded during the period of a CR absent specific Congressional authority.

- b. The contract action will cite the clause at FAR 52.232-18 to expressly condition the government's obligation under the contract for the balance of funding required upon the availability of funds. If FAR 52.232-18 has not been included in the contract, the contract cannot be funded or the option exercised unless a bilateral modification is negotiated with the contractor for its inclusion.
- c. Assuming that the CR does not lapse, additional partial or full funding will be provided to the servicing AGO Division for obligation on the contract before the existing funding has been fully expended in performance by the contractor.
- d. Partial funding of FFP contracts is authorized only during the period of a CR. Once all appropriations have been received and allocated by NOAA, the balance of funding necessary to fully fund the contract will be promptly provided to the servicing AGO Division. ***Without specific Congressional authority for the contract at issue, partial funding of FFP contracts can not be used after the Department has received its appropriation.***
- e. Because, absent specific authority, appropriations made under a CR are not available to fund new initiatives or projects. Program offices shall coordinate with their Budget Office to ensure that the terms of any CR are met before funds are provided to the servicing AGO Acquisition Division for obligation. Submission of funding to the servicing AGO Division will constitute confirmation that use of the funding for obligation on the specific contract complies with the terms of the applicable CR.

Please ensure that this information gets distributed widely. The policy will be posted to the AGO web site in the near future.

If you have any questions, please contact Jerry Rorstrom-Lee at (301) 713-0833, extension 140 or [Jerry.Rorstrom-Lee@noaa.gov](mailto:Jerry.Rorstrom-Lee@noaa.gov).