ADS Chapter 603

Forward Funding, Non-Program Funds

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POC for ADS 603: Diana Fernandez, difernandez@usaid.gov

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ADS 603 – Forward Funding, Non-Program Funds

603.1 OVERVIEW

Effective Date: 01/12/2015

This ADS chapter provides guidance on forward funding of appropriations for the Operating Expense (OE), Operating Expense of the Office of the Inspector General (OIG-OE), and Development Credit Administrative Expense (DCAE) accounts. This guidance also applies to program funds authorized by statute for administrative purposes. (See **ADS 602, Forward Funding of Program Funds**, for guidance for program funds, including program-funded operational costs.) Exceptions to the forward funding guidance of this chapter require approval from the Bureau for Management, Office of Management Policy, Budget, and Performance (M/MPBP).

This chapter does not apply to the Working Capital Fund used by alternate service providers under the International Cooperative Administrative Support Services (ICASS) program (see **ADS Chapter 635, Working Capital Fund**).

603.2 PRIMARY RESPONSIBILITIES

Effective Date: 01/12/2015

a. The **Bureau for Management, Office of Management Policy, Budget and Performance (M/MPBP)** is responsible for developing and interpreting policy on forward funding non-program funds and approving exceptions, as appropriate.

b. **Obligating officials** and **obligation managers** are responsible for ensuring that funding decisions comply with the policy directives and required procedures in this chapter.

c. The **Office of the General Counsel (GC)**, including its **Resident Legal Officers (RLOs)**, upon request, advises any operating unit on the application of forward funding authorities.

603.3 POLICY DIRECTIVES AND REQUIRED PROCEDURES

603.3.1 Principles for Forward Funding

Effective Date: 01/12/2015

Forward funding is the practice of obligating current fiscal-year-fund amounts to cover the cost of goods and services that will be received in a subsequent fiscal year. The following are the guiding principles for forward funding both non-program and program funds (see **ADS 602, Forward Funding, Program Funds**).

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 (in some cases arising prior to but continuing to exist in) the fiscal years covered by

the appropriation. To forward fund, an operating unit must have a current and continuing need or an exception to the bona fide needs rule.

To determine a current need, the operating unit must consider the fiscal year of performance or delivery and the necessary time between contract award and performance or delivery. For example, if the Agency needs information technology services in FY 2014 that requires signing the contract in FY 2013 for the services, then a FY 2013 bona fide need exists.

b. Severable and Non-Severable Contracts. Government Accountability Office (GAO) Comptroller General decisions on the bona fide needs rule distinguish between severable and non-severable contracts.

Severable contracts represent services that are continuing or recurring and can be separated into components. These components may be performed to meet separate needs. Under a severable contract, an operating unit receives value each time the contractor renders a service. Unless an exception to the bona fide needs rule applies, the operating unit may not fund severable contracts across fiscal years and must charge severable services to the fiscal years in which the contractor renders the service.

A non-severable contract represents a single undertaking that cannot be separated into components. With a non-severable contract, an operating unit receives value only when the contractor performs the entire service. Unless an exception to the bona fide needs rule applies, an operating unit must fully fund a non-severable contract in the fiscal year in which it signs the contract, even though performance may extend into future fiscal years.

Examples:

A contract that, if terminated, still provides a benefit from its cost is considered severable. For example, an operating unit has a service contract to wash 1,000 windows for six months. If the contract is terminated after only 10 windows are washed, the operating unit has the benefit of 10 clean windows (and presumably would not have to pay for the windows that were not washed). This contract is considered to be severable. Another example is supplies; operating units must use current funds for current needs. When the delivery of supplies may not occur until the following fiscal year, a current need, e.g., replacement stock, must exist to make that order.

A contract that, if terminated, does not provide a benefit from its cost is considered non-severable. If the contract is for a study, terminating the

contract before the study is complete does not leave a useful product or benefit. Therefore, the contract is considered non-severable.

Some contracts may be severable in part. For example, if an operating unit signs a contract with a company for the purchase of 10 copiers and the maintenance of the copiers for 18 months, the portion of the contract relating to the purchase would be considered non-severable while the portion relating to the maintenance would be considered severable.

c. Exceptions to the Bona Fide Needs Rule

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

The basis of the bona fide needs rule is that Congress appropriates funding only for the needs of the current fiscal year, as normally specified in the annual appropriations law. However, if the Agency's Congressional Budget Justification notifies Congress of the Agency's intent to use funding for a certain future-year need, then, in enacting the appropriations bill, Congress authorizes the use of funds for that future-year 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. The contract period cannot exceed one year. For example, a contract signed in May 2013 may fund performance from May 2013 to May 2014.

- **Five-Year Authority**. **41 U.S.C. 254c** and **FAR 17.104** authorize multi-year contracts of up to five years for both severable and non-severable services and materials if the **Procurement Executive** determines that

  (a) The need for the property or services is reasonably firm and continuing over the period of the contract, and

  (b) A multi-year 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.

  Operating units have the flexibility to fund the obligations up front or incrementally (including by forward funding using the bona fide needs rule).

(3) Forward Funding Authority for the Operating Expense Account

Since FY 2004, the annual appropriation act, under the Operating Expense account heading, provides the OE account with forward-funding authority for contracts and agreements. Under this authority, operating units may use current-year OE to forward fund contracts and agreements through September 30 of the fiscal year following the last year of the period of availability of the appropriation.

To use the forward funding authority, operating units must obligate OE funds by September 30 of the final fiscal year in the appropriation's period of availability.

- **One-year Appropriation**: With a one-year appropriation, forward-funding can occur only in the year of availability. For example, contracts and agreements entered into with FY 2014 funds may have commitments for the expenditure of funds through FY 2015.

- **Two-year Appropriation**: With a two-year appropriation, forward-funding can occur only in the second year of the period of availability. For example, the Agency could have used the FY 2012 OE appropriation in FY 2013 (the second year of availability) to forward fund contracts and agreements through September 30 of FY 2014 (the following fiscal year).

Note: The OE appropriation had a one-year period of availability from FY 1976 to FY 2011, a two-year period of availability from FY 2012 to FY 2013, and reverted to a one-year period of availability in FY 2014.

The forward-funding authority in the USAID OE appropriation language applies only to the OE account; it does not apply to the Office of Inspector General OE, Development Credit Administrative Expense, or program funds authorized for administrative expenses.

(4) Foreign Assistance Act Exceptions

- **Section 636 (a) (10) of the Foreign Assistance Act (FAA)** permits advance funding of the rent or lease of office and residential space outside the United States for up to ten years. In addition, it permits the advance funding of maintenance, furnishings, necessary repairs, improvements and alterations, fuel, and utilities for such properties. This authorization of payments in advance is also an exception to the advance payment statute under **31 U.S.C. 3324**.

- **Section 635 (h) of the FAA** provides that contracts or agreements funded under FAA chapter 1 (except development loans) and title II of chapter 2 of part I and under part II may, subject to any future action of

the Congress, extend at any time for not more than five years. For USAID, this authority applies primarily to the Development Assistance and Global Health accounts. It does not apply to the Economic Support Fund account.

Note: Operating units should consult with GC and RLOs if they have any questions on forward funding.

603.3.2 Categories of Operational Costs

Effective Date: 01/12/2015

The policies in **603.3.2.1** through **603.3.2.10** address the most common types of operational costs and how they relate to the OE appropriation's forward-funding authority described in **603.3.1.c.1** for costs that otherwise would be restricted from forward funding.

603.3.2.1 Salaries, Benefits, and Awards of Direct-Hire Personnel

Effective Date: 01/12/2015

Operating units must use current-year funds to cover actual and accrued obligations for both U.S. and Foreign Service National (FSN) direct-hire personnel salaries, benefits, and awards each fiscal year (see **Funding the USAID Workforce**).

603.3.2.2 Service Contracts

Effective Date: 01/12/2015

a. Service Contracts (Severable): Operating units may obligate OE funds in the final year of the period of availability for services to be provided through September 30 of the following fiscal year. Operating units must obligate the full amount of liability to the government, which may include termination costs.

b. Service Contracts (Non-Severable): Unless an exception to the bona fide needs rule applies, operating units must fully obligate the award amount at the time they sign contracts, regardless of the period of performance.

c. Service Contracts (Part Severable/Part Non-Severable): The severable portion must follow the rules in **603.3.2.2.a**. The non-severable portion must follow the rules in **603.3.2.2.b**.

603.3.2.3 Personal Services Contracts – United States, Foreign Service National, and Third Country National

Effective Date: 01/12/2015

a. Generally, OE-funded personal services contracts (PSCs) are severable. Operating units may obligate severable costs, such as salaries and benefits, under a PSC through one year from the date of the contract/amendment for

services crossing into the next fiscal year, per the one-year authority contract exception in **603.3.1.c.3**. PSCs cannot be funded beyond 12 months.

b. In select circumstances, PSCs may be non-severable, such as when an operating unit needs services for the length of a particular activity (e.g., a reconstruction effort). In such cases, at the time of requisition, M/MPBP must approve the request to fully fund the contract.

603.3.2.4 Involuntary Separation Payments for Direct-Hire Personnel

Effective Date: 01/12/2015

Due to the unpredictable nature of involuntary separation payments for direct-hire personnel, the Agency may not obligate these payments beyond the end of the current fiscal year. Following is more specific guidance.

a. U.S. Direct-Hire Personnel: The Office of the Chief Financial Officer Payroll Division (M/CFO/FPS) processes the involuntary separation payments for U.S. direct-hire personnel. Obligations for these personnel occur periodically, often into the next fiscal year, using funds from the new fiscal year. M/MPBP/BUD is responsible for providing funds for OE-funded employees and operating units are responsible for program-funded employees.

b. Foreign Service National Direct-Hire Personnel: If payments to FSN direct-hire personnel occur over a period of time, the guidelines in **603.3.2.1** apply. If the payment is lump sum, the Mission Controller records the obligation when the employee formally receives the notice of separation (see **ADS 628, Gifts and Donations and Dollar Trust Fund Management**).

603.3.2.5 Voluntary and Involuntary FSN Separation Payments

Effective Date: 01/12/2015

a. Voluntary FSN Separation Payments: Missions must annually compute and obligate the funds required to cover the cumulative liability through the end of the fiscal year of voluntary separation deposits into the FSN Separation Liability Trust Fund. Missions must use current-year funds to obligate any additional amounts due. Missions cannot forward-fund FSN separation payments (see **ADS 628**).

b. Involuntary FSN Separation Payments: Missions may use FSN Separation Liability Trust Fund deposits to fund payments due to reductions in force (RIF). Missions must fund any shortfalls related to RIF actions with current-year funds. (see **ADS 628**).

603.3.2.6 Travel
Effective Date: 01/12/2015

a. **Post Assignment Travel:** Operating units may obligate the full cost of travel and transportation (including transportation of effects) in the final year of the period of availability for travel in the current or following fiscal year (see **Appropriate Fiscal Year to Charge for USAID Employees Travel and Transportation of Effects**).

b. **Retirement Travel:** Operating units may obligate the estimated cost of retirement travel for Foreign Service (FS) personnel in the final year of the period of availability 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 occurs in Washington, D.C. or at an overseas post. If travel does not occur within the prescribed period, the operating unit must de-obligate the funds (see **ADS 525, Separation/Retirement Travel for Foreign Service Employees**).

c. **Temporary Duty and Other Operational Travel:** Operating units may obligate the full cost of travel in the final year of the period of availability for travel in the current or following fiscal year.

603.3.2.7 Training
Effective Date: 01/12/2015

Operating units may obligate the full cost of training in the final year of the period of availability for training in the current or following fiscal year. Training is usually a non-severable contract. Therefore, operating units must obligate the full cost of the training in the current fiscal year, even though the training may be completed the following year.

603.3.2.8 Rental of Space (Office, Residential, or Other)
Effective Date: 01/12/2015

Operating units may obligate funds for the rental of space on a monthly, quarterly, or annual basis, as required. Operating units may obligate for rental periods beyond September 30 of the current fiscal year only if the lease requires rent payment before that September 30 date. **Note:** The overseas exception pursuant to FAA 636(a)(10) discussed in **603.3.1.c.4**.

603.3.2.9 Supplies, Materials, and Equipment
Effective Date: 01/12/2015

Operating units may forward fund supplies, materials, and equipment for requirements in the final year of the period of availability through September 30 of the following fiscal year.

603.3.2.10 Utilities, Phones, ICASS, and Other Recurring Costs
Effective Date: 01/12/2015

Operating units may forward fund utilities, phones, ICASS, and other recurring costs in the final year of the period of availability through September 30 of the following fiscal year. Operating units have the discretion to record obligations for anticipated recurring costs at the beginning of the fiscal year, in each quarter, or in each month.

603.3.3 Application to Multi-Year and No-Year Appropriations
Effective Date: 01/12/2015

The policies in **603.3.2.1** through **603.3.2.10** apply to multi-year appropriations. For example, operating units may fund a severable contract for the entire two-year period under a two-year appropriation.

No-year appropriations are available without regard to the bona fide needs rule.

603.3.4 Application to Continuing Resolutions
Effective Date: 01/12/2015

The policies in **603.3.2.1** through **603.3.2.10** apply to continuing resolutions (CRs). A CR is a temporary appropriation, pending enactment of a standard appropriation for the entire fiscal year. A CR, despite being usually in effect for a few days to a few months, is available for the bona fide needs of the entire fiscal year. Therefore, during a CR, an operating unit may fund an obligation for the entire current fiscal year for a one-year appropriation, or, in the case of multi-year appropriations, for all or part of the multiple fiscal years, not just the CR period.

For example, under a three-day CR for FY 2014, an operating unit may seek to fund a training contract. That operating unit may fund the contract performance in its entirety beyond the three-day period up to the end of the fiscal year. The ability to incur such obligations, however, is subject to the availability of funds during the CR period.

603.3.5 Application to Lapse in Appropriation
Effective Date: 01/12/2015

If there is a funding lapse (no current-year appropriation or CR), the Bureau for Management, in coordination with the Office of the General Counsel, will issue instructions for operations.

603.4 MANDATORY REFERENCES

603.4.1 External Mandatory References
Effective Date: 01/12/2015

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

b. **31 U.S.C. 3324, Advances**

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

d. **41 U.S.C. 254c, Multi-year contracts**

e. **FAA Sec. 636 (a) (10), Advance funding of rent outside the U.S.**

f. **FAA Sec. 635 (h), Contracts may extend for not more than five years**

g. **FAR 17.104, Multi-year contracting**

h. **FAR 32.703, Contract funding requirements**

603.4.2 Internal Mandatory References

Effective Date: 01/12/2015

a. **ADS 525, Separation/Retirement Travel for Foreign Service Employees**

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

c. **ADS 628, Gifts and Donations and Dollar Trust Fund Management**

d. **Appropriate Fiscal Year to Charge for USAID Employees Travel and Transportation of Effects**

e. **Bureau for Management, Office of the Chief Financial Officer, Financial, Policy, and Support Notice - Funding the USAID Workforce)**

603.5 ADDITIONAL HELP

Effective Date: 01/12/2015

a. **A Glossary of Terms Used in the Federal Budget Process**

b. **Principles of Federal Appropriation Law, U.S. Government Accountability Office, Volume I, Chapter 5, Availability of Appropriations: Time**

603.6 DEFINITIONS

Effective Date: 01/12/2015

The terms and definitions listed below have been incorporated into the ADS Glossary. See the **ADS Glossary** for all ADS terms and definitions.

appropriation
A form of budget authority provided by law that permits Federal agencies to incur obligations and make payments out of the Treasury for specified purposes. (**Chapters 603, 621**, **634**)

bona fide needs rule
A fundamental principle of appropriations law that an appropriation may be obligated 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 funds in the final fiscal year of the period of availability 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. (**32 USC 1502(a)**) (**Chapter 603**)

continuing resolution (CR)
An "appropriation" for an entire fiscal year, pending enactment of a standard appropriation, but subject to time limitations, usually a few days to a few months, on how long it remains in effect. The funding available under a CR usually is based on the prior-year appropriation level and the portion of the fiscal year during which the CR is in effect. (**Chapters 603**, **621**, **634**)

forward funding
Obligating, from funds in the final year of the period of availability, amounts to cover the cost of goods and services that will be received in a subsequent fiscal year. Rules for forward funding will vary somewhat depending on the goods and services under consideration. (**Chapters 546**, **602**, **603**, **621**)

one-year appropriation
Budget authority available for obligation only during a specific fiscal year that expires at the end of that fiscal year. It is also known as annual budget authority. (**Chapter 603**)

multiple-year appropriation
Budget authority available for obligation for a fixed period of time in excess of one fiscal year. This authority generally takes the form of two-year, three-year, and so forth, availability. (**Chapter 603**)

no-year appropriation
Funds appropriated to be available for obligation in succeeding fiscal years until amounts are exhausted. (**Chapter 603**)

obligation
A term of appropriations law that means some action that creates a definite commitment, which creates a legal liability of the government for the payment of funds for specific goods or services ordered or received. It includes a range of transactions, e.g., contracts, grants, loans, guarantees, wages, and travel. (**Chapter 603** and **621**)

obligating official
USAID officials with the delegated authority to sign obligating documents. Their duties include 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 Agency official. (**Chapters 603** and **621**)

obligation manager
An individual responsible for managing a specific obligation. The obligation manager may be the contracting officer's representative, agreement officer's representative, activity manager, assistance objective team leader, executive officer, or other Agency official. (**Chapters 202**, **303**, **603**, **621**)

severable/non-severable contracts
Severable contracts represent continuing or recurring services that can be separated into components. These components may be performed to meet separate needs. Under a severable contract, operating units receive value each time the contractor renders a service. Unless an exception to the bona fide needs rule applies, operating units may not fund severable contracts across fiscal years and must charge severable services to the fiscal years in which the contractor renders the service.

A non-severable contract represents a single undertaking that cannot be separated into components. With a non-severable contract, operating units receive value only when the contractor performs the entire service. Unless an exception to the bona fide needs rule applies, operating units must fully fund non-severable contracts in the fiscal year in which they sign the contracts, even though performance may extend into future fiscal years. (**Chapter 603**)

training
A learning activity taking place in the U.S., a third country, or in-country in a setting predominantly intended for teaching or imparting certain knowledge and information to the participants with formally designated instructors or lead persons, learning objectives, and outcomes, conducted fulltime or intermittently. (**Chapters 253**, **580**, **603**)

travel
The official travel and transportation of employees, their dependents and effects. It also includes the administration of allowances and benefits to employees assigned to overseas posts. (**Chapter 527** and **603**)

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