
**ACQUISITION FUNDING —
TERMINOLOGY AND REQUIREMENTS**



Antideficiency Act (ADA) — One of the major laws through which Congress exercises constitutional control of the public purse. Some of its prohibitions include: making or incurring overobligation or overexpenditure from an appropriation, apportionment, or formal subdivision thereof (i.e., allotment or suballotment, if issued, under NASA Fund Control Regulations); making or incurring expenditures or obligations in advance of an appropriation unless authorized by law; and accepting voluntary services unless authorized by law. Additional related restrictions include: only using an appropriation for its intended purpose and, for appropriations made for a definite period (e.g., two-year funds), only using the appropriation for expenses and obligations properly incurred during that time (“bona fide needs” rule). ADA constraints apply to all phases of an appropriation's life cycle. (*31 United States Code (U.S.C.) § 1301(a), 1341(a)(1)(A)&(B), 1342, 1502(a), 1514(a), and 1517(a); (NPR 9470.1, Attachment D, “NASA Fund Control Regulations”;* *Government Accounting Office’s (GAO’s) “Antideficiency Act Background”*)

Bona Fide Need — An appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability, or to complete contracts properly made and obligated within the period of availability. That is, the obligation must be to satisfy a need of the agency that arose during the period of availability (with certain limited exceptions) and must meet the purpose and availability of funds established in the appropriation. *31 U.S.C. § 1501 and 1502(a); NPR 9470.1. Additional discussion: Principles of Federal Appropriations Law (Red Book), Chapter 5.B.)*

Basic Requirements for Funding Procurement Actions and Recording the Obligation — An obligation is any act that legally binds the Government to make an outlay or expenditure of funds immediately or in the future; a “bona fide” need must exist and funds/budget authority must be available, apportioned, and distributed before creating an obligation. The obligation is recorded in the official accounting system.

The obligation must be made within the fiscal year sought to be charged and must meet a bona fide need of that fiscal year. Obligations are recorded when the precise obligation is known,

taking into account the bona fide need requirements. If a precise amount is not known at the time a liability is incurred, an initial amount must still be recorded; adjustments to obligations are made when more precise information becomes known.

It does not violate the Bona Fide Needs Rule, the Recording Act, or the ADA to use budget authority to fund an acquisition incrementally within a period of availability, as long as the budget authority equals the obligation by the end of the period, and sufficient funds were available to the Agency at the time of award. Such a practice, however, could lead to a violation of the ADA should funds later be insufficient to cover the requirement, since it would be improper to charge future fiscal years for nonseverable services obligated in a prior year.

(37 Comp. Gen. 155/GAO Decision B-130815; 62 Comp. Gen. 143, 146/GAO Decision B-174839; GAO Decision B-272191; Red Book, Chapter 7.B.1; Federal Acquisition Regulations (FAR) 32.703-1)

Commercial Space Launch Act (CSLA) Agreements — An agreement awarded to meet the purpose of the CSLA. See NID 9090.1 on Commercial Services Pricing for additional information. *(49 U.S.C. § 70101)*

Contingent Liability — An existing condition, situation, or set of circumstances which poses the possibility of a loss to an agency that will ultimately be resolved when one or more future events occur or fail to occur.

A contingent liability does not create an obligation unless and until the contingency materializes. However, agencies have a legal obligation to take reasonable steps to avoid situations in which contingent liabilities become actual liabilities that result in Antideficiency Act violations. This may include the “administrative reservation” or “commitment” of funds, as well as taking other actions to prevent contingencies from materializing.

(GAO Decision B-255831; Red Book, Chapter 7.C; GAO’s “A Glossary of Terms Used in the Federal Budget Process”)

Continuing Resolution — An appropriation act that provides budget authority for the continuation of operations when a regular appropriation act has not been enacted. Continuing resolutions typically incorporate by

reference the same restrictions and conditions from regular apportionments.

The continuing resolution appropriates an annual amount, and bona fide need and obligation requirements are typically the same as under a regular appropriation. Thus, a contract severable by fiscal year should be funded for services through September 30 of the current fiscal year or through the end of the period of performance, whichever comes first, if the funding is available. However, exceptions may apply; for example, severable service contracts may be funded through the end of the continuing resolution if necessary to comply with the limitations set forth in the legislation and if an availability of funds clause is contained in the contract.

(Red Book, Chapter 10.A.1. through 10.B.3.; GAO’s “A Glossary of Terms Used in the Federal Budget Process”)

Contract

- “Contract” means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements...

While the term “contract” is often used informally to refer to all form of binding agreements, the better practice is to reserve the term for procurement contracts covered under the FAR. This does not include agreements under “other transaction authority,” such as Space Act Agreements or most barter or reimbursable agreements under special authorities like the Commercial Space Launch Act.

(31 U.S.C. § 3324 and § 6303; 41 U.S.C. § 6301 [previously in 41 U.S.C. § 11]; FAR 2.101, Congressional Research Service (CRS) Report for Congress: Other Transaction (OT) Authority); GAO-03-150). See “Grant and Cooperative Agreement” and “Space Act Agreement” for descriptions of those documents and their appropriate use.)

Contract Modifications	<p>— “Contract modification” means any written change in the terms of a contract.</p> <p>Contracts should be funded on a set cycle to minimize the number of funding actions, preferably no more frequently than quarterly. In addition, except to fully fund a contract, incremental funding modifications and modifications to deobligate funds shall not be issued for amounts totaling less than \$25,000.</p> <p>The Procurement Officer, with the Chief Financial Officer’s concurrence, may waive the \$25,000 minimum for contract modifications.</p> <p><i>(Red Book, Chapter 5.B.7; FAR 2.101; NASA FAR Supplement (NFS) 1832.702-70)</i></p>
Contract Period of Performance or Term	<p>— For all severable services contracts, the basic period of performance shall not extend beyond the date of the availability of funds initially obligated to the contract at the time of the award. The Bona Fide Needs Rule, codified at 31 U.S.C. § 1502, also provides that an appropriations or fund with a definite period is available for obligation on contracts properly made within that period of availability for services to be provided during that period of availability. The period of performance of any options on severable services contracts shall not extend beyond the period of availability of the funds corresponding to the exercise of the option. <i>(31 U.S.C. § 1502; Red Book, Chapter 5.A.2.b.; FAR 32.703-3 and 37.106; NASA Procurement Information Circular 11-05)</i></p>
Contractual Services and Supplies	<p>— The obligation for contractual services and supplies is incurred at the time that there is a binding agreement, usually when the contract is signed. This will generally be the maximum liability to the Government within the limitations set forth in the contract terms and considering bona fide need requirements. <i>(Office of Management and Budget (OMB) Circular No. A-11, Section 20.5)</i></p>
Cost Reimbursement	<p>— A cost-reimbursement contract provides for payment of allowable incurred costs, to the extent prescribed in the contract, and establishes an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed without the approval of the contracting officer. The following are types of cost-reimbursement contracts:</p>

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- Cost contract – the contractor receives no fee.
 - Cost-sharing contract – the contractor receives no fee and is reimbursed only for an agreed-upon portion of its allowable costs.
 - Cost-plus-incentive fee contract – provides for an initially negotiated fee to be adjusted later by a formula based on the relationship of total allowable costs to total target costs.
 - Cost-plus-award-fee contract – provides for a fee consisting of a base amount (which may be zero) fixed at inception of the contract and an award amount sufficient to provide motivation for excellence in contract performance.
 - Cost-plus-fixed-fee contract – provides for payment to the contractor of a negotiated fee that is fixed at the inception of the contract.

The funding requirements for cost-reimbursement contracts vary depending on whether they are severable or nonseverable. Nonseverable tasks must be fully funded by an appropriation available for obligation (current) at the time of award. Severable services must be funded by an appropriation available at the time the services are provided.

Cost-reimbursement contracts may be incrementally funded only if otherwise legally authorized and if all of the following conditions are met:

- Total contract value, including options, is \$500,000 or more for R&D contracts under which no supplies are deliverable; or \$1,000,000 or more for all other contracts.
- Period of performance is greater than one year.
- Funds are not available to fully fund at the time of award.
- Initial funding is greater than \$100,000.

The Procurement Officer, with the Chief Financial Officer's concurrence, may waive the conditions for incremental funding set forth in NFS 1832.702-70 and listed in the preceding paragraph.

(61 Comp. Gen. 609/GAO Decision B-195732, which modified 59 Comp. Gen. 518; GAO Decision B-277165; GAO Decision B-317139; Red Book, Chapter 7.B.1.f.; GAO-09-921; FAR 16.301-16.306; FAR 32.703-1; NFS 1832.702-70)

Economy Act Agreement

- An agreement to obtain goods or services from another agency or major unit of the same agency under the terms of 31 U.S.C. § 1535.

Obligations for services must be funded by an appropriation available for obligation when they are rendered and supplies must be funded by an appropriation available when the order is placed. The amount obligated must be deobligated to the extent that the performing agency/unit has not incurred obligations before the end of the period of availability of the ordering appropriation and set agreement period of performance. Funds may not be obligated by the performing agency after the ordering agency's appropriation expires and set agreement period of performance.

(31 U.S.C. § 1535; 34 Comp. Gen. 418/GAO Decision B-121982; (OMB Circular No. A-11, Section 20.5; GAO's "Frequently Asked Questions Regarding Interagency Transactions")

Firm Fixed Price

- A firm fixed price contract provides for a price that is not subject to any adjustment regardless of the contractor's cost experience in performing the contract. It may be used in conjunction with an award-fee incentive and performance or delivery incentives when the award fee or incentive is based solely on factors other than cost. The contract type remains firm-fixed-price when used with these incentives.

If the contract is nonseverable, it must be fully funded by an appropriation available for obligation at the time of award. If the contract has more than one nonseverable component, an obligation is recorded as the nonseverable tasks orders are placed. If the contract is for severable services, it must be funded by an appropriation available for obligation at the time the services are provided. The obligation for severable services is for services through September 30 of the current fiscal year or through the end of the period of performance, whichever comes first.

Fixed price contracts other than research and development (R&D) shall not be incrementally funded, with the exception of high technology capital projects, which are highly dependent on R&D and highly uncertain in outcome.

If otherwise legally authorized, fixed price R&D contracts may be incrementally funded if the incremental funding conditions for

cost-reimbursement contracts are met and the initial funding increment is at least 50 percent of total fixed price. Fixed price incrementally funded contracts must be fully funded as soon as funding is available.

The Procurement Officer, with the Chief Financial Officer, may waive the conditions for incremental funding set forth in NFS 702-70 and discussed in the preceding paragraph.

See “Fixed Price Incentive” for funding requirements of contracts with incentives.

(Red Book, Chapter 7.B.1.f.; GAO-01-432R; (FAR 16.201 and 16.202-1; FAR 32.703-1; NFS 1832.702-70)

**Fixed Price
Incentive or with
Economic Price
Adjustment**

- A fixed price incentive contract is a fixed price contract that provides for adjusting profit and establishing the final contract price based on the contractor’s performance. The contract will state a target cost that may be adjusted based upon an incentive provision or formula in the contract. One with an economic price adjustment provides for revision of the stated contract price upon the occurrence of specified contingencies.

If the contract is nonseverable, it must be fully funded by an appropriation current at the time of award. If the contract has more than one nonseverable component, an obligation is recorded as the nonseverable tasks orders are placed. If the contract is for severable services, it must be funded by an appropriation available for obligation at the time the services are provided. The obligation for severable services is for services through September 30 of the current fiscal year or through the end of the period of performance, whichever comes first. For a fixed price incentive or with economic price adjustment contract, the target amount is the amount to be obligated, with the obligation adjusted upward as incentive payments become due or price adjustments are made. The difference between the target and ceiling prices is a contingent liability that may or may not require future obligations. The agency should administratively reserve sufficient funds to cover the potential liability and avoid the possibility of a violation of the Antideficiency Act or 41 U.S.C. § 6301.

(34 Comp. Gen. 418/GAO Decision B-121982; 55 Comp. Gen. 812/GAO Decision B-184830; GAO Decision B-206283; GAO Decision B-255831; (Red Book, Chapter 7.B.1.f.; FAR 16.403)

Fully Funded Contract

- A contract for which funds are obligated to cover the price or target price of a fixed-price contract or the estimated cost and any fee of a cost-reimbursement contract. Nonseverable contracts must be fully funded during the period of appropriation availability unless statutory authority allows incremental funding. *(GAO Decision B-241415; FAR 32.703-1)*

Grant or Cooperative Agreement

- An instrument providing federal financial assistance in the form of an award, making payment in cash or in kind for a specified purpose. The federal government is not expected to have substantial involvement with the recipient while the contemplated activity is being performed. A cooperative agreement is similar to a grant with the exception that the federal government is expected to have substantial involvement.

Guidance and limitations concerning the funding of grants is found in 14 Code of Federal Regulations (CFR) 1260.11.

In the grant context, the obligation occurs at the time of award.

For discretionary grants, record the full grant amount or amount to be funded in the current fiscal year as the obligation. For formula grants, record the amount determined by the formula or appropriation.

Consistent with NPR 5800.1E, NASA may award grants that contemplate financial assistance over several years. Traditional severability determinations do not apply in the grants context, and NASA has discretion to decide whether to fully or incrementally fund grant awards without regard to the nature of the work being supported.

NASA may fund any grant award fully at the time of award from an appropriation available for obligation at the time of award, even if the work will not be completed or funds disbursed until the period of availability has expired.

Additionally, NASA may incrementally fund multiple-year grant awards by using standard clauses from 14 CFR §§ 1260.52 and 1260.53 to limit NASA's obligation to fund grants up to a

particular time period and/or amount (e.g., a fiscal year, or those funds available during the current year). These clauses indicate that NASA contemplates continuing financial assistance for future periods, but clearly states that additional funding is not guaranteed. When these clauses are properly used and invoked, exercise of each additional period of financial support is a new bona fide need, and funds from an appropriation current at the time of extension must be obligated. When incremental funding is used in this way, NASA personnel shall take care not to overtly or implicitly promise that continued financial support beyond the period or amount specified is guaranteed in any way.

(31 U.S.C. § 6304 and § 6305; GAO Decision B-229873; GAO Decision B-289801; GAO Decision B-300480.2; Red Book, Chapters 7.B.1.f. and 10.C.2.b.; OMB Circular No. A-11, Section 20.5; 14 CFR 1260.11, "Grant and Cooperative Agreement Handbook"; GAO-04-496; GAO's "A Glossary of Terms Used in the Federal Budget Process")

**Incrementally
Funded Contract**

- A contract in which the total work effort is performed over multiple time periods and funds are allotted to cover discernible phases or increments of performance. The term is generally used to refer to incremental funding in the budget on a year-by-year basis, but NASA also uses the term to refer to incrementally funding a contract or other procurement document within a single fiscal year. *(GAO-01-432R; FAR 32.703-1; U.S. Army Corps of Engineers, Office of the Principal Assistant Responsible for Contracting (OPARC))*

**Indefinite Delivery,
Indefinite Quantity
(IDIQ)**

- A form of an indefinite-delivery contract under which the government is required to order and the contractor is required to furnish a stated minimum quantity of supplies or services. The Government may place orders to meet its needs at any time during a fixed period.

The minimum contract amount is the obligation and must be funded by an appropriation available at the time of contract award. Amounts over the minimum are obligated as task or delivery orders are placed against the original contract. Current year funds are used when placing orders above the guaranteed minimum. Although the period for ordering under an IDIQ contract may extend beyond the appropriation's period of availability, the minimum requirement and each task order placed must conform to

PIC 11-05 performance period requirements.

(34 Comp. Gen. 418/GAO Decision B-121982, GAO Decision B-318046, GAO Decision B-302358, GAO Decision B-308969, Red Book, Chapter 7.B.1.e. and f., FAR 16.501-504 and 32.703-2b.)

Land and Structures — Record contracts for lands and structures according to the guidelines under Contracts, except as provided in OMB Circular No. A-11. *(OMB Circular No. A-11, Section 20.5)*

Letter Contract — A letter contract is a written preliminary contractual instrument that authorizes the contractor to begin immediately manufacturing supplies or performing services.

The obligation is the maximum liability under the contract itself. If a contract is definitized in the following fiscal year, the obligation that must be funded by an appropriation current at the time the letter contract is awarded is the amount of the definitized contract minus either (a) actual costs incurred under the letter contract (when known), or (b) the maximum legal liability stated in the letter contract (when the actual costs cannot be determined). The remaining amount to be recorded is obligated against the appropriation current at the time of definitization.

(34 Comp. Gen. 418/GAO Decision B-121982, GAO Decision B-197274, Red Book, Chapter 7.B.1.a., FAR 16.603-1)

Multiyear Contract — A contract covering the needs or requirements of more than one fiscal year without establishing and having to exercise an option for each program year after the first. The multiyear contract may cover no more than five program years. 10 U.S.C. § 2306b and 2306c set forth the criteria that NASA's multiyear contracts must meet, and the Red Book provide the following example to help in determining whether a contract is or is not "multiyear": "A contract for the needs of the current year, even though performance may extend over several years, is not a multiyear contract... Thus, a contract to construct a ship that will take 3 years to complete is not a multiyear contract; a contract to construct one ship a year for the next 3 years is." Multiyear contracts having cancellation ceilings exceeding \$100,000,000 have Congressional notification requirements before award. Multiyear contracting authority is not generally used at NASA.

Record an obligation for: (1) the entire amount of the 5-year contract against the fiscal year appropriation current at the time of contract award plus termination costs; or (2) the amount for each of the 5 years against appropriations enacted for each of those years when the funds have been appropriated.

(10 U.S.C. § 2306c., (Red Book, Chapter 5.B.8.a., Red Book, Chapter 5.B.9.b.(1), FAR 17.103, GAO-08-298. Additional discussion: Red Book, Chapter 6.C.2.b.(4))

**Nonseverable
(Entire) Service**
*(see also
Severable Service)*

- A service that, by its nature, cannot be separated for performance in separate fiscal years. The service involves work which cannot be separated into components, but constitutes a specific, entire job with a defined end product that must be performed as a single task to meet a need of the government.

The entire contract or task order price must be obligated using an appropriation available for obligation at time of award, notwithstanding that performance may extend into future fiscal years. A limitation of funds clause does not affect the applicable bona fide needs rule or the severable test.

(GAO Decision B-240264, GAO Decision B-235678, GAO Decision B-257977, GAO Decision B-259274, GAO Decision B-241415, GAO Decision B-277165, Red Book, Chapter 5.B.5., Uscourts.gov's JP3 Glossary of Terms, 79th Fiscal Law Course Deskbook, Chapter 3.IV.F.3.)

**Ordering
Agreement**

- A basic ordering agreement is a written instrument of understanding, negotiated between an agency and a contractor, that contains (1) terms and clauses applying to future contracts (orders) between the parties during its term, (2) a description, as specific as practicable, of supplies or services to be provided, and (3) methods for pricing, issuing, and delivering future orders under the basic ordering agreement. A basic ordering agreement is not a contract.

The obligation is incurred when an order is placed under the ordering agreement.

(GAO Decision B-318046, FAR 16.703)

Requirements

- A requirements contract provides for filling all actual purchase
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Contract

requirements of designated Government activities for supplies or services during a specified contract period, with deliveries or performance to be scheduled by placing orders with the contractor.

The obligation is incurred when an order for goods or services is placed against the requirements contract.

(GAO Decision B-318046, Red Book, Chapter 7.B.1.e., FAR 16.503)

Research and Development (R&D)

- The collection of efforts directed toward gaining greater knowledge or understanding and applying knowledge toward the production of useful materials, devices, and methods. These activities comprise creative work undertaken on a systematic basis to increase knowledge and the use of this knowledge to devise new applications. OMB defines R&D as including basic research, applied research, development, R&D equipment, and R&D facilities.

More detailed definitions for the above terms are found in OMB Circular No. A-11, Section 84 (provided under Citations below). Definitions specifically related to NASA research and technology and technology development programs and projects are found in NPR 7120.8, and those related to space flight projects are found in NPR 7120.5.

For funding guidance on R&D and technology development contracts, see “R&D/Technology Development Contracts” below.

(President’s Budget of the United States, Fiscal Year 2012, Analytical Perspectives, 22. Research and Development; OMB Circular No. A-11, Section 84; FAR 2.101, 35.005, and 35.001)

R&D/Technology Development Contracts

- The primary purpose of contracted R&D programs is to advance scientific and technical knowledge and apply that knowledge to the extent necessary to achieve agency and national goals. Unlike contracts for supplies and services, most R&D contracts are directed toward objectives for which the work or methods cannot be precisely described in advance. It is difficult to judge the probabilities of success or required effort for technical approaches, some of which offer little or no early assurance of full success.

Technology development, or high technology, projects are close in

nature to research and development, even though they are intended to produce end items. They are highly dependent on R&D and highly uncertain in outcome.

NASA's R&D and technology development contracts may be fully or incrementally funded if a review by OGC, Office of Procurement and OCFO at an Acquisition Strategy Meeting (ASM) or Procurement Strategy Meeting (PSM) affirms that the planned contract/task order(s) are for R&D or technology development activities. For requirements that do not require an ASM or PSM, Center OGC, Procurement, and OCFO must conduct a review as early in the acquisition cycle as practicable.

When incrementally funding R&D and high technology projects, the contract must make clear that the Government's obligation is strictly limited to the amount of funding obligated and that no additional work may be performed on behalf of the Government unless and until the contract is modified to authorize further funding. The period of performance for a contract for R&D or technology development activities, or delivery date for R&D hardware items, may extend beyond the period of funding availability, as long as the appropriate contract language limiting the Government's obligation is used.

Contracts for activities that are in support of R&D or technology development that have minimal or no R&D or technology development must undergo a severability determination to determine the contract funding requirements. (See Nonseverable Service, Severable Service, and Severable Test.)

(GAO Decision B-238893; FAR 35.002; CRS Report for Congress: Defense Procurement: Full Funding Policy — Background, issues, and Options for Congress, Updated June 15, 2007; CRS Report for Congress: Navy Ship Procurement: Alternative Funding Approaches — Background and Options for Congress, Updated March 25, 2005; NASA OCFO Decision Memorandum 12-02: Funding for Research and Development (R&D) and Technology Development Contracts; GAO-03-1011; GAO-01-432R, Incremental Funding of Capital Assets)

Severable Service
(see also
Nonseverable Service)

- A service that can be separated into components that independently meet a need of the government. The services are continuing and recurring and, by definition, address needs of the time the services are rendered. To the extent a need for a specific portion of continuing or recurring services arises in a subsequent fiscal year, that portion is severable and chargeable to appropriations available in the subsequent year. Funding and period of performance may not extend beyond the appropriation's period of availability unless authorized by statute. Severable service contracts must be funded by an appropriation available for obligation on the date the contractor performs the services.

(GAO Decision B-259274; GAO Decision B-240264; GAO Decision B-277165; Red Book, Chapter 5.B.5.; Uscourts.gov's JP3 Glossary of Terms; 79th Fiscal Law Course Deskbook, Chapter 3.IV.F.4)

**Severable Service
Crossing Fiscal
Years**

- If express authority exists in law, during the last year in which an appropriation is available for "new" obligations, agencies may enter into a contract for procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year if (without regard to any option to extend the period of the contract) the contract period does not exceed one year. DoD and USCG may also use this authority for the purpose of leasing real or personal property, including the maintenance of such property when contracted for as part of the lease agreement. Funds made available for a fiscal year may be obligated for the total amount of a contract. **Currently, NASA does not have this authority.** *(10 U.S.C. § 2410a., 41 U.S.C. § 3101 [previously in 41 U.S.C. § 252], 41 U.S.C. § 3902 [previously in 41 U.S.C. § 2531]; FAR 37.106)*

Severable Test

- If a service contract is to be performed partially in one fiscal year and partially in the next and the contract is terminated at the end of the first fiscal year and is not renewed, what do you have? Three examples of applying the severability test are given in GAO's Red Book: "In the case of a window-cleaning contract, you have half of your windows clean, a benefit that is not diminished by the fact that the other half is still dirty. What you paid for the first half has not been wasted. These services are clearly severable. Now consider a contract to conduct a study and prepare a final report, as in 65 Comp. Gen. 741 (1986). If this contract is terminated halfway through, you essentially have nothing. The partial results of an

incomplete study, while perhaps beneficial in some ethereal sense, do not do you very much good when what you needed was the complete study and report. Or suppose the contract is to repair a broken frammis. If the repairs are not completed, certainly some work has been done, but you still don't have an operational frammis. The latter two examples are nonseverable." A limitation of funds clause does not affect the applicable bona fide needs rule and the severable test. (*Red Book, Chapter 5.B.5.*)

Space Act Agreement — A binding agreement entered into under the "other transaction" authority in the Space Act between NASA and another party ("Agreement Partner"). Space Act Agreements can be Reimbursable (NASA's costs are reimbursed for its unique goods, services, or facilities), Nonreimbursable (there is no exchange of funds), or Funded (appropriated funds are transferred to a domestic Agreement Partner to accomplish an Agency mission).

As a customer, the obligation is incurred when the agreement is signed and must be funded in accordance with appropriation law. Properly obligated budget authority remains obligated after the appropriation expires for liquidating the ordering agency's obligation as the performing agency completes the work (i.e., it does not have to be deobligated before the appropriation expires, like Economy Act obligations). However, as with other contractual obligations, once the agency liquidates the obligation, any remaining balances are subject to the original purpose and time limitations and are not available for new obligation after the account has expired. "Other transaction" authority is distinguished from contracts in law and by GAO and generally is not subject to federal laws and regulations applicable to procurement contracts, but they are subject to Appropriation Law requirements.

(31 U.S.C. §3324) (51 U.S.C. § 20113(e) [formerly in 42 U.S.C. § 2473(c)(5)]; GAO Decision B-298804; GAO Decision B-302760; CRS Report for Congress: Other Transaction (OT) Authority; NASA Policy Document (NPD) 1050.1, Section 1.; NPR 9470.1; GAO-03-150)

Special Termination — An agreement to pay "special termination" costs under an incrementally funded contract creates a firm obligation, not a contingent liability, to pay the contractor because the contracting agency remains liable for the costs even if it decides not to fund the contract further.

Record the obligation when the agreement is signed. This obligation remains until the contract is fully funded.

(Red Book, Chapter 6.C.2.b.(3))

**Technology
Development/
High Technology**

— (See R&D/Technology Development Contracts.)
