

CHANGE REQUEST COVER SHEET

Change Request Number: 13-97

Date Received: 7/16/2013

Title: Expedited Deobligation of unused funding

Name: Eugene Scott

Phone: 202-493-4639

Policy OR Guidance: Guidance

Section/Text Location Affected: T3.3.1A1 and T3.10.1A11

Summary of Change: The changes authorize FAA to deobligate unused funding on contracts that are complete except for the completion of a contractor final rates determination.

Reason for Change: To expedite the deobligation of unused funding to address audit concerns and to allow for the possible reallocation of funds.

Development, Review, and/or Concurrence: AGC-500, ACQ-1 and Division contracting managers, AAP-110, Aeronautical Center contracting, AAP-600 and ABP-310 Capital Program Management.

Target Audience: Contracting officers and program offices.

Potential Links within FAST for the Change: none

Briefing Planned: No

ASAG Responsibilities: Approve

Potential Links within FAST for the Change: none

Links for New/Modified Forms (or) Documents (LINK 1)

Links for New/Modified Forms (or) Documents (LINK 2)

Links for New/Modified Forms (or) Documents (LINK 3)

SECTIONS EDITED:

Procurement Guidance:

T3.3.1 - Contract Funding, Financing & Payment

Contract Funding, Financing & Payment

Section 1 : Contract Funding [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

Procurement Guidance:

T3.10.1 Contract Administration

Contract Administration

Section 11 : Contract Closeout [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

SECTIONS EDITED:

Section 1 : Contract Funding

Old Content: Procurement Guidance:

T3.3.1 - Contract Funding, Financing & Payment

Contract Funding, Financing & Payment

Section 1 : Contract Funding

a. *Anti-Deficiency Act.* The FAA must comply with the Anti-Deficiency Act (31 U.S.C. 1341) and all other fiscal laws. The Anti-Deficiency Act prohibits FAA from creating or authorizing an obligation in excess of the funds available, or in advance of appropriations, unless otherwise authorized by law. The Act applies to all forms of procurement, including contracts and purchase card transactions.

b. *Funds Availability.* Before executing a contractual instrument that obligates funds, the Contracting Officer (CO) must ensure sufficient funds are available. The CO must obtain written assurance from the program/requisitioning office that funds are available.

c. *Awards Subject to Availability of Funds.* There may be times when a contract will be awarded before funds become available, such as an award for services to begin at the beginning of the next fiscal year. When this occurs, the contractor must be put on notice that the award is subject to the availability of funds; the CO must incorporate AMS Clause 3.3.1-10, Availability of Funds, or AMS Clause 3.3.1-11, Availability of Funds for the Next Fiscal Year, into the SIR or contract.

d. *Services Crossing Fiscal Years.* FAA may enter into contracts for 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.

e. *Distribution to Accounting Office.* The CO should provide copies of all contract awards and modifications to the accounting office to ensure that it can properly document and track payments and available funding.

New Content: Procurement Guidance:

T3.3.1 - Contract Funding, Financing & Payment

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e. *Distribution to Accounting Office.* The CO should provide copies of all contract awards and modifications to the accounting office to ensure that it can properly document and track payments and available funding.

f. *Timely Deobligation of Unused Funds.* The CO and program office are encouraged to periodically review the funding allocated to each contract or order upon the completion of each contract period, option period or upon completion of a contract line item. The review is intended to determine whether contract line items contain unused funds that can be deobligated. Determining whether funds can be deobligated as soon as possible after each contract period or completion of contract line items helps minimize costs associated with contract administration and the contract closeout processes. Timely deobligation of unused funds also allows for the possible use of those funds elsewhere.

Red Line Content: Procurement Guidance:

T3.3.1 - Contract Funding, Financing & Payment

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Section 11 : Contract Closeout

Old Content: Procurement Guidance:

T3.10.1 Contract Administration

Contract Administration

Section 11 : Contract Closeout

a. *Background.* Closeout of contract files occurs at the end of the contract administration process. The CO should assure file integrity throughout the life of the contract. Maintaining an accurate record of contract modifications and obligations facilitates contract closeout, and also minimizes costs associated with administration and closeout processes. Timely closeout deobligates excess funds and returns the excess funds for possible use elsewhere. The time frame for closing a contract is based on both the type of contract and date of physical completion.

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b. Definitions.

(1) A contract is considered to be physically complete when:

- (a) The contractor has completed the required deliveries and the Government has inspected and accepted the supplies;
- (b) The contractor has performed all services and the Government has accepted the services;
- (c) All option provisions, if any, have expired; and
- (d) The Government has given the contractor a notice of complete contract termination.

(2) A purchase order, or delivery order against a Federal Supply Schedule contract, is considered to be physically complete when:

- (a) Property or services have been received within the terms of the contract;
- (b) Final payment has been made to the contractor; and
- (c) A purchase order/delivery order Receiving Report signed by the recipient of the goods or services.

c. Time Frames. Closeout of contract files should occur during the time frames identified below, as evidenced by completion of the "Contract Closeout Checklist" or the closeout section of the "Purchase Order/GSA/FSS Order File Checklist" (See Procurement Forms in FAST).

(1) Files for contracts using commercial and simplified purchase procedures should be considered closed when the CO receives evidence of receipt of supplies and final payment.

(2) Contract files for firm-fixed-price contracts, other than those using commercial and simplified purchase procedures, should be closed within 6 months after the date on which the CO receives evidence of physical completion (for example, signed receipt or delivered product).

(3) Contract files for contracts requiring settlement of indirect cost rates should be closed within 36 months of the month in which the CO receives evidence of physical completion.

(4) Contract files for all other contracts should be closed within 20 months of the month in which the CO receives evidence of physical completion.

d. *Preparation for Closeout.* To prepare for contract closeout, 60 days prior to either final delivery or estimated contract or interagency agreement completion date, the CO should perform a comprehensive review of the contract or interagency agreement to determine whether any documentation is missing and whether any step in the closeout process can be initiated before physical completion. If documents are missing, the CO should attempt to obtain them and insert them into the file. To determine whether steps in the closeout process can begin before the contract or interagency agreement is physically complete, the CO should review the "Contract Closeout Checklist." Following are examples of actions the CO may be able to take before the contract is physically complete:

- (1) Ensure that the contractor has a current list of contractor employees holding FAA security badges and verify that the list corresponds to the FAA Servicing Security Element's list.
- (2) Ensure that all information in Prism is current and correct.
- (3) Reconcile the contract's funding status and invoice payment log with Accounts Payable. Identify final invoices. (Contracts and Interagency Agreements).
- (4) If the contract includes a "Patent Rights" clause, check to see whether final patent or royalty reports have been received.
- (5) If the contract includes "Government Property" clauses or contractor-acquired property, ensure that the property administrator or Contracting Officer's Representative provides disposition instructions to the Contractor. (Contracts and Interagency Agreement).

e. *Closeout Procedures.* When the contract or interagency agreement is physically complete, the CO is responsible for initiating contract closeout. The contract file should not be closed if the contract is in litigation or under appeal. When closing both fixed-price and cost-type contracts, the CO must verify that the documents and activities included in the "Contract Closeout Checklist" have been received or are complete. After completion of the "Contract Closeout Checklist" and notification of final payment from Accounts Payable, the CO must complete and sign a "Contract File Completion Statement" (Appendix 11). For purchase orders (PO) or GSA Federal Supply Schedule (FSS) orders, the CO will use the closeout portion of the "Purchase Order/GSA/FSS Order File Checklist" in place of the "Contract Closeout Checklist" and "Contract File Completion Statement." To facilitate receipt of required closeout documentation, the CO will need to take some or all of the following actions:

- (1) Reconcile the contract's funding status and invoice payment log with Accounts Payable. To accomplish this, contact the Finance Office and obtain reports documenting the obligations and expenditures under the contract.
- (2) Send a memorandum to the program official to confirm contract completion.

- (3) Send a memorandum to the COR requesting termination of all contractor personnel accounts on contract-specific FAA systems (See Appendix 12 for memorandum). The COR should return the signed memo to the CO within 30 days.
- (4) For all cost-type contracts not closed with Quick Closeout procedures, the CO must request the Headquarters Cost/Price Analysis Services group (AAP-500) to initiate a DCAA audit.
- (5) Send a memorandum to the Property Administrator requesting completion and transfer of the Government Property section of the contract file. (Note: the CO must sign the property report submitted by the Property Administrator).
- (6) Send a letter to the contractor indicating that the contract is complete and requesting required documents. Required documents might include:
 - (a) Final voucher.
 - (b) Confirmation of settlement of subcontracts.
 - (c) Government Furnished Property (GFP) and Contractor Acquired Property (CAP) inventory.
 - (d) Report of inventions and subcontracts, if applicable (AMS Clause 3.5-12).
 - (e) Patent and royalty reports.
 - (f) Contractor's release.
 - (g) Contractor's assignment of refunds, rebates, credits, and other amounts.
 - (h) List of contractor personnel holding FAA badges, indicating the badge numbers and when they were returned to the FAA Servicing Security Element.
- (7) Review and approval of the final voucher should include:
 - (a) Verification that all contractual requirements have been satisfied.
 - (b) Completion of any fee adjustments.
 - (c) Verification that contractual funding limitations have not been exceeded.

- (d) Identification of any offsets applied.
- (e) Verification of accuracy of Contractor Release and Assignment.
- (f) Verification that all previous Contractor vouchers have been paid.
- (g) Approval for payment with signature and date.
- (h) Deobligation modification processed and distributed for any funds determined to be in excess.

(8) Completion and submittal of the Past Performance Information Retrieval System (PPIRS) evaluation for the contract.

f. *Quick-closeout Procedures.* In some circumstances, the CO may determine that a contract is a candidate for quick closeout. Quick closeout allows the CO to negotiate the settlement of indirect costs without a DCAA audit and in advance of the determination of final indirect cost rates. The procedures for quick closeout are the same as for regular closeout except that a DCAA audit is not requested. The determinations of final indirect costs under quick closeout procedures are final for the contracts it covers and no adjustments are made to other contracts for over or under recoveries of costs allocated or allocable to the contracts covered by the advance agreement. Additionally, indirect cost rates used in the quick closeout of a contract are not considered a binding precedent when establishing the final indirect cost rates for other contracts.

(1) To determine whether a contract is a candidate for quick closeout, the contract must meet the following criteria:

- (a) The contract is physically complete;
- (b) The amount of unsettled indirect costs is not more than \$1,000,000 and the cumulative unsettled indirect costs to be allocated to one or more contracts in a single fiscal year do not exceed 15% of the estimated, total unsettled indirect costs allocable to cost-type contracts for that fiscal year; and
- (c) Agreement can be reached on a reasonable estimate of allocable dollars.

(2) After the CO has made a decision that the use of quick closeout procedures is appropriate, the CO must:

- (a) Ensure adequate rationale for the decision is included in the file;

(b) Require the contractor to submit a final voucher and a summary of all costs by cost element and fiscal year for the contract(s) in question, as well as a copy of the contractor's final indirect cost rate proposal for each fiscal year quick closeout is involved;

(c) Notify the cognizant audit activity, either verbally or in writing, identify the contract(s), and request:

(i) The contractor's indirect cost history covering a sufficient number of fiscal years to see the trend of claimed, audit questioned, and disallowed costs; and

(ii) Any other information that could impact the decision to use quick-closeout procedures. Indirect cost histories should be requested from the contractor only when the cognizant audit activity is unable to provide the information;

(d) Review the contract(s) for indirect cost rate ceilings and any other contract limitations, as well as the rate history information;

(e) Establish final indirect cost rates using one of the following rates:

(i) The contract's ceiling indirect cost rates, if applicable, and if less than paragraphs (e)(ii) through (vi) of this section;

(ii) The contractor's claimed actual rates adjusted based on the contractor's indirect cost history, if less than paragraphs (e)(iii) through (vi) of this section;

(iii) Recommended rates from the cognizant audit agency, the local pricing office, another installation pricing office, or other recognized knowledgeable source;

(iv) The contractor's negotiated billing rates, if less than paragraphs (e)(v) or (vi) of this section;

(v) The previous year's final rates;

(vi) Final rates for another fiscal year closest to the period for which quick-closeout rates are being established;

(f) If an agreement is reached with the contractor, obtain a release of all claims and other applicable closing documents.

g. *Contract File Documentation.* Official closeout documentation for contracts and interagency agreements, the signed "Contract File Completion Statement," and the completed "Contract Closeout Checklist" should be filed in the official contract file behind a marked tab. For POs or GSA FSS orders, the documentation should be filed in the official file and noted on the "Purchase Order/GSA/FSS Order File Checklist."

h. *Paying Office.* The paying office must furnish the CO written documentation of the final payment including the voucher number, date, invoice number and date, and name and signature of technician processing the payment. The paying office should close their contract files upon issuance of the final payment voucher.

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T3.10.1 Contract Administration

Contract Administration

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(f) If an agreement is reached with the contractor, obtain a release of all claims and other applicable closing documents.

g. Deobligation of Funds Prior to Closeout.

(1) *Actions Before Deobligation.* For contracts that require the establishment of final cost rates, after completion of contractor performance the CO may deobligate unused funding prior to the finalization of the contractor's final cost rates. Prior to deobligating unused funding, the CO must:

(a) Confirm that contractor performance, including any applicable closeout requirement, is complete except for the establishment of final rates; and

(b) Receive written authorization from the funding program office that the funds may be deobligated (a purchase request requesting the deobligation of funds satisfies this requirement).

(2) *Reconciliation.* After establishment of the contractor's final cost rates, FAA will reconcile the final funding requirement.

(a) If the contract funding required after establishment of final cost rates is greater than the amount established prior to the agreement on final cost rates, the FAA program office will provide the necessary additional appropriation and funding, and the CO will modify the contract to increase the final funding amount.

(b) If the contract funding required after establishment of final cost rates is lower than the amount established prior to the agreement on final cost rates, the CO will further lower the final contract funding amount and the contractor will pay to the FAA the amount of overpayment within 60 days of written demand from FAA, or FAA may offset any overpayment from other amounts owed to the contractor. The FAA retains all other rights to collect funds due from the contractor.

h. *Contract File Documentation.* Official closeout documentation for contracts and interagency agreements, the signed "Contract File Completion Statement," and the completed "Contract Closeout Checklist" should be filed in the official contract file behind a marked tab. For POs or GSA FSS orders, the documentation should be filed in the official file and noted on the "Purchase Order/GSA/FSS Order File Checklist."

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T3.10.1 Contract Administration

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- (3) Reconcile the contract's funding status and invoice payment log with Accounts Payable. Identify final invoices. (Contracts and Interagency Agreements).
- (4) If the contract includes a "Patent Rights" clause, check to see whether final patent or royalty reports have been received.
- (5) If the contract includes "Government Property" clauses or contractor-acquired property, ensure that the property administrator or Contracting Officer's Representative provides disposition instructions to the Contractor. (Contracts and Interagency Agreement).

e. *Closeout Procedures.* When the contract or interagency agreement is physically complete, the CO is responsible for initiating contract closeout. The contract file should not be closed if the contract is in litigation or under appeal. When closing both fixed-price and cost-type contracts, the CO must verify that the documents and activities included in the "Contract Closeout Checklist" have been received or are complete. After completion of the "Contract Closeout Checklist" and notification of final payment from Accounts Payable, the CO must complete and sign a "Contract File Completion Statement" (Appendix 11). For purchase orders (PO) or GSA Federal Supply Schedule (FSS) orders, the CO will use the closeout portion of the "Purchase Order/GSA/FSS Order File Checklist" in place of the "Contract Closeout Checklist" and "Contract File Completion Statement." To facilitate receipt of required closeout documentation, the CO will need to take some or all of the following actions:

- (1) Reconcile the contract's funding status and invoice payment log with Accounts Payable. To accomplish this, contact the Finance Office and obtain reports documenting the obligations and expenditures under the contract.
- (2) Send a memorandum to the program official to confirm contract completion.
- (3) Send a memorandum to the COR requesting termination of all contractor personnel accounts on contract-specific FAA systems (See Appendix 12 for

memorandum). The COR should return the signed memo to the CO within 30 days.

(4) For all cost-type contracts not closed with Quick Closeout procedures, the CO must request the Headquarters Cost/Price Analysis Services group (AAP-500) to initiate a DCAA audit.

(5) Send a memorandum to the Property Administrator requesting completion and transfer of the Government Property section of the contract file. (Note: the CO must sign the property report submitted by the Property Administrator).

(6) Send a letter to the contractor indicating that the contract is complete and requesting required documents. Required documents might include:

(a) Final voucher.

(b) Confirmation of settlement of subcontracts.

(c) Government Furnished Property (GFP) and Contractor Acquired Property (CAP) inventory.

(d) Report of inventions and subcontracts, if applicable (AMS Clause 3.5-12).

(e) Patent and royalty reports.

(f) Contractor's release.

(g) Contractor's assignment of refunds, rebates, credits, and other amounts.

(h) List of contractor personnel holding FAA badges, indicating the badge numbers and when they were returned to the FAA Servicing Security Element.

(7) Review and approval of the final voucher should include:

(a) Verification that all contractual requirements have been satisfied.

(b) Completion of any fee adjustments.

(c) Verification that contractual funding limitations have not been exceeded.

(d) Identification of any offsets applied.

(e) Verification of accuracy of Contractor Release and Assignment.

(f) Verification that all previous Contractor vouchers have been paid.

(g) Approval for payment with signature and date.

(h) Deobligation modification processed and distributed for any funds determined to be in excess.

(8) Completion and submittal of the Past Performance Information Retrieval System (PPIRS) evaluation for the contract.

f. *Quick-closeout Procedures.* In some circumstances, the CO may determine that a contract is a candidate for quick closeout. Quick closeout allows the CO to negotiate the settlement of indirect costs without a DCAA audit and in advance of the determination of final indirect cost rates. The procedures for quick closeout are the same as for regular closeout except that a DCAA audit is not requested. The determinations of final indirect costs under quick closeout procedures are final for the contracts it covers and no adjustments are made to other contracts for over or under recoveries of costs allocated or allocable to the contracts covered by the advance agreement. Additionally, indirect cost rates used in the quick closeout of a contract are not considered a binding precedent when establishing the final indirect cost rates for other contracts.

(1) To determine whether a contract is a candidate for quick closeout, the contract must meet the following criteria:

(a) The contract is physically complete;

(b) The amount of unsettled indirect costs is not more than \$1,000,000 and the cumulative unsettled indirect costs to be allocated to one or more contracts in a single fiscal year do not exceed 15% of the estimated, total unsettled indirect costs allocable to cost-type contracts for that fiscal year; and

(c) Agreement can be reached on a reasonable estimate of allocable dollars.

(2) After the CO has made a decision that the use of quick closeout procedures is appropriate, the CO must:

(a) Ensure adequate rationale for the decision is included in the file;

(b) Require the contractor to submit a final voucher and a summary of all costs by cost element and fiscal year for the contract(s) in

question, as well as a copy of the contractor's final indirect cost rate proposal for each fiscal year quick closeout is involved;

(c) Notify the cognizant audit activity, either verbally or in writing, identify the contract(s), and request:

(i) The contractor's indirect cost history covering a sufficient number of fiscal years to see the trend of claimed, audit questioned, and disallowed costs; and

(ii) Any other information that could impact the decision to use quick-closeout procedures. Indirect cost histories should be requested from the contractor only when the cognizant audit activity is unable to provide the information;

(d) Review the contract(s) for indirect cost rate ceilings and any other contract limitations, as well as the rate history information;

(e) Establish final indirect cost rates using one of the following rates:

(i) The contract's ceiling indirect cost rates, if applicable, and if less than paragraphs (e)(ii) through (vi) of this section;

(ii) The contractor's claimed actual rates adjusted based on the contractor's indirect cost history, if less than paragraphs (e)(iii) through (vi) of this section;

(iii) Recommended rates from the cognizant audit agency, the local pricing office, another installation pricing office, or other recognized knowledgeable source;

(iv) The contractor's negotiated billing rates, if less than paragraphs (e)(v) or (vi) of this section;

(v) The previous year's final rates;

(vi) Final rates for another fiscal year closest to the period for which quick-closeout rates are being established;

(f) If an agreement is reached with the contractor, obtain a release of all claims and other applicable closing documents.

g. Deobligation of Funds Prior to Closeout.

(1) Actions Before Deobligation. For contracts that require the establishment of final cost rates, after completion of contractor performance the CO may deobligate unused funding prior to the finalization of the contractor's final cost rates. Prior to deobligating unused funding, the CO must:

(a) Confirm that contractor performance, including any applicable closeout requirement, is complete except for the establishment of final rates; and

(b) Receive written authorization from the funding program office that the funds may be deobligated (a purchase request requesting the deobligation of funds satisfies this requirement).

(2) Reconciliation. After establishment of the contractor's final cost rates, FAA will reconcile the final funding requirement.

(a) If the contract funding required after establishment of final cost rates is greater than the amount established prior to the agreement on final cost rates, the FAA program office will provide the necessary additional appropriation and funding, and the CO will modify the contract to increase the final funding amount.

(b) If the contract funding required after establishment of final cost rates is lower than the amount established prior to the agreement on final cost rates, the CO will further lower the final contract funding amount and the contractor will pay to the FAA the amount of overpayment within 60 days of written demand from FAA, or FAA may offset any overpayment from other amounts owed to the contractor. The FAA retains all other rights to collect funds due from the contractor.

gh. *Contract File Documentation.* Official closeout documentation for contracts and interagency agreements, the signed "Contract File Completion Statement," and the completed "Contract Closeout Checklist" should be filed in the official contract file behind a marked tab. For POs or GSA FSS orders, the documentation should be filed in the official file and noted on the "Purchase Order/GSA/FSS Order File Checklist."

hi. *Paying Office.* The paying office must furnish the CO written documentation of the final payment including the voucher number, date, invoice number and date, and name and signature of technician processing the payment. The paying office should close their contract files upon issuance of the final payment voucher.

