

Collins CIV Cathy

From: Collins CIV Cathy
Sent: Tuesday, July 28, 2009 7:37 PM
To: M_HQMC_MCFCS_Civilian; M_HQMC_MCFCS_Directors/Deputies;
M_HQMC_MCFCS_Enlisted; M_HQMC_MCFCS_Officer
Cc: M_HQMC_LB
Subject: APM 09-17 Ordering of Supplies Based on Subject to the Availability of Funds & Bona Fide Needs Rule
Signed By: cathy.collins@usmc.mil
Attachments: Bona Fide Needs Justification Form.doc



Bona Fide Needs
Justification ...

To All,

BACKGROUND:

a. In some instances, Purchase Requests (PRs) for supplies submitted via PR Builder to PD2 are contingent upon the availability of funds. Contracting Officers are awarding these supply requirements subject to the availability of funds; however, many times delivery/receipt of the supplies is made before the awarded action has been funded.

b. Per FAR 52.232-18, Availability of Funds (Apr 1984), no legal liability on the part of the Government for any payment may arise until funds are made available to the Contracting Officer for this contract and until the Contractor receives notice of such availability, to be confirmed in writing by the Contracting Officer. Delivery/receipt of the supplies ordered constitutes legal liability on the part of the Government.

c. Therefore, additional policy and guidance regarding the award of PRs for supplies subject to the availability of funds is included herein.

POLICY:

a. Contract actions for supplies may not be awarded subject to the availability of funds unless:

(1) A Bona Fide Needs Justification For Supplies form (included as an attachment to this email) has been completed and submitted by the requirements generator and included in the official contract file;

(2) The Contracting Officer has determined the information included in the Bona Fide Needs Justification For Supplies substantiates the following:

(a) As required by FAR 32.705-1, the contract action will be funded with next fiscal year funds and the contract action will be initiated before the funds are available; and

(b) The delivery of supplies cannot be made prior to the contract action being fully funded.

(3) FAR 52.232-18, Availability of Funds (Apr 1984), is included in the awarded contract action.

b. The FAR 52.232-18 requirement that the Contracting Officer provide written confirmation notifying the Contractor funds are available shall be via modification to the contract action funding the supplies

ordered.

ACTION:

a. Any PR for supplies received in the any MCFCS office must be reviewed to determine if the requirement is to be funded using current fiscal year funds or is subject to the availability of next fiscal year funds. For PRs submitted via PR Builder to PD2, the funding can be determined by reviewing:

(1) The "Purchase Request Number" block. This block contains a purchase request number that includes the fiscal year funds that will be used to fund this requirement. A sample number included in this block is "M9305810SS45BPA". The ".10." in this number represents FY10 funds will be used to fund this requirement; and

(2) The line of accounting included in the "Contract Administration Data" section of the PR. The line of accounting will identify the fiscal year funds to be used to fund the requirement.

Both of these areas in the PR must reflect the same fiscal year funds to be used to fund the requirement.

b. Any PR for supplies that identifies the requirement is to be funded using next fiscal year funds is subject to the availability of funds. In these instances, the Contracting Officer shall request the requirements generator complete a Bona Fide Needs Justification for Supplies form. The Contracting Officer may either:

(1) Reject the PR and require it to be resubmitted with the completed justification; or

(2) The PR may be held in abeyance until the justification is received.

Under no circumstances may the PR be processed for award prior to receipt of the Bona Fide Needs Justification.

b. Once a completed form is submitted, the Contracting Officer shall review the information and determine if the requirement meets the conditions for awarding the action subject to the availability of funds.

c. If the Contracting Officer determines it is necessary to award the action contingent on the availability of funds, FAR 52.232-18, Availability of Funds (Apr 1984), shall be included. When funds become available, the Contracting Officer shall execute a modification funding the contract action.

R/ cc

Cathy Collins
Policy and Process Team (LBP)
HQMC Contracts Division
(703) 695-6590 x2546
DSN 225-6590 x2546
FAX (703) 695-6382

BONA FIDE NEEDS JUSTIFICATION FOR SUPPLIES

(Ref: 77th Fiscal Law Deskbook)

The below form is required to be completed by the requirements generator when a Purchase Request (PR) is to be submitted to the Contracts Office contingent on the availability of funds.

The language annotated in red provides information for the requirements generator to consider when determining the applicability of submitting a requirement subject to the availability of funds. In addition, this information provides guidance to the Contracting Officer for evaluating whether the completed Bona Fide Needs Justification For Supplies form adequately justifies the applicability of awarding the requirement subject to the availability of funds.

Orders may not be pursuant to FAR 52.232-18 Availability of Funds clause unless using next fiscal year funds. This usually applies to 4th quarter actions. Requirements generator must complete and submit this form when the purchase for supplies is subject to the Availability of Funds; i.e. funds will not be available at time of award. **The Bona Fide Needs Rules states:** The balance of an appropriation of 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 within that period of availability and obligated consistent with 31 U.S.C. 1501. However, the appropriation of fund is not available for expenditure for a period beyond the period otherwise authorized by law. Generally, bona fide needs are determined when the government actually requires (will be able to use or consume to fulfill a requirement) the supplies being acquired. Accordingly, agencies generally must obligate for the fiscal year in which the supplies will be used.

Standard Document Number (SDN):

Date:

List Items to be Purchased:

PART I - JUSTIFICATION

1. Delivery Time: What is the acquisition or delivery lead-time? This aspect of the exception recognizes that the agency has a need for, but cannot obtain the item, in the current FY. If an agency cannot obtain materials in the same FY in which they are needed and contracted for, delivery in the next FY does not violate the Bona Fide Needs Rule as long as the purchase meets the following: (1) the time between contracting and delivery must not be excessive, and (2) the procurement must not be for standard, commercial items readily available from other sources.

Delivery Time: Is this requirement for standard, commercial items readily available from other sources? (See Block 1 above)

3. Production Lead-Time: Can the material/equipment being contracted for be obtained on the open market at the time needed for use? This aspect of the exception permits the agency to consider the normal production lead-time in determining the bona fide needs for an acquisition. Thus, an agency may contract in one FY for delivery in the second FY if the material contracted for cannot be obtained on the open market at the time needed for use, so long as the intervening period is necessary for the production. For example: (1) If the normal

lead-time between order and delivery of an item is 45 days, an obligation of FY 2009 funds is appropriate for a delivery on or before a required delivery date of 14 November 2009. (Remember 1 October 2009 is the beginning of FY 2010). This represents the bona fide needs of FY 2009. However, if the government directs the contractor to withhold delivery until after 14 November 2009 there is not a bona fide need for the item in FY 2009 because the necessary lead-time prior to delivery permits the government to order and deliver the item in FY2010. (2) If the government establishes a delivery date for an item that is beyond the normal lead-time and in the next fiscal year, then the government must use funds for the next fiscal year. In the example in (1), the government does not require the item until after 14 November 2009, then the government must use FY 2010 funds.

4. Production Lead-Time: Is the period between contract award and delivery strictly for production of the item? (See Block 3 above)

5. Stock-levels: What is the authorized or normal stock level for item(s) (including mobilization reserves)? The stock level exception permits agencies to purchase sufficient supplies to maintain adequate and normal stock levels. The government may use current year funds to replace stock consumed in the current fiscal year, even though the government will not use the replacement stock until the following fiscal year. For example, the government may award a contract to maintain the normal authorized stock levels of repair parts in August 2009 and may require delivery in September 2009, using FY 2009 funds, even if the government knows that the government will not use the repair parts until early October 2000 (i.e., FY2010). Fiscal year stockpiling of supplies in excess of normal usage is prohibited.

6. Stock-levels: What is the stock on hand? (See Block 5 above)

7. Stock-levels: What is the estimated consumption or withdrawals for use? (See Block 5 above)

8. Stock-levels: Are there any orders already pending delivery? (See Block 5 above)

9. Stock-levels: What is the typical period of time between contract award and delivery? (See Block 5 above)

10. Stock-levels: What is the impact to mission if stock is not readily available? (See Block 5 above)

Requirements Generator:

Date:

SMU/Supply Officer:

Date:

PART II-DETERMINATION

__ This Supply requirement will be chargeable to funds of the new fiscal year. Additionally, due to circumstances justified above it is appropriate to initiate the contract action before the funds are available.

Fiscal Authorizing Official:

Date: