32.410 Findings, determination, and authorization.

(a) Each determination concerning advance payments shall be supported by written findings (see 32.402(c)(1)(iii)).

(b) The following is an example of the format and text of findings, determination, and authorization with alternative words, phrases, and paragraphs to be selected to conform to the circumstances involved:

FINDINGS, DETERMINATION, AND AUTHORIZATION FOR ADVANCE PAYMENTS

FINDINGS

(a) The undersigned hereby finds that:

(1) The [insert the name of the contracting activity] and [insert the name of the contractor] (have entered) (propose to enter) into (negotiated) (sealed bid) Contract No. __________________, dated __________________.[Summary the specific facts and significant circumstances concerning the contract and the contractor, that, together with the other findings, will clearly support the determination below.]

(2) Advance payments (in an amount not to exceed $________ at any time outstanding) (in an aggregate amount not exceeding $________, less the aggregate amounts repaid, or withdrawn by the Government) are required by the Contractor to perform under the contract. The amount does not exceed the unpaid contract price or the estimated interim cash needs arising during the reimbursement cycle.

(3) The advance payments are necessary for prompt, efficient contract performance that will benefit the Government.

(4) The proposed advance payment clause provides for security for the protection of the Government. The clause requires that all payments will be deposited in a special account at the Contractor's financial institution (without the contractor acquiring title to the funds); and

(5) Advance payments are the only adequate means of financing available to the Contractor, and the amount designated in (2) above is based, to the extent possible, on the use of the Contractor's own working capital in performing the contract.

(f) The requirements of this 32.409-3 do not apply when using letters of credit if an agency's procedures provide for—

(1) The use under a cost-reimbursement contract of Federal funds deposited in the contractor's account at a financial institution (without the contractor acquiring title to the funds); and

(2) The security of such deposit of public moneys in accordance with governing regulations of the Treasury Department.

(g) If a separate special account is not required; e.g., advance payment by a letter of credit, an agency may require a special account for an individual case, or classes of cases, if the circumstances warrant.

Federal Acquisition Regulation

32.411 Agreement for special account at a financial institution.

The contracting officer must use substantially the following form of agreement for a special account for advance payments:

Agreement for Special Account

This agreement is entered into this ___ day of ___, 20___, between the United States of America (the Government), represented by the Contracting Officer exercising this agreement, [Insert the name of the Contractor], a [Insert the name of the state of incorporation] corporation (the Contractor), and _____, a financial institution operating under the laws of _____, located at _____ (the financial institution).

Recitals

(a) Under date of _____, 20___, the Government and the Contractor entered into Contract No. ___, or a related supplemental agreement, providing for advance payments to the Contractor. A copy of the advance payment terms was furnished to the financial institution, which meets the requirements.

(b) The contract or supplemental agreement requires that amounts advanced to the Contractor be deposited separate from the Contractor's general or other funds, in a Special Account at a member bank of the Federal Reserve System, any "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (12 U.S.C. 1811), or a credit union insured by the National Credit Union Administration. The parties agree to deposit the amounts with the financial institution, which meets the requirements.

(c) This Special Account is designated [Insert the name of the Government agency] Special Account.

Covenants

In consideration of the foregoing, and for other good and valuable considerations, the parties agree to the following conditions:

(a) The Government shall have a lien on the credit balance in the account to secure the repayment of all advance payments made to the Contractor. The lien is paramount to any lien or claim of the financial institution regarding the account.

(b) The financial institution is bound by the terms of the contract relating to the deposit and withdrawal of funds in the Special Account, but is not responsible for the application of funds withdrawn from the account.

The financial institution shall act on written directions from the Contracting Officer, the administering office, or a duly authorized