

**32.608**

(7) Protective requirements that are considered by the Government to be prudent and feasible in the specific circumstances. The coverage of protective terms at 32.409 and 32.501-5 may be used as a guide.

(h) If a contractor appeal of the debt determination is pending, the deferment agreement shall also include a requirement that the contractor shall—

(1) Diligently prosecute the appeal; and

(2) Pay the debt in full when the appeal is decided, or when the parties reach agreement on the debt amount.

(i) The deferment agreement may provide for the right to make early payments without prejudice, for refund of overpayments, and for crediting of interest.

[73 FR 54002, Sept. 17, 2008, as amended at 75 FR 53149, Aug. 30, 2010]

**32.608 Interest.****32.608-1 Interest charges.**

Unless specified otherwise in the clause at 52.232-17, Interest, interest charges shall apply to any contract debt unpaid after 30 days from the issuance of a demand unless—

(a) The contract is a kind excluded under 32.611; or

(b) The contract or debt has been exempted from interest charges under agency procedures.

**32.608-2 Interest credits.**

(a) An equitable interest credit shall be applied under the following circumstances:

(1) When the amount of debt initially determined is subsequently reduced; *e.g.*, through a successful appeal.

(2) When any amount collected by the Government is in excess of the amount found to be due on appeal under the Disputes Clause of the contract.

(3) When the collection procedures followed in a given case result in an overcollection of the debt due.

(4) When the responsible official determines that the Government has unduly delayed payments to the contractor on the same contract at some time during the period to which the interest charge applied, provided an in-

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terest penalty was not paid for such late payment.

(b) Any appropriate interest credits shall be computed under the following procedures:

(1) Interest at the rate under 52.232-17 shall be charged on the reduced debt from the date of collection by the Government until the date the monies are remitted to the contractor.

(2) Interest may not be reduced for any time between the due date under the demand and the period covered by a deferment of collection, unless the contract includes an interest clause; *e.g.*, the clause prescribed in 32.611.

(3) Interest shall not be credited in an amount that, when added to other amounts refunded or released to the contractor, exceeds the total amount that has been collected, or withheld for the purpose of collecting the debt. This limitation shall be further reduced by the amount of any limitation applicable under paragraph (b)(2) of this subsection.

**32.609 Delays in receipt of notices or demands.**

If interest is accrued based on the date of the demand letter and delivery of the demand letter is delayed by the Government (*e.g.*, undue delay after dating at the originating office or delays in the mail), the date of the debt and accrual of interest shall be extended to a time that is fair and reasonable under the particular circumstances.

**32.610 Compromising debts.**

For debts under \$100,000, excluding interest, the designated agency official may compromise the debt pursuant to the Federal Claims Collection Standards (31 CFR part 902) and agency regulations. Unless specifically authorized by agency procedures, contracting officers cannot compromise debts.

**32.611 Contract clause.**

(a) The contracting officer shall insert the clause at 52.232-17, Interest, in solicitations and contracts unless it is contemplated that the contract will be in one or more of the following categories:

(1) Contracts at or below the simplified acquisition threshold.

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- (2) Contracts with Government agencies.
- (3) Contracts with a State or local government or instrumentality.
- (4) Contracts with a foreign government or instrumentality.
- (5) Contracts without any provision for profit or fee with a nonprofit organization.
- (6) Contracts described in Subpart 5.5, Paid Advertisements.
- (7) Any other exceptions authorized under agency procedures.

(b) The contracting officer may insert the FAR clause at 52.232-17, Interest, in solicitations and contracts when it is contemplated that the contract will be in any of the categories specified in 32.611(a).

### **Subpart 32.7—Contract Funding**

#### **32.700 Scope of subpart.**

This subpart (a) describes basic requirements for contract funding and (b) prescribes procedures for using limitation of cost or limitation of funds clauses. Detailed acquisition funding requirements are contained in agency fiscal regulations.

#### **32.701 [Reserved]**

#### **32.702 Policy.**

No officer or employee of the Government may create or authorize an obligation in excess of the funds available, or in advance of appropriations (Anti-Deficiency Act, 31 U.S.C. 1341), unless otherwise authorized by law. Before executing any contract, the contracting officer shall (a) obtain written assurance from responsible fiscal authority that adequate funds are available or (b) expressly condition the contract upon availability of funds in accordance with 32.703-2.

[48 FR 42328, Sept. 19, 1983, as amended at 51 FR 2665, Jan. 17, 1986]

#### **32.703 Contract funding requirements.**

##### **32.703-1 General.**

(a) If the contract is fully funded, 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.

(b) If the contract is incrementally funded, funds are obligated to cover the amount allotted and any corresponding increment of fee.

##### **32.703-2 Contracts conditioned upon availability of funds.**

(a) *Fiscal year contracts.* The contracting officer may initiate a contract action properly chargeable to funds of the new fiscal year before these funds are available, *provided* that the contract includes the clause at 52.232-18, Availability of Funds (see 32.706-1(a)). This authority may be used only for operation and maintenance and continuing services (e.g., rentals, utilities, and supply items not financed by stock funds) (1) necessary for normal operations and (2) for which Congress previously had consistently appropriated funds, unless specific statutory authority exists permitting applicability to other requirements.

(b) *Indefinite-quantity or requirements contracts.* A one-year indefinite-quantity or requirements contract for services that is funded by annual appropriations may extend beyond the fiscal year in which it begins; *provided*, that (1) any specified minimum quantities are certain to be ordered in the initial fiscal year (see 37.106) and (2) the contract includes the clause at 52.232-19, Availability of Funds for the Next Fiscal Year (see 32.706-1(b)).

(c) *Acceptance of supplies or services.* The Government shall not accept supplies or services under a contract conditioned upon the availability of funds until the contracting officer has given the contractor notice, to be confirmed in writing, that funds are available.

[48 FR 42328, Sept. 19, 1983, as amended at 67 FR 13054, Mar. 20, 2002; 78 FR 37688, June 21, 2013]

##### **32.703-3 Contracts crossing fiscal years.**

(a) A contract that is funded by annual appropriations may not cross fiscal years, except in accordance with statutory authorization (e.g., 41 U.S.C. 6302, 31 U.S.C. 1308, 42 U.S.C. 2459a, 42 U.S.C. 3515, and paragraph (b) of this subsection), or when the contract calls for an end product that cannot feasibly be subdivided for separate performance