

post allowance to reflect the elimination of that allowance from the Department of States' Standardized Regulations (Government Civilians, Foreign Areas), Chapter 230.

#### B. Regulatory Planning and Review

This is not a significant regulatory action and, therefore, is subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

#### C. Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), USAID has considered the economic impact of the rule and has determined that its provisions would not have a significant economic impact on a substantial number of small entities.

#### D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the AIDAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

#### List of Subjects in 48 CFR Part 7

Government procurement.

For the reasons set forth in the preamble, the U. S. Agency for International Development proposes to amend 48 CFR part 7 as follows:

1. The authority citation for 48 CFR part 7 continues to read as follows:

**Authority:** Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

#### PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2. Amend Section 752.7028 by revising paragraph (a), removing and reserving paragraph (e), and adding a sentence at the end of paragraph (j)(1) to read as follows:

##### **§ 752.7028 Differential and allowances.**

\* \* \* \* \*

(a) *Post differential.* Post differential is an additional compensation for service at places in foreign areas where conditions of environment differ substantially from conditions of environment in the continental United States and warrant additional compensation as a recruitment and retention incentive.

(1) In areas where post differential is paid to USAID direct-hire employees,

post differentials not to exceed the percentage of salary as is provided such USAID employees in accordance with the Standardized Regulations (Government civilians, Foreign Areas), Chapter 500 (except the limitation contained in Section 552, "Ceiling on Payment") Tables—Chapter 900, as from time to time amended, will be reimbursable hereunder for employees in respect to amounts earned during the time such employees actually spend overseas on work under this contract. (See Standardized Regulation 510).

Payments for post differential are limited to that percentage rate applied to a maximum 40-hour work week, regardless of whether the contracting officer has authorized a work week in excess of 40 hours. Exceptions to this policy may be granted either by the Mission Director or the Assistant Administrator having program responsibility for the project.

(2) When such post differential is provided to regular employees of the Contractor, it shall be payable beginning on the date of arrival at the post of assignment and continue, including periods away from post on official business, until the close of business on the day of departure from post of assignment en route to the United States. Sick or vacation leave taken at or away from the post of assignment will not interrupt the continuity of the assignment or require a discontinuance of such post differential payments, provided such leave is not taken within the United States or the territories of the United States. Post differential will not be payable while the employee is away from his/her post of assignment for purposes of home leave. Short-term employees shall be entitled to post differential beginning with the forty-third (43rd) day at post.

\* \* \* \* \*

(e) Reserved.

\* \* \* \* \*

(j) (1) \* \* \* Payments for danger pay are limited to that percentage of basic compensation as established by the Standardized Regulations applied to a maximum 40-hour work week, regardless of whether the contracting officer has authorized a work week in excess of 40 hours. Exceptions to this policy may be granted either by the Mission Director or the Assistant Administrator having program responsibility for the project.

Dated: October 12, 2006.

**Michael F. Walsh,**

*Procurement Executive.*

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#### DEPARTMENT OF DEFENSE

#### GENERAL SERVICES ADMINISTRATION

#### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 12, 13, 32, 33, 36, 42, and 52

[FAR Case 2005-018]

RIN: 9000-AK59; Docket 2006-0020; Sequence 11

#### Federal Acquisition Regulation; FAR Case 2005-018, Contract Debts

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to revise the policies and procedures for contract debts.

**DATES:** Interested parties should submit written comments to the FAR Secretariat on or before December 26, 2006 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAR case 2005-018 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Search for any document by first selecting the proper document types and selecting "Federal Acquisition Regulation" as the agency of choice. At the "Keyword" prompt, type in the FAR case number (for example, FAR Case 2006-001) and click on the "Submit" button. You may also search for any document by clicking on the "Advanced search/document search" tab at the top of the screen, selecting from the agency field "Federal Acquisition Regulation", and typing the FAR case number in the keyword field. Select the "Submit" button.

• Fax: 202-501-4067.

- Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

**Instructions:** Please submit comments only and cite FAR case 2005-018 in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeremy Olson at (202) 501-3221 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755. Please cite FAR case 2005-018.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

In 2003, the DoD Comptroller established the DoD Accounts Receivable Workgroup to evaluate the processes and procedures for reporting accounts receivables. This Workgroup concluded that contracting officers may not be properly reporting contract debts. Based on the Workgroup's recommendations, DoD established a Contract Debt Integrated Process Team (IPT).

The mission of the IPT was to evaluate the adequacy of DoD's existing controls and procedures for ensuring that contract debts are identified and recovered in a timely manner, properly accounted for in DoD's books and records, and properly coordinated with the appropriate Government Officials. Contract debts result from compliance, or a failure to comply, with the terms of a contract and include debts identified by auditors, contracting officers, disbursing officials, and contractors. On May 26, 2005, a final report was issued that included a number of recommended FAR changes to improve contract debt controls and procedures, and to ensure consistency within/between existing regulations.

The Councils established this case to evaluate the DoD recommendations. As a result of this review, the Councils are proposing the revisions discussed below. In addition, the Councils are considering whether the current provisions regarding interest provisions are sufficient. In particular, concerns have been expressed over the current timeline for computing interest. The Councils agreed to defer this issue for consideration to a later date (including a possible public meeting).

**1. Reorganize FAR Subpart 32.6.**

Reorganizes FAR Subpart 32.6 to add clarity and provide a logical sequence. The Subpart has been reorganized as follows:

- 32.600 Scope of subpart.
- 32.601 General.
- 32.602 Responsibilities.
- 32.603 Debt determination.
- 32.604 Demand for payment.
- 32.605 Final decisions.
- 32.606 Debt collection.
- 32.607 Installment payments and deferment of collection.
- 32.607-1 Installment payments.
- 32.607-2 Deferment of collection.

32.608 Interest.

32.608-1 Interest charges.

32.608-2 Interest credits.

32.609 Delays in receipt of notices or demands.

32.610 Compromising debts.

32.611 Contract clause.

**2. Scope of Subpart.** Revise FAR 32.600 to provide a more accurate description of the scope of this FAR subpart. FAR 32.6 prescribes policies and procedures for identifying, collecting, and deferring contract debts (including interest, if applicable).

**3. Responsible Official.** Replace the term "responsible official" with the specific individual/organization responsible for fulfilling the FAR requirement. Some of the responsibilities currently listed are assigned to one individual/organization (e.g., the Procuring Contracting Officer) and other responsibilities are assigned to another individual/organization (e.g., the payment office). To assure a clear understanding of the process and applicable duties, the proposed rule specifies the responsible party for each required action (e.g., the Procuring Contracting Officer, the Administrative Contracting Officer, the payment office, etc.) rather than referring to all parties as "responsible officials."

**4. Contract Debt – General.** Revise FAR 32.601 to specify what constitutes a contract debt, rather than how a contract debt may arise. In addition, amend this section to include payments determined to be in excess of contract limitations for commercial financing, since such payments constitute a contract debt.

**5. Contract Debt Responsibilities – Identifying, Demanding Payment, Collecting, and Liquidating.** Add a section to clearly define the responsibilities of the contracting officer and the payment officials to assure an efficient and non-duplicative process. Under the proposed rule the—

(a) The contracting officer is responsible for identifying a contract debt and demanding payment of a contract debt. The contracting officer is prohibited from collecting contract debts or otherwise liquidating contract debts (e.g., offsetting the amount of the debt against existing unpaid bills due the contractor or allowing contractors to retain contract debts to cover amounts that may be payable to the contractor in the future).

(b) The payment office is responsible for collecting payment of the contract debt and liquidating the contract debt.

**6. Contract Debt Determinations** Consolidate all discussions of contract debt determinations in FAR 32.603, Debt Determinations, including the

responsibility of the contracting officer in making debt determinations.

**7. Tax Credit.** Delete the current FAR 32.607 because the referenced tax credit (Sec. 1481) was repealed on November 5, 1990, by Public Law 101-508.

**8. Demand for Payment.** Consolidate all discussions of the demand for payment in a single section, at FAR 32.604, Demand for Payment to include:

(a) A requirement to issue the demand letter except in specific circumstances.

(b) A requirement that the demand letter include accounting information to enable the payment office to correctly record the amounts in the proper accounts.

(c) A requirement that the demand letter include the amount of interest owed under statutes that require interest assessments from the date of noncompliance to the date of repayment (CAS and TINA).

(d) A paragraph implementing the requirements of 31 U.S.C. 3717(e)(1) and the Debt Collection Improvement Act of 1996; and

(e) A paragraph addressing instances where overpayments exist but a demand for payment is not necessary.

**9. Final Decisions.** Consolidate all discussions of final decisions in a single section at FAR 32.605, Final Decisions, to include:

(a) When a final decision must be issued;

(b) A statement that the due date for a demand letter is not extended simply because a final decision is being issued;

(c) A need to obtain evidence of receipt by the contractor to establish the starting date for interest computations and the statute of limitations.

**10. Debt Collection.** Consolidate all discussions of debt collection in a single section, at FAR 32.606, Debt Collection, to include:

(a) The current requirements at 32.612;

(b) The current requirements for transferring debts to the Department of Treasury; and

(c) A requirement to assure the debt is being collected by maintaining communication between the contracting officer and the payment office.

**11. Installment Payments and Deferment of Collection.** Clarify procedures for processing installment payments and deferment of collection requests.

**12. Interest.** Consolidate and simplify all discussions of interest in a single section at FAR 32.608, Interest, to include:

(a) The substance of the current language at 32.614;

(b) Computing interest on overpayments.

**13. FAR 12.215 and 32.008 –**

**Notification of Overpayment.** Revise FAR 32.008 to specifically state the responsibilities of the contracting officer when notified by the contractor of a duplicate payment or that the Government has otherwise overpaid. In addition, amend FAR 12.215 to include reference to the requirement in FAR 32.604.

**14. FAR Contract Clauses – Payment.**

Revise the contract clauses at FAR 52.212–4(i)(5) and (6); 52.232–25(d); 52.232–26(c); and FAR 52.232–27(l) to assure that the contractor remits payment to the payment office (rather than the contracting officer) and the payment office is able to properly account for the remittance.

**15. FAR 52.232–17, Interest.** Revise FAR 52.232–17 to conform with the other proposed revisions.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**B. Regulatory Flexibility Act**

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the regulatory changes are predominantly internal operating procedures for contracting officers and will not significantly change duties of small entities under their contracts. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Part(s) 12, 13, 32, 33, 36, 42, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2005–018), in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Parts 12, 13, 32, 33, 36, 42, and 52**

Government procurement.

Dated: October 6, 2006.

**Ralph De Stefano,**

*Director, Contract Policy Division.*

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 12, 13, 32, 33, 36, 42, and 52 as set forth below:

1. The authority citation for 48 CFR parts 12, 13, 32, 33, 36, 42, and 52 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

**PART 12—ACQUISITION OF COMMERCIAL ITEMS**

2. Revise section 12.215 to read as follows:

**12.215 Notification of Overpayment.**

If the contractor notifies the contracting officer of a duplicate payment or that the Government has otherwise overpaid, the contracting officer shall follow the procedures at 32.604.

**PART 13—SIMPLIFIED ACQUISITION PROCEDURES**

3. Revise section 13.401 (b) to read as follows:

**13.401 General.**

\* \* \* \* \*

(b) The contracting officer shall be primarily responsible for determining the amount of debts resulting from failure of contractors to properly replace, repair, or correct supplies lost, damaged, or not conforming to purchase requirements (see 32.602 and 32.603).

\* \* \* \* \*

**PART 32—CONTRACT FINANCING**

4. Revise section 32.008 to read as follows:

**32.008 Notification of Overpayment.**

If the contractor notifies the contracting officer of a duplicate payment or that the Government has otherwise overpaid, the contracting officer shall follow the procedures at 32.604.

5. Revise subpart 32.6 to read as follows:

**Subpart 32.6—Contract Debts**

Sec.

- 32.600 Scope of subpart.
- 32.601 General.
- 32.602 Responsibilities.
- 32.603 Debt determination.
- 32.604 Demand for payment.
- 32.605 Final decisions.
- 32.606 Debt collection.
- 32.607 Installment payments and deferment of collection.
- 32.607-1 Installment payments.
- 32.607-2 Deferment of collection.
- 32.608 Interest.

32.608-1 Interest charges.

32.608-2 Interest credits.

32.609 Delays in receipt of notices or demands.

32.610 Compromising debts.

32.611 Contract clause.

**32.600 Scope of Subpart.**

This subpart prescribes policies and procedures for identifying, collecting, and deferring contract debts (including interest, if applicable). Sections 32.607, 32.608, and 32.610 of this subpart do not apply to claims against common carriers for transportation overcharges and freight and cargo losses (31 U.S.C. 3726).

**32.601 General.**

(a) Contract debts are amounts that—  
(1) Have been paid to a contractor to which the contractor is not currently entitled under the terms and conditions of the contract; or

(2) Are otherwise due from the contractor under the terms and conditions of the contract. (b) Contract debts include, but are not limited to, the following:

(1) Billing and price reductions resulting from contract terms for price redetermination or for determination of prices under incentive type contracts.

(2) Price or cost reductions for defective cost or pricing data.

(3) Financing payments determined to be in excess of the contract limitations at 52.232–16(a)(7), Progress Payments, or 52.232–32(d)(2), Performance-Based Payments, or any contract clause for commercial item financing.

(4) Increases to financing payment liquidation rates.

(5) Overpayments disclosed by quarterly statements required under price redetermination or incentive contracts.

(6) Price adjustments resulting from Cost Accounting Standards (CAS) noncompliances or changes in cost accounting practice.

(7) Reinspection costs for nonconforming supplies or services.

(8) Duplicate or erroneous payments.

(9) Damages or excess costs related to defaults in performance.

(10) Breach of contract obligations concerning progress payments, performance based payments, advance payments, commercial item financing, or Government-furnished property.

(11) Government expense of correcting defects.

(12) Overpayments related to errors in quantity or billing or deficiencies in quality.

(13) Delinquency in contractor payments due under agreements or arrangements for deferral or postponement of collections.

(14) Reimbursement of amounts due under 33.102(b)(3) and 33.104(h)(8).

### 32.602 Responsibilities.

(a) The contracting officer has primary responsibility for identifying and demanding payment of contract debts except those resulting from errors made by the payment office. The contracting officer shall not collect contract debts or otherwise agree to liquidate contract debts (e.g. offset the amount of the debt against existing unpaid bills due the contractor, or allow contractors to retain contract debts to cover amounts that may become payable in future periods.

(b) The payment office has primary responsibility for—

- (1) Collecting contract debts identified by contracting officers;
- (2) Identifying and collecting duplicate and erroneous payments; and
- (3) Authorizing the liquidation of contract debts in accordance with agency procedures.

### 32.603 Debt determination.

(a) If the contracting officer has any indication that a contractor owes money to the Government under a contract, the contracting officer shall determine promptly whether an actual debt is due and the amount. Any unnecessary delay may contribute to—

(1) Loss of timely availability of the funds to the program for which the funds were initially provided;

(2) Increased difficulty in collecting the debt; or

(3) Actual monetary loss to the Government.

(b) The amount of indebtedness determined unilaterally by the contracting officer shall be an amount that—

(1) Is based on the merits of the case; and

(2) Is consistent with the contract terms.

### 32.604 Demand for payment.

(a) Except as provided in paragraph (c) of this section, the contracting officer shall take the following actions:

(1) Issue the demand for payment as soon as the contracting officer has determined that an actual debt is due the Government and the amount.

(2) Issue a demand for payment even if—

(i) The debt is or will be the subject of a bilateral modification;

(ii) The contractor is otherwise obligated to pay the money under the existing contract terms; or

(iii) The contractor has agreed to repay the debt.

(3) Issue the demand for payment as a part of the final decision, if a final decision is required by 32.605(a).

(b) The demand for payment shall include the following:

(1) A description of the debt, including the debt amount.

(2) A distribution of the principal amount of the debt by line(s) of accounting subject to the following:

(i) If the debt affects multiple lines of accounting, the contracting officer shall, to the maximum extent practicable, identify all affected lines of accounting. If it is not practicable to identify all affected lines of accounting, the contracting officer may select representative lines of accounting in accordance with paragraph (b)(2)(ii) of this section.

(ii) In selecting representative lines of accounting, the contracting officer shall—

(A) Consider the affected departments or agencies, years of appropriations, and the predominant types of appropriations;

(B) Not distribute to any line of accounting an amount of the principal in excess of the total obligation for the line of accounting; and

(iii) Include the lines of accounting even if the associated funds are expired or cancelled. While cancelled funds will be deposited in a miscellaneous receipt account of the Treasury if collected, the funds are tracked under the closed year appropriation(s) to comply with the Anti-Deficiency Act.

(iv) If the debt affects multiple contracts and the lines of accounting are not readily available, the contracting officer shall—

(A) Issue the demand for payment without the distribution of the principal amount to the affected lines of accounting;

(B) Include a statement in the demand for payment advising when the distribution will be provided; and

(C) Provide the distribution by the date identified in the demand for payment.

(3) The basis for and amount of any accrued interest or penalty.

(4)(i) For debts resulting from specific contract terms (e.g., debts resulting from incentive clause provisions, Quarterly Limitation on Payments Statement, Cost Accounting Standards, price reduction for defective pricing), a notification stating that payment should be made promptly, and that interest is due in accordance with the terms of the contract. Interest shall be computed from the date specified in the applicable contract clause until repayment by the contractor. The interest rate shall be the rate specified in the applicable contract clause.

(ii) For all other contract debts, a notification stating that any amounts not

paid within 30 days from the date of the demand for payment will bear interest. Interest shall be computed from the date of the demand for payment until repayment by the contractor. The interest rate shall be the interest rate established by the Secretary of the Treasury, as provided in Section 611 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six-month period as established by the Secretary until the amount is paid.

(iii) In the case of a debt arising from a price reduction for defective pricing, or as specifically set forth in a Cost Accounting Standards (CAS) clause in the contract, interest is computed from the date of overpayment by the Government until repayment by the contractor at the underpayment rate established by the Secretary of the Treasury, for the periods affected, under 26 U.S.C. 6621(a)(2).

(5) A statement advising the contractor—

(i) To contact the contracting officer if the contractor believes the debt is invalid or the amount is incorrect; and

(ii) To remit a check payable to the “Treasurer of the United States” annotated with the contract number along with a copy of the demand for payment to the payment office identified in the contract or as otherwise specified in the demand letter in accordance with agency procedures.

(6) Notification that the payment office may offset the debt against any payments otherwise due the contractor.

(7) Notification that the debt is subject to administrative charges in accordance with the requirements of 31 U.S.C. 3717(e) and the Debt Collection Improvement Act of 1996.

(8) A notification that the contractor may submit a request for installment payments or deferral of collection if immediate payment is not practicable or if the amount is disputed.

(c) Except as provided in paragraph (d) of this section, the contracting officer should not issue a demand for payment if the contracting officer only becomes aware of the debt when the contractor—

(1) Provides a lump sum payment or submits a credit invoice. (A credit invoice is a contractor’s request to liquidate the debt against existing unpaid bills due the contractor); or

(2) Notifies the contracting officer that the payment office overpaid on an invoice payment. When the contractor provides the notification, the contracting officer shall notify the payment office of the overpayment.

(d) If a demand for payment was not issued as provided for in paragraph (c) of this section, the contracting officer shall issue a demand for payment no sooner than 30 days after the contracting officer becomes aware of the debt unless—

(i) The contractor has liquidated the debt;

(ii) The contractor has requested an installment payment agreement; or

(iii) The payment office has issued a demand for payment.

(e) The contracting officer shall—

(1) Furnish a copy of the demand for payment to the contractor by certified mail, return receipt requested, or by any other method that provides evidence of receipt; and

(2) Forward a copy of the demand to the payment office.

### 32.605 Final decisions.

(a) The contracting officer shall issue a final decision as required by 33.211 if—

(1) The contracting officer and the contractor are unable to reach agreement on the existence or amount of a debt in a timely manner;

(2) The contractor fails to liquidate a debt previously demanded by the contracting officer within the timeline specified in the demand for payment unless the amounts were not repaid because the contractor has requested an installment payment agreement; or

(3) The contractor requests a deferment of collection on a debt previously demanded by the contracting officer (see 32.607-2).

(b) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(c) The contracting officer shall—

(1) Furnish the decision to the contractor by certified mail, return receipt requested, or by any other method that provides evidence of receipt; and

(2) Forward a copy to the payment office identified in the contract.

### 32.606 Debt collection.

(a) If the contractor has not liquidated the debt within 30 days of the date due or requested installment payments or deferment of collection, the payment office initiates withholding of principal, interest, penalties, and administrative charges. In the event the contract is assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 15), the rights of the assignee will be scrupulously respected and withholding of payments shall be consistent with those rights. For

additional information on assignment of claims, see Subpart 32.8.

(b) As provided for in the Debt Collection Improvement Act of 1996, payment offices are required to transfer any debt that is delinquent more than 180 days to the Department of Treasury for collection.

(c) The contracting officer shall periodically follow up with the payment office to determine whether the debt has been collected and credited to the correct appropriation(s).

### 32.607 Installment payments and deferment of collection.

(a) The contracting officer shall not approve or deny a contractor's request for installment payments or deferment of collections. The office designated in agency procedures is responsible for approving or denying requests for installment payments or deferment of collections.

(b) If a contractor has not appealed the debt or filed an action under the Disputes clause of the contract and the contractor has submitted a proposal for debt deferment or installment payments—

(1) The office designated in agency procedures may arrange for deferment/installment payments if the contractor is unable to pay at once in full or the contractor's operations under national defense contracts would be seriously impaired. The arrangement shall include appropriate covenants and securities and should be limited to the shortest practicable maturity; and

(2) The deferment/installment agreement shall include a specific schedule or plan for payment. It should permit the Government to make periodic financial reviews of the contractor and to require payments earlier than required by the agreement if the Government considers the contractor's ability to pay improved. It should also provide for required stated or measurable payments on the occurrence of specific events or contingencies that improve the contractor's ability to pay.

(c) If not already applicable under the contract terms, interest on contract debt shall be made an element of any agreement entered into an installment payment or deferment of collection agreement.

### 32.607-1 Installment payments.

If a contractor requests an installment payment agreement, the contracting officer shall notify the contractor to send a written request for installment payments to the office designated in agency procedures.

### 32.607-2 Deferment of collection.

(a) All requests for deferment of collection must be submitted in writing to the contracting officer.

(1) If the contractor has appealed the debt under the procedures of the Disputes clause of the contract, the information with the request for deferment may be limited to an explanation of—

(i) The contractor's financial condition; and

(ii) Whether deferment of the debt collection is advisable to avoid possible overcollection.

(2) If there is no appeal pending or action filed under the Disputes clause of the contract, the following information about the contractor should be submitted with the request:

(i) Financial condition.

(ii) Contract backlog.

(iii) Projected cash receipts and requirements.

(iv) The feasibility of immediate payment of the debt.

(v) The probable effect on operations of immediate payment in full.

(vi) Whether deferment of the debt collection is advisable to avoid possible over collection.

(b) Upon receipt of the contractor's written request, the contracting officer shall promptly provide a notification to the payment office and advise the payment office that the contractor's request is under consideration. Prompt notification is required to ensure that the payment office does not begin collection while the deferment request is being considered.

(c)(1) The contracting officer shall forward the following to the office designated in agency procedures for a decision:

(i) A copy of the contractor's request for a deferment of collection.

(ii) A written recommendation on the request and the basis for the recommendation including the advisability of deferment to avoid possible overcollections.

(iii) A statement as to whether the contractor has an appeal pending or action filed under the Disputes clause of the contract and the docket number if the appeal has been filed.

(iv) A copy of the contracting officer's final decision (see 32.605).

(2) The contracting officer should consider any information necessary to develop a recommendation on the deferment request.

(d) The office designated in agency procedures may authorize a deferment pending the resolution of appeal to avoid possible overcollections. The agency is required to use current year unexpired funds to pay interest on overcollections.

(e) Deferments pending disposition of appeal may be granted to small business concerns and financially weak contractors, with a reasonable balance of the need for Government security against loss and undue hardship on the contractor.

(f) Contracts and arrangements for deferment shall not provide that a claim of the Government will not become due and payable pending mutual agreement on the amount of the claim or, in the case of a dispute, until the decision is reached.

(g) At a minimum, the deferment agreement shall contain the following:

(1) A description of the debt.

(2) The date of first demand for payment.

(3) Notice of an interest charge, in conformity with FAR 32.608 and the FAR clause at 52.232-17, Interest; or, in the case of a debt arising from a defective pricing or a CAS noncompliance overpayment, interest, as prescribed by the applicable Price Reduction for Defective Cost or Pricing Data or CAS clause.

(4) Identification of the office to which the contractor is to send debt payments.

(5) A requirement for the contractor to submit financial information requested by the Government and for reasonable access to the contractor's records and property by Government representatives.

(6) Provision for the Government to terminate the deferment agreement and accelerate the maturity of the debt if the contractor defaults or if bankruptcy or insolvency proceedings are instituted by or against the contractor.

(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.

(j) Actions filed by contractors under the Disputes clause shall not suspend or delay collection. Until the action is decided, deferments shall only be granted if, within 30 days after the filing of such action, the contractor presents to

the office designated in agency procedures a good and sufficient bond, or other acceptable collateral, in the amount of the claim, and the deferment is approved by the office designated in agency procedures. Any amount collected by the Government in excess of the amount found to be due on appeal under the Disputes clause of the contract shall be refunded to the contractor with interest thereon from the date of collection by the Government until the date the monies are remitted to the contractor at the annual rate established by the Secretary of Treasury under Public Law 92-41. Simple interest shall be calculated to reflect each 6-month period change in the rates established by the Secretary.

### **32.608 Interest.**

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

(a) Unless specified otherwise in the FAR clause at 52.232-17—

(1) Interest charges shall apply to any contract debt unpaid after 30 days from the issuance of a demand for payment or from any earlier date specified in the contract unless—

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

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

(2) The interest charge shall be at the rate established by the Secretary of the Treasury under Public Law 92-41 for the period in which the amount becomes due. The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(i) The date on which the designated office receives payment from the contractor;

(ii) The date of issuance of a Government check to the contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(iii) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the contractor.

(b) If not already applicable under the contract terms, interest on contract debt shall be made an element of any agreement entered into on installment payment and deferment of collection agreements.

#### **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 the collection procedures followed in a given case result in an over collection of the debt due.

(3) 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 interest 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 paragraph (b) of the FAR clause at 52.232-17 and 32.608-1(a)(2) shall be charged on the reduced debt from the date specified in the first demand made for payment of the higher debt.

(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, if further collection is not practicable or would cost more than the amount of recovery, the designated agency official may compromise the debt. Compromise is authorized by the Federal Claims Collection Act (31 U.S.C. 3711). Compromise shall conform to Federal Claims Collection Standards 31 CFR part 900, and agency regulations. Unless specifically authorized by agency procedures, contracting officers can not 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.
- (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).

### PART 33—PROTESTS, DISPUTES, AND APPEALS

#### 33.208 [Amended]

6. Amend section 33.208(b) by removing “32.614” and adding “32.608” in its place.

#### 33.211 [Amended]

7. Amend section 33.211(a)(vi) by removing “32.610(b)” and adding “32.604 and 32.605” in its place.

### PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

#### 36.608 [Amended]

8. Amend section 36.608 in the fourth sentence by removing “collect” and adding “issue a demand for payment of the amount due” in its place.

### PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

9. Amend section 42.302 by revising paragraph (a)(17) to read as follows:

#### 42.302 Contract administration functions.

(a) \* \* \*

- (17) Analyze quarterly limitation on payments statements and take action in accordance with Subpart 32.6 to recover overpayments from the contractor.

\* \* \* \* \*

### PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

10. Amend section 52.212-4 by revising the date of the clause and paragraph (i)(5); and adding paragraph (i)(6) to read as follows:

#### 52.212-4 Contract Terms and Conditions—Commercial Items.

\* \* \* \* \*

#### CONTRACT TERMS AND CONDITIONS—COMMERCIAL ITEMS—(DATE)

\* \* \* \* \*

(i) \* \* \*

(5) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall take the following actions:

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number if applicable;

(C) Affected contract line item or subline item, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) *Interest.* (i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 611 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(ii) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment consistent with this contract, including any demand for payment resulting from a default termination.

(iii) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(iv) The interest charge made under this clause may be reduced under the

procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

\* \* \* \* \*

11. Revise section 52.232-17 to read as follows:

#### 52.232-17 Interest.

As prescribed in 32.611(a) and (b), insert the following clause:

#### INTEREST (DATE)

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 611 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) Amounts shall be due at the earliest of the following dates:

(1) The date fixed under this contract.

(2) The date of the first written demand for payment consistent with this contract, including any demand for payment resulting from a default termination.

(c) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(1) The date on which the designated office receives payment from the Contractor;

(2) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(3) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(d) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

12. Amend section 52.232-25 by revising the date of the clause and paragraph (d) to read as follows:

#### 52.232-25 Prompt Payment.

\* \* \* \* \*

#### PROMPT PAYMENT (DATE)

\* \* \* \* \*

(d) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

(1) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(i) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(ii) Affected contract number and delivery order number if applicable;

(iii) Affected contract line item or subline item, if applicable; and

(iv) Contractor point of contact.

(2) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(End of clause)

13. Amend section 52.232-26 by revising the date of the clause and paragraph (c) to read as follows:

**52.232-26 Prompt Payment for Fixed-Price Architect-Engineer Contracts.**

\* \* \* \* \*

PROMPT PAYMENT FOR FIXED-PRICE ARCHITECT-ENGINEER CONTRACTS (DATE)

\* \* \* \* \*

(c) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

(1) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(i) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(ii) Affected contract number and delivery order number if applicable;

(iii) Affected contract line item or subline item, if applicable; and

(iv) Contractor point of contact.

(2) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(End of clause)

14. Amend section 52.232-27 by revising the date of the clause and paragraph (l) to read as follows:

**52.232-27 Prompt Payment for Construction Contracts.**

\* \* \* \* \*

PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS (DATE)

\* \* \* \* \*

(l) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

(1) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(i) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(ii) Affected contract number and delivery order number if applicable;

(iii) Affected contract line item or subline item, if applicable; and

(iv) Contractor point of contact.

(2) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(End of clause)

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