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### 32.000 Scope of part.

This part prescribes policies and procedures for contract financing and other payment matters. This part addresses—

(a) Payment methods, including partial payments and progress payments based on percentage or stage of completion;

(b) Loan guarantees, advance payments, and progress payments based on costs;

(c) Administration of debts to the Government arising out of contracts;

(d) Contract funding, including the use of contract clauses limiting costs or funds;

(e) Assignment of claims to aid in private financing;

(f) Selected payment clauses;

(g) Financing of purchases of commercial items;

(h) Performance-based payments; and

(i) Electronic funds transfer payments.

[48 FR 42328, Sept. 19, 1983, as amended at 60 FR 49710, Sept. 26, 1995; 61 FR 45772, Aug. 29, 1996; 67 FR 13054, Mar. 20, 2002]

### 32.001 Definitions.

As used in this part—

*Commercial interim payment* means any payment that is not a commercial

advance payment or a delivery payment. These payments are contract financing payments for prompt payment purposes (*i.e.*, not subject to the interest penalty provisions of the Prompt Payment Act in accordance with subpart 32.9). A commercial interim payment is given to the contractor after some work has been done, whereas a commercial advance payment is given to the contractor when no work has been done.

*Contract action* means an action resulting in a contract, as defined in subpart 2.1, including actions for additional supplies or services outside the existing contract scope, but not including actions that are within the scope and under the terms of the existing contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

*Contract financing payment* means an authorized Government disbursement of monies to a contractor prior to acceptance of supplies or services by the Government.

(1) Contract financing payments include—

- (i) Advance payments;
- (ii) Performance-based payments;
- (iii) Commercial advance and interim payments;
- (iv) Progress payments based on cost under the clause at 52.232-16, Progress Payments;
- (v) Progress payments based on a percentage or stage of completion (see 32.102(e)), except those made under the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, or the clause at 52.232-10, Payments Under Fixed-Price Architect-Engineer Contracts; and
- (vi) Interim payments under a cost reimbursement contract, except for a cost reimbursement contract for services when Alternate I of the clause at 52.232-25, Prompt Payment, is used.

(2) Contract financing payments do not include—

- (i) Invoice payments;
- (ii) Payments for partial deliveries; or
- (iii) Lease and rental payments.

*Customary contract financing* means that financing deemed by an agency to be available for routine use by con-

tracting officers. Most customary contract financing arrangements should be usable by contracting officers without specific reviews or approvals by higher management.

*Delivery payment* means a payment for accepted supplies or services, including payments for accepted partial deliveries. Commercial financing payments are liquidated by deduction from these payments. Delivery payments are invoice payments for prompt payment purposes.

*Designated billing office* means the office or person (governmental or nongovernmental) designated in the contract where the contractor first submits invoices and contract financing requests. The contract might designate different offices to receive invoices and contract financing requests. The designated billing office might be—

- (1) The Government disbursing office;
- (2) The contract administration office;
- (3) The office accepting the supplies delivered or services performed by the contractor;
- (4) The contract audit office; or
- (5) A nongovernmental agent.

*Designated payment office* means the office designated in the contract to make invoice payments or contract financing payments. Normally, this will be the Government disbursing office.

*Due date* means the date on which payment should be made.

*Invoice payment* means a Government disbursement of monies to a contractor under a contract or other authorization for supplies or services accepted by the Government.

- (1) Invoice payments include—
  - (i) Payments for partial deliveries that have been accepted by the Government;
  - (ii) Final cost or fee payments where amounts owed have been settled between the Government and the contractor;
  - (iii) For purposes of subpart 32.9 only, all payments made under the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, and the clause at 52.232-10, Payments Under Fixed-Price Architect-Engineer Contracts; and
  - (iv) Interim payments under a cost-reimbursement contract for services

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when Alternate I of the clause at 52.232-25, Prompt Payment, is used.

(2) Invoice payments do not include contract financing payments.

*Unusual contract financing* means any financing not deemed customary contract financing by the agency. Unusual contract financing is financing that is legal and proper under applicable laws, but that the agency has not authorized contracting officers to use without specific reviews or approvals by higher management.

[52 FR 30077, Aug. 12, 1987, as amended at 60 FR 49710, Sept. 26, 1995; 66 FR 2131, Jan. 10, 2001; 66 FR 65354, Dec. 18, 2001; 67 FR 13054, Mar. 20, 2002]

**32.002 Applicability of subparts.**

(a) The following sections and subparts of this part are applicable to all purchases subject to part 32:

- (1) Sections 32.000 through 32.005.
- (2) Subpart 32.3, Loan Guarantees for Defense Production.
- (3) Subpart 32.6, Contract Debts.
- (4) Subpart 32.7, Contract Funding.
- (5) Subpart 32.8, Assignment of Claims.
- (6) Subpart 32.9, Prompt Payment.
- (7) Subpart 32.11, Electronic Funds Transfer.

(b) Subpart 32.2, Commercial Item Purchase Financing, is applicable only to purchases of commercial items under authority of part 12.

(c) The following subparts of this part are applicable to all purchases made under any authority other than part 12:

- (1) Subpart 32.1, Non-Commercial Item Purchase Financing.
- (2) Subpart 32.4, Advance Payments For Non-Commercial Items.
- (3) Subpart 32.5, Progress Payments Based on Costs.
- (4) Subpart 32.10, Performance-Based Payments.

[60 FR 49710, Sept. 26, 1995, as amended at 61 FR 45772, Aug. 29, 1996]

**32.003 Simplified acquisition procedures financing.**

Unless agency regulations otherwise permit, contract financing shall not be provided for purchases made under the authority of part 13.

[60 FR 49710, Sept. 26, 1995]

**32.004 Contract performance in foreign countries.**

The enforceability of contract provisions for security of Government financing in a foreign jurisdiction is dependent upon local law and procedure. Prior to providing contract financing where foreign jurisdictions may become involved, the contracting officer shall ensure the Government's security is enforceable. This may require the provision of additional or different security than that normally provided for in the standard contract clauses.

[60 FR 49710, Sept. 26, 1995]

**32.005 Consideration for contract financing.**

(a) *Requirement.* When a contract financing clause is included at the inception of a contract, there shall be no separate consideration for the contract financing clause. The value of the contract financing to the contractor is expected to be reflected in either

(1) A bid or negotiated price that will be lower than such price would have been in the absence of the contract financing, or

(2) Contract terms and conditions, other than price, that are more beneficial to the Government than they would have been in the absence of the contract financing. Adequate new consideration is required for changes to, or the addition of, contract financing after award.

(b) *Amount of new consideration.* The contractor may provide new consideration by monetary or nonmonetary means, provided the value is adequate. The fair and reasonable consideration should approximate the amount by which the price would have been less had the contract financing terms been contained in the initial contract. In the absence of definite information on this point, the contracting officer should apply the following criteria in evaluating whether the proposed new consideration is adequate:

(1) The value to the contractor of the anticipated amount and duration of the contract financing at the imputed financial costs of the equivalent working capital.

(2) The estimated profit rate to be earned through contract performance.