

Federal Acquisition Regulation

32.106

of contracts or orders (e.g., issued under indefinite-delivery contracts, basic ordering agreements, or their equivalent);

(2) Administer contract financing so as to aid, not impede, the acquisition;

(3) Avoid any undue risk of monetary loss to the Government through the financing;

(4) Include the form of contract financing deemed to be in the Government's best interest in the solicitation (see 32.106 and 32.113); and

(5) Monitor the contractor's use of the contract financing provided and the contractor's financial status.

(b) If the contractor is a small business concern, the contracting officer must give special attention to meeting the contractor's contract financing need. However, a contractor's receipt of a certificate of competency from the Small Business Administration has no bearing on the contractor's need for or entitlement to contract financing.

(c) Subject to specific agency regulations and paragraph (d) of this section, the contracting officer—

(1) May provide customary contract financing in accordance with 32.113; and

(2) Must not provide unusual contract financing except as authorized in 32.114.

(d) Unless otherwise authorized by agency procedures, the contracting officer may provide contract financing in the form of performance-based payments (see subpart 32.10) or customary progress payments (see subpart 32.5) if the following conditions are met:

(1) The contractor—

(i) Will not be able to bill for the first delivery of products for a substantial time after work must begin (normally 4 months or more for small business concerns, and 6 months or more for others), and will make expenditures for contract performance during the predelivery period that have a significant impact on the contractor's working capital; or

(ii) Demonstrates actual financial need or the unavailability of private financing.

(2) If the contractor is not a small business concern—

(i) For an individual contract, the contract price is \$2 million or more; or

(ii) For an indefinite-delivery contract, a basic ordering agreement or a similar ordering instrument, the contracting officer expects the aggregate value of orders or contracts that individually exceed the simplified acquisition threshold to have a total value of \$2 million or more. The contracting officer must limit financing to those orders or contracts that exceed the simplified acquisition threshold.

(3) If the contractor is a small business concern—

(i) For an individual contract, the contract price exceeds the simplified acquisition threshold; or

(ii) For an indefinite-delivery contract, a basic ordering agreement or a similar ordering instrument, the contracting officer expects the aggregate value of orders or contracts to exceed the simplified acquisition threshold.

[65 FR 16278, Mar. 27, 2000]

32.105 Uses of contract financing.

(a) Contract financing methods covered in this part are intended to be self-liquidating through contract performance. Consequently, agencies shall only use the methods for financing of contractor working capital, not for the expansion of contractor-owned facilities or the acquisition of fixed assets. However, under loan guarantees, exceptions may be made for—

(1) Facilities expansion of a minor or incidental nature, if a relatively small part of the guaranteed loan is used for the expansion and the contractor's repayment would not be delayed or impaired; or

(2) Other instances of facilities expansion for which contract financing is appropriate under agency procedures.

(b) The limitations in this section do not apply to contracts under which facilities are being acquired for Government ownership.

32.106 Order of preference.

The contracting officer must consider the following order of preference when a contractor requests contract financing, unless an exception would be in the Government's best interest in a specific case:

(a) Private financing without Government guarantee. It is not intended, however, that the contracting officer

32.107

require the contractor to obtain private financing—

- (1) At unreasonable terms; or
- (2) From other agencies.
- (b) Customary contract financing other than loan guarantees and certain advance payments (see 32.113).
- (c) Loan guarantees.
- (d) Unusual contract financing (see 32.114).
- (e) Advance payments (see exceptions in 32.402(b)).

[48 FR 42328, Sept. 19, 1983, as amended at 60 FR 49711, Sept. 26, 1995; 65 FR 16279, Mar. 27, 2000]

32.107 Need for contract financing not a deterrent.

- (a) If the contractor or offeror meets the standards prescribed for responsible prospective contractors at 9.104, the contracting officer shall not treat the contractor's need for contract financing as a handicap for a contract award; e.g., as a responsibility factor or evaluation criterion.
- (b) The contractor should not be disqualified from contract financing solely because the contractor failed to indicate a need for contract financing before the contract was awarded.

32.108 Financial consultation.

Each contracting office should have available and use the services of contract financing personnel competent to evaluate credit and financial problems. In resolving any questions concerning (a) the financial capability of an offeror or contractor to perform a contract or (b) what form of contract financing is appropriate in a given case, the contracting officer should consult the appropriate contract financing office.

32.109 Termination financing.

To encourage contractors to invest their own funds in performance despite the susceptibility of the contract to termination for the convenience of the Government, the contract financing procedures under this part may be applied to the financing of terminations either in connection with or independently of financing for contract performance (see 49.112-1).

32.110 Payment of subcontractors under cost-reimbursement prime contracts.

If the contractor makes financing payments to a subcontractor under a cost-reimbursement prime contract, the contracting officer should accept the financing payments as reimbursable costs of the prime contract only under the following conditions:

- (a) The payments are made under the criteria in subpart 32.5 for customary progress payments based on costs, 32.202-1 for commercial item purchase financing, or 32.1003 for performance-based payments, as applicable.
- (b) If customary progress payments are made, the payments do not exceed the progress payment rate in 32.501-1, unless unusual progress payments to the subcontractor have been approved in accordance with 32.501-2.
- (c) If customary progress payments are made, the subcontractor complies with the liquidation principles of 32.503-8, 32.503-9, and 32.503-10.
- (d) If performance-based payments are made, the subcontractor complies with the liquidation principles of 32.1004(d).
- (e) The subcontract contains financing payments terms as prescribed in this part.

[65 FR 16279, Mar. 27, 2000]

32.111 Contract clauses for non-commercial purchases.

- (a) The contracting officer shall insert the following clauses, appropriately modified with respect to payment due dates, in accordance with agency regulations—
 - (1) The clause at 52.232-1, Payments, in solicitations and contracts when a fixed-price supply contract, a fixed-price service contract, or a contract for nonregulated communication services is contemplated;
 - (2) The clause at 52.232-2, Payment under Fixed-Price Research and Development Contracts, in solicitations and contracts when a fixed-price research and development contract is contemplated;
 - (3) The clause at 52.232-3, Payments under Personal Services Contracts, in solicitations and contracts for personal services;