

**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;

## Federal Acquisition Regulation

32.112-1

(4) The clause at 52.232-4, Payments under Transportation Contracts and Transportation-Related Services Contracts, in solicitations and contracts for transportation or transportation-related services;

(5) The clause at 52.232-5, Payments under Fixed-Price Construction Contracts, in solicitations and contracts for construction when a fixed-price contract is contemplated; and

(6) The clause at 52.232-6, Payments under Communication Service Contracts with Common Carriers, in solicitations and contracts for regulated communication services by common carriers.

(b) The contracting officer shall insert the clause at 52.232-7, Payments under Time-and-Materials and Labor-Hour Contracts, appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts when a time-and-materials or labor-hour contract is contemplated. If (i) the nature of the work to be performed requires the contractor to furnish material that is regularly sold to the general public in the normal course of business by the contractor and (ii) the price is under the limitations prescribed in 16.601(b)(3), the contracting officer shall use the clause with its Alternate I. If a labor-hour contract is contemplated, and if no specific reimbursement for materials furnished is intended, the contracting officer may use the clause with its Alternate II.

(c) 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 52.232-8, Discounts for Prompt Payment, in solicitations and contracts when a fixed-price supply contract or fixed-price service contract is contemplated.

(2) A clause, substantially the same as the clause at 52.232-9, Limitation on Withholding of Payments, in solicitations and contracts when a supply contract, research and development contract, service contract, time-and-materials contract, or labor-hour contract is contemplated that includes two or more terms authorizing the temporary withholding of amounts otherwise pay-

able to the contractor for supplies delivered or services performed.

(d) The contracting officer shall insert the following clauses, appropriately modified with respect to payments due dates in accordance with agency regulations:

(1) The clause at 52.232-10, Payments under Fixed-Price Architect-Engineer Contracts, in fixed-price architect-engineer contracts.

(2) The clause at 52.232-11, Extras, in solicitations and contracts when a fixed-price supply contract, fixed-price service contract, or a transportation contract is contemplated.

[48 FR 42328, Sept. 19, 1983, as amended at 51 FR 2665, Jan. 17, 1986; 60 FR 49711, Sept. 26, 1995]

### **32.112 Nonpayment of subcontractors under contracts for noncommercial items.**

#### **32.112-1 Subcontractor assertions of nonpayment.**

(a) In accordance with Section 806(a)(4) of Pub. L. 102-190, as amended by Sections 2091 and 8105 of Pub. L. 103-355, upon the assertion by a subcontractor or supplier of a Federal contractor that the subcontractor or supplier has not been paid in accordance with the payment terms of the subcontract, purchase order, or other agreement with the prime contractor, the contracting officer may determine—

(1) For a construction contract, whether the contractor has made—

(i) Progress payments to the subcontractor or supplier in compliance with Chapter 39 of Title 31, United States Code (Prompt Payment Act); or

(ii) Final payment to the subcontractor or supplier in compliance with the terms of the subcontract, purchase order, or other agreement with the prime contractor;

(2) For a contract other than construction, whether the contractor has made progress payments, final payments, or other payments to the subcontractor or supplier in compliance with the terms of the subcontract, purchase order, or other agreement with the prime contractor; or

(3) For any contract, whether the contractor's certification of payment