

**32.304-2**

(2) Protect the Government against monetary loss.

(e) The Federal Reserve Bank will send its report and recommendation to the Federal Reserve Board. The Board will transmit them to the interested guaranteeing agency.

**32.304-2 Certificate of eligibility.**

(a) The contracting officer shall prepare the certificate of eligibility for a contract that the contracting officer deems to be of material consequence, when—

(1) The contract financing office requests it;

(2) Another interested agency requests it; or

(3) The application for a loan guarantee relates to a contract or sub-contract within the cognizance of the contracting officer.

(b) The agency shall evaluate the relevant data, including the certificate of eligibility, the accompanying data, and any other relevant information on the contractor's financial status and performance, to determine whether authorization of a loan guarantee would be in the Government's interest.

(c) If the contractor has several major national defense contracts, it is normally not necessary to evaluate the eligibility of relatively minor contracts. The determination of eligibility should be processed, without delay, based on the preponderance of the amount of the contracts.

(d) The certificate of eligibility shall include the following determinations:

(1) The supplies or services to be acquired are essential to the national defense.

(2) The contractor has the facilities and the technical and management ability required for contract performance.

(3) There is no practicable alternate source for the acquisition without prejudice to the national defense. (This statement shall not be included if the contractor is a small business concern.)

(e) The contracting officer shall consider the following factors in determining if a practicable alternate source exists:

(1) Prejudice to the national defense, because reletting of a contract with another source would conflict with a

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major policy on defense acquisition; e.g., policies relating to the mobilization base.

(2) The urgency of contract performance schedules.

(3) The technical ability and facilities of other potential sources.

(4) The extent to which other sources would need contract financing to perform.

(5) The willingness of other sources to enter into contracts.

(6) The time and expense involved in repurchasing for contracts or parts of contracts. This may include potential claims under a termination for convenience or delays incident to default at a later date.

(7) The comparative prices available from other sources.

(8) The disruption of established subcontracting arrangements.

(9) Other pertinent factors.

(f) The contracting officer shall attach sufficient data to the certificate of eligibility to support the determinations made. Available pertinent information shall be included on—

(1) The contractor's past performance;

(2) The relationship of the contractor's operations to performance schedules; and

(3) Other factors listed in paragraph (e) above, if relevant to the case under consideration.

(g) If the contracting officer determines that a certificate of eligibility is not justified, the facts and reasons supporting that conclusion shall be documented and furnished to the agency contract finance office.

(h) The guaranteeing agency shall review the proposed guarantee terms and conditions. If they are considered appropriate, the guaranteeing agency shall complete a standard form of authorization as prescribed by the Federal Reserve Board. The agency shall transmit the authorization through the Federal Reserve Board to the Federal Reserve Bank. The Bank is authorized to execute and deliver to the financing institution a standard form of guarantee agreement, with the terms and conditions approved for the particular case. The financing institution will then make the loan.

## Federal Acquisition Regulation

## 32.304-5

(i) Substantially the same procedure may be followed for the application of an offeror who is actively negotiating or bidding for a defense contract, except that the guarantee shall not be authorized until the contract has been executed.

(j) The contracting officer shall report to the agency contract finance office any information about the contractor that would have a potentially adverse impact on a pending guarantee application. The contracting officer is not required, however, to initiate any special investigation for this purpose.

(k) With regard to existing contracts, the agency shall not consider the percentage of guarantee requested by the financing institution in determining the contractor's eligibility.

### 32.304-3 Asset formula.

(a) Under guaranteed loans made primarily for working capital purposes, the agency shall normally limit the guarantee, by use of an asset formula, to an amount that does not exceed a specified percentage (90 percent or less) of the contractor's investment (e.g., payrolls and inventories) in defense production contracts. The asset formula may include all items under defense contracts for which the contractor would be entitled to payment on performance or termination. The formula shall exclude—

(1) Amounts for which the contractor has not done any work or made any expenditure;

(2) Amounts that would become due as the result of later performance under the contracts; and

(3) Cash collateral or bank deposit balances.

(b) Progress payments are deducted from the asset formula.

(c) The agency may relax the asset formula to an appropriate extent for the time actually necessary for contract performance, if the contractor's working capital and credit are inadequate.

### 32.304-4 Guarantee amount and maturity.

The agency may change the guarantee amount or maturity date, within the limitations at 32.304-3, as follows:

(a) If the contractor enters into additional defense production contracts after the application for, but before authorization of, a guarantee, the agency may adjust the loan guarantee amount or maturity date to meet any significant increase in financing need.

(b) If the contractor enters into defense production contracts during the term of the guaranteed loan, the parties may adjust the existing guarantee agreement to provide for financing the new contracts. Pertinent information and the Federal Reserve Bank reports will be submitted to the guaranteeing agency under the procedures for the original guarantee application, described in 32.304-1. Normally, a new certificate of eligibility is required.

### 32.304-5 Assignment of claims under contracts.

(a) The agency shall generally require a contractor that is provided a guaranteed loan to execute an assignment of claims under defense production contracts (including any contracts entered into during the term of the guaranteed loan that are eligible for financing under the loan); however, the agency need not require assignment if any of the following conditions are present:

(1) The contractor's financial condition is so strong that the protection to the Government provided by an assignment of claims is unnecessary.

(2) In connection with the assignment of claims under a major contract, the increased protection of the loan that would be provided by the assignments under additional, relatively smaller contracts is not considered necessary by the agency.

(3) The assignment of claims would create an administrative burden disproportionate to the protection required; e.g., if the contractor has a large number of contracts with individually small dollar amounts.

(b) The contractor shall also execute an assignment of claims if requested to do so by the guarantor or the financing institution.

(c) A subcontract or purchase order issued to a subcontractor shall not be considered eligible for financing under guaranteed loans when the issuer of