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(1) The published prime rate of the financial institution (depository) in which the special account (see 32.409-3) is established; or

(2) The rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2).

(b) The interest rate for advance payments shall be adjusted for changes in the prime rate of the depository and the semiannual determination by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). The contracting officer shall obtain data from the depository on changes in the interest rate during the month. Interest shall be computed at the end of each month on the daily unliquidated balance of advance payments at the applicable daily interest rate.

(c) Interest shall be required on contracts that are for acquisition, at cost, of facilities for Government ownership, if the contracts are awarded in combination with, or in contemplation of, supply contracts or subcontracts.

(d) The agency head or designee may authorize advance payments without interest under the following types of contracts, if in the Government's interest:

(1) Contracts for experimental, research, or development work (including studies, surveys, and demonstrations in socio-economic areas) with nonprofit education or research institutions.

(2) Contracts solely for the management and operation of Government-owned plants.

(3) Cost-reimbursement contracts with governments, including State or local governments, or their instrumentalities.

(4) Other classes of contracts, or unusual cases, for which the exclusion of interest on advances is specifically authorized by agency procedures.

(e) If a contract provides for interest-free advance payments, the contracting officer may require the contractor to charge interest on advances or downpayments to subcontractors and credit the Government for the proceeds from the interest charges. Interest rates shall be determined as described in paragraphs (a) and (b) above. The contracting officer need not require the contractor to charge interest on an advance to a subcontractor that is an in-

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stitution of the kind described in paragraph (d)(1).

(f) The contracting officer shall not allow interest charges, required by this 32.407, as reimbursable costs under cost-reimbursement contracts, whether the interest charge was incurred by the prime contractor or a subcontractor.

[48 FR 42328, Sept. 19, 1983, as amended at 66 FR 2138, Jan. 10, 2001]

32.408 Application for advance payments.

(a) A contractor may apply for advance payments before or after the award of a contract.

(b) The contractor shall submit any advance payment request in writing to the contracting officer and provide the following information:

(1) A reference to the contract if the request concerns an existing contract, or a reference to the solicitation if the request concerns a proposed contract.

(2) A cash flow forecast showing estimated disbursements and receipts for the period of contract performance. If the application pertains to a type of contract described in 32.403(a) or (b), the contractor shall limit the forecast to the contract to be financed by advance payments.

(3) The proposed total amount of advance payments.

(4) The name and address of the financial institution at which the contractor expects to establish a special account as depository for the advance payments. If advance payments in the form of a letter of credit are anticipated, the contractor shall identify the specific account at the financial institution to be used. This subparagraph (4) is not applicable if an alternate method is used under agency procedures.

(5) A description of the contractor's efforts to obtain unguaranteed private financing or a V-loan (see 32.301) under eligible contracts. This requirement is not applicable to the contract types described in 32.403(a) or (b).

(6) Other information appropriate to an understanding of (i) the contractor's financial condition and need, (ii) the contractor's ability to perform the contract without loss to the Government, and (iii) financial safeguards needed to

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protect the Government's interest. Ordinarily, if the contract is a type described in 32.403(a) or (b), the contractor may limit the response to this subparagraph (6) to information on the contractor's reliability, technical ability, and accounting system and controls.

[48 FR 42328, Sept. 19, 1983, as amended at 66 FR 2138, Jan. 10, 2001]

32.409 Contracting officer action.

After analysis of the contractor's application and any appropriate investigation, the contracting officer shall recommend approval or disapproval and transmit the request and recommendation to the approving authority designated under 32.402(e).

32.409-1 Recommendation for approval.

If recommending approval, the contracting officer shall transmit the following, under agency procedures, to the approving authority:

- (a) Contract data, including—
 - (1) Identification and date of the award;
 - (2) Citation of the appropriation;
 - (3) Type and dollar amount of the contract;
 - (4) Items to be supplied, schedule of deliveries or performance, and status of any deliveries or performance;
 - (5) The contract fee or profit contemplated; and
 - (6) A copy of the contract, if available.
- (b) The contractor's request and supporting information.
- (c) A report on the contractor's past performance, responsibility, technical ability, and plant capacity.
- (d) Comments on (1) the contractor's need for advance payments and (2) potential Government benefits from the contract performance.
- (e) Proposed advance payment contract terms, including proposed security requirements.
- (f) The findings, determination, and authorization (see 32.410).
- (g) The recommendation for approval of the advance payment request.
- (h) Justification of any proposal for waiver of interest charges (see 32.407).

32.409-2 Recommendation for disapproval.

If recommending disapproval, the contracting officer shall, under agency procedures, transmit—

- (a) The items prescribed in 32.409-1(a), (b), and (c); and
- (b) The recommendation for disapproval and the reasons.

32.409-3 Security, supervision, and covenants.

(a) If advance payments are approved, the contracting officer shall enter into an agreement with the contractor covering special accounts and suitable covenants protecting the Government's interest (see 32.411). This requirement generally applies under all statutory authorities, but modified requirements applicable to certain specific cases are prescribed in paragraphs (e) through (g) below.

(b) The agency shall (1) ensure that the amount of advance payments does not exceed the contractor's financial needs, and (2) closely supervise the contractor's withdrawal of funds from special accounts in which the advance payments are deposited.

(c) In the terms of the agreement, the contracting officer should provide for a paramount lien in favor of the Government. This lien may supplement or replace other security requirements. The lien should cover—

- (1) Supplies being acquired;
- (2) Any credit balance in the special account in which advance payments are deposited; and

(3) All property that the contractor acquires for performing the contract, except to the extent to which the Government otherwise has valid title to the property.

(d) Security requirements vary to fit the circumstances of different cases. Minimum security requirements are covered by the clauses prescribed in the contract. The contracting officer may supplement these as necessary in each case for protection of the Government's interest. Examples of additional security terms are—

- (1) Personal or corporate endorsements or guarantees;
- (2) Pledges of collateral;
- (3) Subordination or standby of other indebtedness;