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(2) Ascertain the correct amount of the debt;

(3) Act promptly and effectively to collect the debt;

(4) Administer deferment of collection agreements; and

(5) Provide up-to-date information on the status of the debt.

(b) For most kinds of contract debts, including reimbursement of protest costs, the contracting officer has the primary responsibility for determining the amounts of and collecting contract debt. Under some agency procedures, however, the individual who is responsible for payment under the contract; e.g., the disbursing officer, may have this primary responsibility.

[48 FR 42328, Sept. 19, 1983, as amended at 60 FR 48275, Sept. 18, 1995]

32.606 Debt determination and collection.

(a) If any indication of a contract debt arises, the responsible official shall determine promptly whether an actual debt is due the Government and the amount. Any unwarranted delay may contribute to—

(1) Loss of timely availability of the funds to the program for which the funds were initially provided;

(2) Increased difficulty in collecting the debt; or

(3) Actual monetary loss to the Government.

(b) In determining the amount of any contract debt, the responsible official shall fairly consider both the Government's claim and any contract claims by the contractor against the Government. This determination does not constitute a settlement of such claims, nor is it a contracting officer's final determination under the Contract Disputes Act of 1978.

(c) The responsible official shall establish a control record for each contract debt, to include at least the following information:

(1) The name and address of the contractor.

(2) The contract number, if any.

(3) A description of the debt.

(4) The amount of debt and the appropriation to be credited.

(5) The date the debt was determined.

(6) The dates of demands for payment.

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(7) The amounts and dates of collections, as they occur.

(8) The date of any appeal filed or action brought in the Court of Claims under the Disputes clause.

(9) The status of collections. Examples include—

(i) Actions reported to the disbursing officer (name, location, and date);

(ii) Funds requested to be withheld by the disbursing officer;

(iii) Funds requested to be withheld by other offices (date and office);

(iv) Deferment or installment payment arrangement requested;

(v) Deferment or installment request reviewed;

(vi) Supplemental information requested to support deferment requests; and

(vii) Actions transferred to the contract financing office.

(d) Except in cases in which an agreement has been entered into for deferment of collections (32.613) or bankruptcy proceedings against the contractor have been initiated, the contractor shall be required to liquidate the debt by—

(1) Cash payment in a lump sum, on demand; or

(2) Credit against existing unpaid bills due the contractor.

(e) The responsible officials shall use all proper means available to them for collecting debts as rapidly as possible. Practices for ascertaining and collecting debts shall be comprehensive, dynamic, and as uniform as practicable. Full consideration shall be given to personal contact and followup.

[48 FR 42328, Sept. 19, 1983, as amended at 55 FR 38517, Sept. 18, 1990]

32.607 Tax credit.

(a) If the contractor is entitled to a tax credit under section 1481 of the Internal Revenue Code (26 U.S.C. 1481) and requests recognition of the credit in the debt collection, the responsible official shall comply.

(b) The tax credit shall be considered to reduce the amount of the debt as of the date when interest on the debt begins to accrue.

(c) The amount of the debt reduction shall be the amount of the tax credit certificate, if a certificate was issued by the Internal Revenue Service (IRS).

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If the IRS has not yet issued a certificate, the responsible official may accept the contractor's estimate of the tax credit amount until the certificate is issued, subject to any verification that the responsible official considers appropriate.

(d) A reduction for a tax credit does not apply to a debt arising from a sub-contract.

32.608 Negotiation of contract debts.

(a) The responsible official shall ensure that any negotiations concerning debt determinations are completed expeditiously. If consistent with the contract, the official shall make a unilateral determination promptly if the contractor is delinquent in any of the following actions:

- (1) Furnishing pertinent information.
- (2) Negotiating expeditiously.
- (3) Entering into an agreement on a fair and reasonable price revision.
- (4) Signing an interim memorandum evidencing a negotiated pricing agreement involving refund.
- (5) Executing an appropriate contract modification reflecting the result of negotiations.

(b) The amount of indebtedness determined unilaterally shall be an amount that—

- (1) Is proper based on the merits of the case;
- (2) Does not exceed an amount that would have been considered acceptable in a negotiated agreement; and
- (3) Is consistent with the contract terms.

(c) For unilateral debt determinations, the contracting officer shall issue a decision as required by the clause at 52.233-1, Disputes. Such decision shall include a demand for payment (see 33.211(a)(4)(vi)). No demand for payment under 32.610 shall be issued prior to a contracting officer's final decision. A copy of the final decision shall be sent to the appropriate finance office.

[48 FR 42328, Sept. 19, 1983, as amended at 54 FR 34755, Aug. 21, 1989]

32.609 Memorandum of pricing agreement with refund.

(a) If a refund to the Government is agreed upon in negotiations under a price revision type of contract, the re-

sponsible official shall promptly write a memorandum to document the agreement and the contract debt. The memorandum shall be signed by the negotiators for the Government and the contractor. If the procedures of either the agency or the contractor require approval of the negotiation results by higher authority, the memorandum shall be written without prejudice to the final pricing. After negotiations are completed, a supplemental agreement shall be executed without delay.

(b) The amount of refund shall be computed promptly, without waiting for itemization of adjustment of past billings, accounting adjustments, or the adjusted invoices.

32.610 Demand for payment of contract debt.

(a) A demand for payment shall be made as soon as the responsible official has computed the amount of refund due. If the debt arises from excess costs for a default termination, the demand shall be made without delay, as explained in 49.402-6.

(b) The demand shall include the following:

- (1) A description of the debt, including the debt amount.
- (2) Notification that any amounts not paid within 30 days from the date of the demand will bear interest from the date of the demand, or from any earlier date specified in the contract, and that the interest rate shall be the rate established by the Secretary of the Treasury, for the period affected, under Public Law 92-41. In the case of a debt arising from a price reduction for defective pricing, or as specifically set forth in a Cost Accounting Standards (CAS) clause in the contract, that interest will run from the date of overpayment by the Government until repayment by the contractor at the underpayment rate established by the Secretary of the Treasury, for the periods affected, under 26 U.S.C. 6621(a)(2).
- (3) A notification that the contractor may submit a proposal for deferment of collection if immediate payment is not practicable or if the amount is disputed.
- (4) Identification of the responsible official designated for determining the