

## Federal Acquisition Regulation

32.610

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

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amount of the debt and for its collection.

(c) If subparagraph (b)(3) of the clause at 52.232-17, Interest, applies, the demand mentioned in paragraph (a) above shall accompany or be included in the transmittal mentioned in the clause.

[48 FR 42328, Sept. 19, 1983, as amended at 54 FR 34755, Aug. 21, 1989; 55 FR 52794, Dec. 21, 1990; 56 FR 29128, June 25, 1991; 61 FR 18922, Apr. 29, 1996]

#### **32.611 Routine setoff.**

If a disbursing officer is the responsible official for collection of a contract debt, or is notified of the debt by the responsible official and has contractor invoices on hand for payment, the disbursing officer shall make an appropriate setoff. The disbursing officer shall give the contractor an explanation of the setoff. To the extent that the setoff reduces the debt, the explanation shall replace the demand prescribed in 32.610.

#### **32.612 Withholding and setoff.**

During the 30 days following the issuance of a demand, the advisability of withholding payments otherwise due to the contractor shall be considered based on the circumstances of the individual cases. If payment is not completed within 30 days, and deferment is not requested, withholding of principal and interest shall be initiated immediately. In the event the contract is assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 15), the rights of the assignee will be scrupulously respected and withholding of payments shall be consistent with those rights. For additional information on assignment of claims, see subpart 32.8.

[48 FR 42328, Sept. 19, 1983, as amended at 51 FR 2665, Jan. 17, 1986]

#### **32.613 Deferment of collection.**

(a) If the responsible official receives a written request from the contractor for a deferment of the debt collection or installment payments, the official shall promptly review the request to see if the information included is adequate for action on the request. If not, the contractor shall be asked to fur-

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nish the needed information. Any necessary changes to the terms of the proposed deferment/installment agreement shall also be suggested.

(b) If the contractor has appealed the debt under the procedures of the Disputes clause of the contract, the information with the request for deferment may be limited to an explanation of the contractor's financial condition.

(c) If there is no appeal pending or action filed under the Disputes clause of the contract, the following information about the contractor should be submitted with the request:

- (1) Financial condition.
- (2) Contract backlog.
- (3) Projected cash receipts and requirements.
- (4) The feasibility of immediate payment of the debt.
- (5) The probable effect on operations of immediate payment in full.

(d) Although the existence of a contractor appeal of the debt does not of itself require the Government to suspend or delay collection action, the responsible official shall consider whether deferment of the debt collection is advisable to avoid possible overcollection. The responsible official may authorize a deferment pending the resolution of appeal.

(e) Deferments pending disposition of appeal may be granted to small business concerns and financially weak contractors, with a reasonable balance of the need for Government security against loss and undue hardship on the contractor.

(f) If a contractor has not appealed the debt or filed an action under the Disputes clause of the contract, the responsible official may arrange for deferment/installment payments if the contractor is unable to pay at once in full or the contractor's operations under national defense contracts would be seriously impaired. The arrangement shall include appropriate covenants and securities and should be limited to the shortest practicable maturity.

(g) Contracts and arrangements for deferment may not provide that a claim of the Government will not become due and payable pending mutual agreement on the amount of the claim