

342.7003

(d) The contracting officer is responsible for assuring that contractor performance and contract monitoring are carried out in conformance with contract provisions. If performance is not satisfactory or if problems are anticipated, it is essential that the contracting officer take immediate action to protect the Government's rights under the contract. The contracting officer shall notify his/her immediate supervisor of problems that cannot be resolved within contract limitations and whenever contract or program objectives are not met. The notification shall include a statement of action being taken by the contracting officer.

342.7003 Withholding of contract payments.

342.7003-1 Policy.

(a) All solicitations and resultant contracts shall contain the withholding of contract payments clause at 352.232-9, and an excusable delays clause, or a clause which incorporates the definition of excusable delays. The excusable delays clause at 352.249-14 shall be used when the solicitation and resultant contract (other than purchase orders) does not contain a default or other excusable delays clause.

(b) The transmittal letter used to convey the contract to each contractor shall contain a notice which highlights the contractor's agreement with the withholding of contract payments clause.

(c) No contract payment shall be made when any report required to be submitted by the contractor is overdue, or the contractor fails to perform or deliver work or services as required by the contract.

(d) The contracting officer shall issue a ten-day cure notice or initiate appropriate termination action for any failure in the contractor's performance as stated in paragraph (c) of this section.

342.7003-2 Procedures.

(a) The contracting officer is responsible for initiating immediate action to protect the Government's rights whenever the contractor fails to comply with either the delivery or reporting provisions of the contract. Compliance with the reporting provisions includes

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those reports to be submitted directly to the payment office. If such a report is not submitted on time, the contracting officer is to be notified promptly by the payment officer.

(b) When the contract contains a termination for default clause, the contractor's failure to either submit any required report when due or perform or deliver services or work when required by the contract is to be considered a default in performance. In either circumstance, the contracting officer is to immediately issue a formal ten-day cure notice pursuant to the default clause. The cure notice is to follow the format prescribed in FAR 49.607 and is to include a statement to the effect that contract payments will be withheld if the default is not cured or is not determined to be excusable.

(1) If the default is cured or is determined to be excusable, the contracting officer is not to initiate the withholding action.

(2) If the default is not determined to be excusable or a response is not received within the allotted time, the contracting officer is to initiate withholding action on all contract payments and is to determine whether termination for default or other action would be in the best interest of the Government.

(c) When the contract does not contain a termination for default clause, the contractor's failure to either submit any required report when due or perform or deliver services or work when required by the contract is to be considered a failure to perform. In either circumstance, the contracting officer is to immediately issue a written notice to the contractor specifying the failure and providing a period of ten days, or longer period as determined necessary by the contracting officer, in which the contractor is to cure the failure or establish an excusable delay. The contracting officer is to include a statement in the written notice to the effect that contract payments will be withheld if the failure is not cured or is not determined to be excusable.

(1) If the failure is cured or is determined to be excusable, the contracting officer is not to initiate the withholding action.