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232.001 Definitions.

“Incremental funding” means the partial funding of a contract or an exercised option, with additional funds anticipated to be provided at a later time.

232.006 Reduction or suspension of contract payments upon finding of fraud.

232.006-5 Reporting.

Departments and agencies, in accordance with department/agency procedures, shall prepare and submit to the Under Secretary of Defense (Acquisition and Sustainment), through the Principal Director, Defense Pricing, Contracting, and Acquisition Policy, annual reports (Report Control Symbol DD-AT&L(A)1891) containing the information required by FAR 32.006-5.

232.007 Contract financing payments.

(a) DoD policy is to make contract financing payments as quickly as possible. Generally, the contracting officer shall insert the standard due dates of 7 days for progress payments, and 14 days for performance-based payments and interim payments on cost-type contracts, in the appropriate

paragraphs of the respective payment clauses. For interim payments on cost-reimbursement contracts for services, see 232.906 (a)(i).

(b) The contracting officer should coordinate contract financing payment terms with offices that will be involved in the payment process to ensure that specified terms can be met. Where justified, the contracting officer may insert a due date greater than, but not less than, the standard. In determining payment terms, consider—

(i) Geographical separation;

(ii) Workload;

(iii) Contractor ability to submit a proper request; and

(iv) Other factors that could affect timing of payment.

232.009 Providing accelerated payments to small business contractors and to prime contractors that subcontractors with a small business concern.

232.009-1 General.

10 U.S.C. 3801(b) requires DoD to provide accelerated payments to small business contractors and subcontractors, to the fullest extent permitted by law, with a goal of 15 days.

232.070 Responsibilities.

(a) The Principal Director, Defense Pricing, Contracting, and Acquisition Policy (DPCAP), Office of the Under Secretary of Defense (Acquisition and Sustainment) (OUSD(A&S)DPCAP) is responsible for ensuring uniform administration of DoD contract financing, including DoD contract financing policies and important related procedures. Agency discretion under FAR Part 32 is at the DoD level and is not delegated to the departments and agencies. Proposals by the departments and agencies, to exercise agency discretion, shall be submitted to OUSD(A&S)DPCAP.

(b) Departments and agencies are responsible for their day-to-day contract financing operations. Refer specific cases involving financing policy or important procedural issues to OUSD(A&S)DPCAP for consideration through the department/agency Contract Finance Committee members (also see subpart 201.4 for deviation request and approval procedures).

(c) See PGI 232.070 (c) for information on department/agency contract financing offices.

232.071 Reserved.

232.072 Financial responsibility of contractors.

Use the policies and procedures in this section in determining the financial capability of current or prospective contractors.

232.072-1 Required financial reviews.

The contracting officer shall perform a financial review when the contracting officer does not otherwise have sufficient information to make a positive determination of financial responsibility. In addition, the contracting officer shall consider performing a financial review—

(a) Prior to award of a contract, when—

(1) The contractor is on a list requiring preaward clearance or other special clearance before award;

(2) The contractor is listed on the Consolidated List of Contractors Indebted to the Government (Hold-Up List), or is otherwise known to be indebted to the Government;

(3) The contractor may receive Government assets such as contract financing payments or Government property;

(4) The contractor is experiencing performance difficulties on other work; or

(5) The contractor is a new company or a new supplier of the item.

(b) At periodic intervals after award of a contract, when—

(1) Any of the conditions in paragraphs (a)(2) through (a)(5) of this subsection are applicable; or

(2) There is any other reason to question the contractor’s ability to finance performance and completion of the contract.

232.072-2 Appropriate information.

(a) The contracting officer shall obtain the type and depth of financial and other information that is required to establish a contractor’s financial capability or disclose a contractor’s financial condition. While the contracting officer should not request information that is not necessary for protection of the Government’s interests, the contracting officer must insist upon obtaining the information that is necessary. The unwillingness or inability of a contractor to present reasonably requested information in a timely manner, especially information that a prudent business person would be expected to have and to use in the professional management of a business, may be a material fact in the determination of the contractor’s responsibility and prospects for contract completion.

(b) The contracting officer shall obtain the following information to the extent required to protect the Government’s interest. In addition, if the contracting officer concludes that information not listed in paragraphs (b)(1) through (b)(10) of this subsection is required to comply with 232.072-1 , that information should be requested. The information must be for the person(s) who are legally liable for contract performance. If the contractor is not a corporation, the contracting officer shall obtain the required information for each individual/joint venturer/partner:

(1) Balance sheet and income statement—

(i) For the current fiscal year (interim);

(ii) For the most recent fiscal year and, preferably, for the 2 preceding fiscal years. These should be certified by an independent public accountant or by an appropriate officer of the firm; and

(iii) Forecasted for each fiscal year for the remainder of the period of contract performance.

(2) Summary history of the contractor and its principal managers, disclosing any previous insolvencies—corporate or personal, and describing its products or services.

(3) Statement of all affiliations disclosing—

(i) Material financial interests of the contractor;

(ii) Material financial interests in the contractor;

(iii) Material affiliations of owners, officers, directors, major stockholders; and

(iv) The major stockholders if the contractor is not a widely-traded, publicly-held corporation.

(4) Statement of all forms of compensation to each officer, manager, partner, joint venturer, or proprietor, as appropriate—

(i) Planned for the current year;

(ii) Paid during the past 2 years; and

(iii) Deferred to future periods.

(5) Business base and forecast that—

(i) Shows, by significant markets, existing contracts and outstanding offers, including those under negotiation; and

(ii) Is reconcilable to indirect cost rate projections.

(6) Cash forecast for the duration of the contract (see 232.072-3).

(7) Financing arrangement information that discloses—

(i) Availability of cash to finance contract performance;

(ii) Contractor’s exposure to financial crisis from creditor’s demands;

(iii) Degree to which credit security provisions could conflict with Government title terms under contract financing;

(iv) Clearly stated confirmations of credit with no unacceptable qualifications; and

(v) Unambiguous written agreement by a creditor if credit arrangements include deferred trade payments or creditor subordinations/repayment suspensions.

(8) Statement of all state, local, and Federal tax accounts, including special mandatory

contributions, e.g., environmental superfund.

(9) Description and explanation of the financial effect of issues such as—

(i) Leases, deferred purchase arrangements, or patent or royalty arrangements;

(ii) Insurance, when relevant to the contract;

(iii) Contemplated capital expenditures, changes in equity, or contractor debt load;

(iv) Pending claims either by or against the contractor;

(v) Contingent liabilities such as guarantees, litigation, environmental, or product liabilities;

(vi) Validity of accounts receivable and actual value of inventory, as assets; and

(vii) Status and aging of accounts payable.

(10) Significant ratios such as—

(i) Inventory to annual sales;

(ii) Inventory to current assets;

(iii) Liquid assets to current assets;

(iv) Liquid assets to current liabilities;

(v) Current assets to current liabilities; and

(vi) Net worth to net debt.

232.072-3 Cash flow forecasts.

(a) A contractor must be able to sustain a sufficient cash flow to perform the contract. When there is doubt regarding the sufficiency of a contractor’s cash flow, the contracting officer should require the contractor to submit a cash flow forecast covering the duration of the contract.

(b) A contractor’s inability or refusal to prepare and provide cash flow forecasts or to reconcile actual cash flow with previous forecasts is a strong indicator of serious managerial deficiencies or potential contract cost or performance problems.

(c) Single or one-time cash flow forecasts are of limited forecasting power. As such, they should be limited to preaward survey situations. Reliability of cash flow forecasts can be established only by comparing a series of previous actual cash flows with the corresponding forecasts and examining the causes of any differences.

(d) Cash flow forecasts must—

(1) Show the origin and use of all material amounts of cash within the entire business unit responsible for contract performance, period by period, for the length of the contract (or until the risk of a cash crisis ends); and

(2) Provide an audit trail to the data and assumptions used to prepare it.

(e) Cash flow forecasts can be no more reliable than the assumptions on which they are based. Most important of these assumptions are—

(1) Estimated amounts and timing of purchases and payments for materials, parts, components, subassemblies, and services;

(2) Estimated amounts and timing of payments for purchase or production of capital assets, test facilities, and tooling;

(3) Amounts and timing of fixed cash charges such as debt installments, interest, rentals, taxes, and indirect costs;

(4) Estimated amounts and timing of payments for projected labor, both direct and indirect;

(5) Reasonableness of projected manufacturing and production schedules;

(6) Estimated amounts and timing of billings to customers (including progress payments), and customer payments;

(7) Estimated amounts and timing of cash receipts from lenders or other credit sources, and liquidation of loans; and

(8) Estimated amounts and timing of cash receipts from other sources.

(f) The contracting officer should review the assumptions underlying the cash flow forecasts. In determining whether the assumptions are reasonable and realistic, the contracting officer should consult with—

(1) The contractor;

(2) Government personnel in the areas of finance, engineering, production, cost, and price analysis; or

(3) Prospective supply, subcontract, and loan or credit sources.

Subpart 232.1 - FINANCING FOR OTHER THAN A COMMERCIAL PURCHASE

232.102 Description of contract financing methods.

(e)(2) Progress payments based on percentage or stage of completion are authorized only for contracts for construction (as defined in FAR 36.102), shipbuilding, and ship conversion, alteration, or repair. However, percentage or stage of completion methods of measuring contractor performance may be used for performance-based payments in accordance with FAR Subpart 32.10.

232.102-70 Provisional delivery payments.

(a) The contracting officer may establish provisional delivery payments to pay contractors for the costs of supplies and services delivered to and accepted by the Government under the following contract actions, if undefinitized:

(1) Letter contracts contemplating a fixed-price contract.

(2) Orders under basic ordering agreements.

(3) Spares provisioning documents annexed to contracts.

(4) Unpriced equitable adjustments on fixed-price contracts.

(5) Orders under indefinite-delivery contracts.

(b) Provisional delivery payments shall be—

(1) Used sparingly;

(2) Priced conservatively; and

(3) Reduced by liquidating previous progress payments in accordance with the Progress Payments clause.

(c) Provisional delivery payments shall not—

(1) Include profit;

(2) Exceed funds obligated for the undefinitized contract action; or

(3) Influence the definitized contract price.

232.104 Providing contract financing.

For fixed-price contracts with a period of performance in excess of a year that meet the dollar thresholds established in FAR 32.104(d), and for solicitations expected to result in such contracts, in lieu of the requirement at FAR 32.104(d)(1)(ii) for the contractor to demonstrate actual financial need or the unavailability of private financing, DoD has determined that—

(1) The use of customary contract financing (see FAR 32.113), other than loan guarantees and advance payments, is in DoD’s best interest; and

(2) Further justification of its use in individual acquisitions is unnecessary.

Subpart 232.2 - COMMERCIAL PRODUCT AND COMMERCIAL SERVICE PURCHASE FINANCING

232.202 RESERVED

232.202-4 Security for Government financing.

(a)(2) When determining whether an offeror's financial condition is adequate security, see 232.072-2 and 232.072-3 for guidance. It should be noted that an offeror's financial condition may be sufficient to make the contractor responsible for award purposes, but may not be adequate security for commercial contract financing.

232.206 Solicitation provisions and contract clauses.

(f) *Prompt payment for commercial purchase payments.* The contracting officer shall incorporate the following standard prompt payment terms for commercial product and commercial service contract financing:

(i) *Commercial advance payments:* The contractor entitlement date specified in the contract, or 30 days after receipt by the designated billing office of a proper request for payment, whichever is later.

(ii) *Commercial interim payments:* The contractor entitlement date specified in the contract, or 14 days after receipt by the designated billing office of a proper request for payment, whichever is later. The prompt payment standards for commercial delivery payments shall be the same as specified in FAR Subpart 32.9 for invoice payments for the item delivered.

(g) *Installment payment financing for commercial products and commercial services.* Installment payment financing shall not be used for DoD contracts, unless market research has established that this form of contract financing is both appropriate and customary in the commercial marketplace. When installment payment financing is used, the contracting officer shall use the ceiling percentage of contract price that is customary in the particular marketplace (not to exceed the maximum rate established in FAR 52.232-30).

Subpart 232.3 - LOAN GUARANTEES FOR DEFENSE PRODUCTION

232.302 Authority.

(a) The use of guaranteed loans as a contract financing mechanism requires the availability of certain congressional authority. The DoD has not requested such authority in recent years, and none is now available.

Subpart 232.4 - ADVANCE PAYMENTS FOR OTHER THAN COMMERCIAL ACQUISITIONS

232.404 Exclusions.

(a)(9) The requirements of FAR Subpart 32.4 do not apply to advertisements in high school and college publications for military recruitment efforts under 10 U.S.C. 503 when the contract cost does not exceed the micro-purchase threshold.

232.409 Contracting officer action.

232.409-1 Recommendation for approval.

Follow the procedures at PGI 232.409-1 for preparation of the documents required by FAR 32.409-1(e) and (f).

232.410 Findings, determination, and authorization.

If an advance payment procedure is used without a special bank account, follow the procedures at PGI 232.410 .

232.412 Contract clause.

232.412-70 Additional clauses.

(a) Use the clause at 252.232-7000 , Advance Payment Pool, in any contract that will be subject to the terms of an advance payment pool agreement with a nonprofit organization or educational institution. Normally, use the clause in all cost reimbursement type contracts with the organization or institution.

(b) Use the clause at 252.232-7005 , Reimbursement of Subcontractor Advance Payments—DoD Mentor-Protege Program, when advance payments will be provided by the contractor to a subcontractor pursuant to an approved mentor-protege agreement (see subpart 219.71).

232.470 Advance payment pool.

(a) An advance payment pool agreement—

(1) Is a means of financing the performance of more than one contract held by a single contractor;

(2) Is especially convenient for the financing of cost-type contracts with nonprofit educational or research institutions for experimental or research and development work when several contracts require financing by advance payments. When appropriate, pooled advance payments may also be used to finance other types of contracts held by a single contractor; and

(3) May be established—

(i) Without regard to the number of appropriations involved;

(ii) To finance contracts for one or more department(s) or contracting activity(ies); or

(iii) In addition to any other advance payment pool agreement at a single contractor location when it is more convenient or otherwise preferable to have more than one agreement.

Subpart 232.5 - PROGRESS PAYMENTS BASED ON COSTS

232.501 General.

232.501-1 Customary progress payment rates.

(a) The customary progress payment rates for DoD contracts, including contracts that contain foreign military sales (FMS) requirements, are 80 percent for large business concerns and 90 percent for small business concerns.

232.501-2 Unusual progress payments.

Follow the procedures at PGI 232.501-2 for approval of unusual progress payments.

232.501-3 Contract price.

(b) The contracting officer may approve progress payments when the contract price exceeds the funds obligated under the contract, provided the contract limits the Government’s liability to the lesser of—

(i) The applicable rate (i.e., the lower of the progress payment rate, the liquidation rate, or the loss-ratio adjusted rate); or

(ii) 100 percent of the funds obligated.

232.502 Preaward matters.

232.502-4 Contract clauses.

232.502-4-70 Additional clauses.

(a) Use the clause at 252.232-7002 , Progress Payments for Foreign Military Sales Acquisitions, in solicitations and contracts that—

(i) Contain FMS requirements; and

(ii) Provide for progress payments.

(b) Use the clause at 252.232-7004 , DoD Progress Payment Rates, instead of Alternate I of the clause at FAR 52.232-16, if the contractor is a small business concern.

(c) Use the clause at 252.232-7018, Progress Payments-Multiple Lots, to authorize separate progress payment requests for multiple lots.

232.503 Postaward matters.

232.503-6 Suspension or reduction of payments.

(b) *Contractor noncompliance.* See also 242.7503 .

(g) *Loss contracts.* Use the following loss ratio adjustment procedures for making adjustments required by FAR 32.503-6(f) and (g)—

(i) Except as provided in paragraph (g)(ii) of this subsection, the contracting officer must prepare a supplementary analysis of the contractor's request for progress payments and calculate the loss ratio adjustment using the procedures in FAR 32.503-6(g).

(ii) The contracting officer may request the contractor to prepare the supplementary analysis as an attachment to the progress payment request when the contracting officer determines that the contractor's methods of estimating the “Costs to Complete” are reliable, accurate, and not susceptible to improper influences.

(iii) To maintain an audit trail and permit verification of calculations, do not make the loss ratio adjustments by altering or replacing data on the contractor's original request for progress payment (SF 1443, Contractor's Request for Progress Payment, or computer generated equivalent).

232.503-15 Application of Government title terms.

(d) An administrative contracting officer (ACO) determination that the contractor's material management and accounting system conforms to the system criteria at 252.242-7004 (d)(7) constitutes the contracting officer approval requirement of FAR 32.503-15(d). Prior to granting blanket approval of cost transfers between contracts, the ACO should determine that—

(i) The contractor retains records of the transfer activity that took place in the prior month;

(ii) The contractor prepares, at least monthly, a summary of the transfer activity that took place in the prior month; and

(iii) The summary report includes as a minimum, the total number and dollar value of transfers.

Subpart 232.6 - CONTRACT DEBTS

232.602 Responsibilities.

(b) Disbursing officers are those officials designated to make payments under a contract or to receive payments of amounts due under a contract. The disbursing officer is responsible for determining the amount and collecting contract debts whenever overpayments or erroneous payments have been made. The disbursing officer also has primary responsibility when the amounts due and dates for payment are contained in the contract, and a copy of the contract has been furnished to the disbursing officer with notice to collect as amounts become due.

232.603 Debt determination.

When transferring a case to the contract financing office, follow the procedures at PGI 232.603 .

232.604 Demand for payment.

When issuing a demand for payment of a contract debt, follow the procedures at PGI 232.604 .

232.610 Compromising debts.

Only the department/agency contract financing offices (see PGI 232.070 (c)) are authorized to compromise debts covered by this subpart.

232.611 Contract clause.

(a) The Principal Director, Defense Pricing, Contracting, and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition and Sustainment), may exempt the contracts in FAR 32.611(a)(2) through (5) and other contracts, in exceptional circumstances, from the administrative interest charges required by this subpart.

(7) Other exceptions are—

(A) Contracts for instructions of military or ROTC personnel at civilian schools, colleges, and universities;

(B) Basic agreements with telephone companies for communications services and facilities, and purchases under such agreements; and

(C) Transportation contracts with common carriers for common carrier services.

232.670 Transfer of responsibility for debt collection.

Follow the procedures at PGI 232.670 for transferring responsibility for debt collection.

232.671 Bankruptcy reporting.

Follow the procedures at PGI 232.671 for bankruptcy reporting.

Subpart 232.7 - CONTRACT FUNDING

232.702 Policy.

Fixed-price contracts shall be fully funded except as permitted by 232.703-1 .

232.703 Contract funding requirements.

232.703-1 General.

(1) A fixed-price contract may be incrementally funded only if—

(i) The contract (excluding any options) or any exercised option—

(A) Is for severable services;

(B) Does not exceed one year in length; and

(C) Is incrementally funded using funds available (unexpired) as of the date the funds are obligated; or

(ii) The contract uses funds available from multiple (two or more) fiscal years and—

(A) The contract is funded with research and development appropriations; or

(B) Congress has otherwise authorized incremental funding.

(2) An incrementally funded fixed-price contract shall be fully funded as soon as funds are available.

232.703-3 Contracts crossing fiscal years.

(b) The contracting officer may enter into a contract, exercise an option, or place an order under a contract for severable services for a period that begins in one fiscal year and ends in the next fiscal year if the period of the contract awarded, option exercised, or order placed does not exceed 1 year (10 U.S.C. 3133).

232.703-70 Military construction appropriations act restriction.

Annual military construction appropriations acts restrict the use of funds appropriated by the acts for payments under cost-plus-fixed-fee contracts (see 216.306 (c)).

232.704 Limitation of cost or funds.

232.704-70 Incrementally funded fixed-price contracts.

(a) Upon receipt of the contractor's notice under paragraph (c) of the clause at 252.232-7007 , Limitation of Government's Obligation, the contracting officer shall promptly provide written notice to the contractor that the Government is—

(1) Allotting additional funds for continued performance and increasing the Government's limitation of obligation in a specified amount;

(2) Terminating the contract; or

(3) Considering whether to allot additional funds; and

(i) The contractor is entitled by the contract terms to stop work when the Government's limitation of obligation is reached; and

(ii) Any costs expended beyond the Government's limitation of obligation are at the contractor's risk.

(b) Upon learning that the contract will receive no further funds, the contracting officer shall promptly give the contractor written notice of the Government's decision and terminate for the convenience of the Government.

(c) The contracting officer shall ensure that, in accordance with paragraph (b) of the clause at 252.232-7007 , Limitation of Government's Obligation, sufficient funds are allotted to the contract to cover the total amount payable to the contractor in the event of termination for the convenience of the Government.

232.706 Contract clauses.

232.706-70 Clause for limitation of Governments obligation.

Use the clause at 252.232-7007 , Limitation of Government's Obligation, in solicitations and resultant incrementally funded fixed-price contracts. The contracting officer may revise the contractor's notification period, in paragraph (c) of the clause, from "ninety" to "thirty" or "sixty" days, as appropriate.

Subpart 232.8 - ASSIGNMENT OF CLAIMS

232.803 Policies.

(b) Only contracts for personal services may prohibit the assignment of claims.

(d) Pursuant to 41 U.S.C. 6305, and in accordance with Presidential delegation dated October 3, 1995, Secretary of Defense delegation dated February 5, 1996, and Under Secretary of Defense

(Acquisition and Sustainment) delegation dated February 23, 1996, the Director of Defense Procurement determined on May 10, 1996, that a need exists for DoD to agree not to reduce or set off any money due or to become due under the contract when the proceeds under the contract have been assigned in accordance with the Assignment of Claims provision of the contract. This determination was published in the Federal Register on June 11, 1996, as required by law. Nevertheless, if departments/agencies decide it is in the Government's interest, or if the contracting officer makes a determination in accordance with FAR 32.803(d) concerning a significantly indebted offeror, they may exclude the no-setoff commitment.

232.805 Procedure.

(b) The assignee shall forward—

(i) To the administrative contracting officer (ACO), a true copy of the instrument of assignment and an original and three copies of the notice of assignment. The ACO shall acknowledge receipt by signing and dating all copies of the notice of assignment and shall—

(A) File the true copy of the instrument of assignment and the original of the notice in the contract file;

(B) Forward two copies of the notice to the disbursing officer of the payment office cited in the contract;

(C) Return a copy of the notice to the assignee; and

(D) Advise the contracting officer of the assignment.

(ii) To the surety or sureties, if any, a true copy of the instrument of assignment and an original and three copies of the notice of assignment. The surety shall return three acknowledged copies of the notice to the assignee, who shall forward two copies to the disbursing officer designated in the contract.

(iii) To the disbursing officer of the payment office cited in the contract, a true copy of the instrument of assignment and an original and one copy of the notice of assignment. The disbursing officer shall acknowledge and return to the assignee the copy of the notice and shall file the true copy of the instrument and original notice.

232.806 Contract clauses.

(a)(1) Use the clause at 252.232-7008, Assignment of Claims (Overseas), instead of the clause at FAR 52.232-23, Assignment of Claims, in solicitations and contracts when contract performance will be in a foreign country.

(2) Use Alternate I with the clause at FAR 52.232-23, Assignment of Claims, unless otherwise authorized under 232.803(d).

Subpart 232.9 - PROMPT PAYMENT

232.901 Applicability.

(1) Except for FAR 32.908, FAR subpart 32.9, Prompt Payment, does not apply when-

(i) There is-

(A) An emergency, as defined in the Disaster Relief Act of 1974;

(B) A contingency operation (see FAR 2.101(b)); or

(C) The release or threatened release of hazardous substances (as defined in 4 U.S.C. 9606, section 106);

(ii) The head of the contracting activity has made a determination, after consultation with the cognizant comptroller, that conditions exist that limit normal business operations; and

(iii) Payments will be made in the operational area or made contingent upon receiving supporting documentation (i.e., contract, invoice, and receiving report) from the operational area.

(2) Criteria limiting normal business operations during emergencies and contingency operations that restrict the use of FAR 32.9 may include such conditions as—

(i) Support infrastructure, hardware, communications capabilities, and bandwidth are not consistently available such that normal business operations can be carried out;

(ii) Support resources, facilities, and banking needs are not consistently available for use as necessary in carrying out normal business operations;

(iii) Military mission priorities override the availability of appropriately skilled personnel in support of back-office operations;

(iv) Mobility impairments and security concerns restrict free movement of personnel and documents necessary for timely processing;

(v) Foreign vendors are not familiar with or do not understand DoD contract requirements (i.e., proper invoice, receiving documentation, and contracting terms); or

(vi) Documents received in support of payment requests and shipments require language translations that cannot be performed and documented within normal business processing times.

(3) Subsequent Determinations. The head of the contracting activity shall make subsequent determinations, after consultation with the cognizant comptroller, as the operational area evolves into either a more stable or less stable environment.

(i) If the head of the contracting activity determines that the operational area has evolved into a more stable environment, the contracting officer shall notify, by issuance of a contract modification, each contractor performing in the operational area under review. The modification deactivates this clause 252.232-7011 and activates the applicable FAR Prompt Payment clause in the contract.

(ii) If after deactivation of this clause, the head of the contracting activity subsequently determines

that the operational area has evolved into a less stable environment, the head of the contracting activity will make a determination that conditions exist that limit normal business operations. The contracting officer will then reactivate this clause 252.232-7011 by issuance of a contract modification.

232.903 Responsibilities.

In accordance with 10 U.S.C. 3801(b), DoD shall assist small business concerns by providing payment as quickly as possible, to the fullest extent permitted by law, with a goal of 15 days after receipt of proper invoices and all required documentation, including acceptance, and before normal payment due dates established in the contract (see 232.906 (a)).

See DoD Class Deviation 2014-O0015-Update to Accelerated Payments to Small Businesses, dated April 15, 2014. This deviation is effective until modification of all DoD entitlement and payment systems to accommodate accelerated payments is completed, or until superseded or rescinded.

232.904 Determining payment due dates.

(d) In most cases, Government acceptance or approval can occur within the 7-day constructive acceptance period specified in the FAR Prompt Payment clauses. Government payment of construction progress payments can, in most cases, be made within the 14-day period allowed by the Prompt Payment for Construction Contracts clause. While the contracting officer may specify a longer period because the period specified in the contract is not reasonable or practical, such change should be coordinated with the Government offices responsible for acceptance or approval and for payment. Reasons for specifying a longer period include but are not limited to: the nature of the work or supplies or services, inspection or testing requirements, shipping and acceptance terms, and resources available at the acceptance activity. A constructive acceptance period of less than the cited 7 or 14 days is not authorized.

232.905 Payment documentation and process.

(b)(1)(iii) For task and delivery orders numbered in accordance with FAR 4.1603 and 204.1603 , the 13-character order number may serve as the contract number on invoices and receiving reports. The contract or agreement number under which the order was placed may be omitted from invoices and receiving reports. The contractor may choose to identify both the contract number and the 13-character order number on invoices and receiving reports. Task and delivery orders numbered with a four-position alpha-numeric call or order serial number shall include both the 13-position basic contract Procurement Instrument Identifier and the four-position order number.

232.906 Making payments.

(a)(i) Generally, the contracting officer shall insert the standard due date of 14 days for interim payments on cost-reimbursement contracts for services in the clause at FAR 52.232-25, Prompt Payment, when using the clause with its Alternate I.

(ii) The restrictions of FAR 32.906 prohibiting early payment do not apply to invoice payments made

to small business concerns. However, contractors shall not be entitled to interest penalties if the Government fails to make early payment.

232.908 Contract clauses.

Use the clause at 252.232-7011, Payments in Support of Emergencies and Contingency Operations, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, in acquisitions that meet the applicability criteria at 232.901 (1). Use of this clause is in addition to use of either the approved Payment clause prescribed in FAR 32.908 or the clause at FAR 52.212-4, Contract Terms and Conditions—Commercial Products and Commercial Services.

Subpart 232.10 - PERFORMANCE-BASED PAYMENTS

232.1001 Policy.

(a) As with all contract financing, the purpose of performance-based payments is to assist the contractor in the payment of costs incurred during the performance of the contract. See PGI 232.1001 (a) for additional information on use of performance-based payments. However, in accordance with 10 U.S.C. 3802(a)(2), performance-based payments shall not be conditioned upon costs incurred in contract performance, but on the achievement of performance outcomes. Subject to the criteria in 232.1003-70 , all companies, including nontraditional defense contractors, are eligible for performance-based payments, consistent with best commercial practices.

(d) The contracting officer shall use the following standard payment terms for performance-based payments: The contractor entitlement date, if any, specified in the contract, or 14 days after receipt by the designated billing office of a proper request for payment, whichever is later.

232.1003 Reserved.

232.1003-70 Criteria for use.

In accordance with 10 U.S.C. 3802(c)(1), a contractor’s financial statements shall be in compliance with Generally Accepted Accounting Principles, in order to receive performance-based payments. 10 U.S.C. 3802(c)(2) specifies that it does not grant the Defense Contract Audit Agency the authority to audit compliance with Generally Accepted Accounting Principles.

232.1004 Procedures.

(b) *Establishing performance-based finance payment amounts.*

(i) The contracting officer should include in a solicitation both the progress payments and performance-based payments provisions and clauses prescribed in this part, when considering both types of payment methods. Only one type of financing will be included in the resultant contract,

except as may be authorized on separate orders subject to FAR 32.1003(c)).

(ii) The contracting officer shall analyze the performance-based payment schedule using the performance-based payments (PBP) analysis tool. The PBP analysis tool is on the Defense Pricing, Contracting, and Acquisition Policy website in the Price, Cost and Finance section. The PBP analysis tool and Performance Based Payment - Guidebook are available at https://www.acq.osd.mil/asda/dpc/pcf/pricing-topics.html#pdp .

(A) When considering performance-based payments, obtain from the offeror/contractor a proposed performance-based payments schedule that includes all performance-based payments events, completion criteria and event values along with the projected monthly expenditure profile in order to negotiate the value of the performance events such that the performance-based payments are not expected to result in an unreasonably low or negative level of contractor investment in the contract.

If performance-based payments are deemed practical, the Government will evaluate and negotiate the details of the performance-based payments schedule.

(B) For modifications to contracts that already use performance-based payments financing, the basis for negotiation must include performance-based payments. The PBP analysis tool will be used in the same manner to help determine the price for the modification;

(iii) The contracting officer shall document in the contract file that the performance-based payment schedule provides a mutually beneficial settlement position that reflects adequate consideration to the Government for the improved contractor cash flow.

(c) *Instructions for multiple appropriations*. If the contract contains foreign military sales requirements, the contracting officer shall provide instructions for distribution of the contract financing payments to each country’s account.

232.1005 Reserved.

232.1005-70 Solicitation provisions and contract clauses.

(a) The contracting officer shall include the following clauses with appropriate fill-ins in solicitations and contracts that include performance-based payments:

(1) For performance-based payments made on a whole-contract basis, use the clause at 252.232-7012 , Performance-Based Payments–Whole-Contract Basis.

(2) For performance-based payments made on a deliverable-item basis, use the clause at 252.232-7013 , Performance-Based Payments–Deliverable-Item Basis.

(b) Use the provision at 252.232-7015 , Performance-Based Payments–Representation, in solicitations where the resulting contract may include performance-based payments.

(c) Use the provision at 252.232-7016 , Notice of Progress Payments or Performance-Based Payments, in lieu of FAR 52.232-13, Notice of Progress Payments, when the solicitation contains clauses for progress payments and performance-based payments (only one type of financing will be included in the resultant contract, except as may be authorized on separate orders subject to FAR 32.1003(c)).

Subpart 232.11 - ELECTRONIC FUNDS TRANSFER

232.1108 Payment by Governmentwide commercial purchase card.

232.1108-70 Prohibition of Governmentwide commercial purchase card as a method of payment when the tax on certain foreign procurements applies.

The contracting officer shall not authorize the Governmentwide commercial purchase card as a method of payment during any contract period of performance if the contract includes the clause at FAR 52.229-12, Tax on Certain Foreign Procurements, unless the contract also includes the clause at 252.229-7014, Full Exemption from Two-Percent Excise Tax on Certain Foreign Procurements, indicating that the contractor is fully exempt from the tax.

232.1110 Solicitation provision and contract clauses.

Use the clause at 252.232-7009 , Mandatory Payment by Governmentwide Commercial Purchase Card, in solicitations, contracts, and agreements, including solicitations, contracts, and agreements using FAR part 12 procedures for the acquisition of commercial products and commercial services, when—

(1) Placement of orders or calls valued at or below the micro-purchase threshold is anticipated; and

(2) Payment by Governmentwide commercial purchase card is required for orders or calls valued at or below the micro-purchase threshold under the contract or agreement.

Subpart 232.70 - ELECTRONIC SUBMISSION AND PROCESSING OF PAYMENT REQUESTS AND RECEIVING REPORTS

232.7000 Scope of subpart.

This subpart prescribes policies and procedures for submitting and processing payment requests in electronic form to comply with 10 U.S.C. 4601.

232.7001 Definitions.

As used in this subpart—

“Electronic form” means any automated system that transmits information electronically from the initiating system to affected systems.

“Payment request” means any request for contract financing payment or invoice payment submitted by the contractor under a contract or task or delivery order.

“Receiving report” means the data prepared in the manner and to the extent required by Appendix F, Material Inspection and Receiving Report, of the DFARS.

232.7002 Policy.

(a) Payment requests and receiving reports are required to be submitted in electronic form, except for—

(1) Classified contracts or purchases when electronic submission and processing of payment requests and receiving reports could compromise the safeguarding of classified information or national security;

(2) Cases in which contractor submission of electronic payment requests and receiving reports is not feasible (e.g., when contract performance is in an environment where internet connectivity is not available);

(3) Cases in which DoD is unable to receive payment requests or provide acceptance in electronic form;

(4) Cases in which the contractor has requested permission in writing to submit payment requests and receiving reports by nonelectronic means, and the contracting officer has provided instructions for a temporary alternative method of submission of payment requests and receiving reports in the contract administration data section of the contract or task or delivery order (e.g., section G, an addendum to FAR 52.212-4, or applicable clause); and

(5) When the Governmentwide commercial purchase card is used as the method of payment, in which case only submission of the receiving report in electronic form is required.

(b)(1) The only acceptable electronic form for submission of payment requests and receiving reports is Wide Area WorkFlow (WAWF) (https://wawf.eb.mil/), except as follows:

(i) For payment of commercial transportation services provided under a Government rate tender, contract, or task or delivery order for transportation services, the use of a DoD-approved electronic third party payment system or other exempted vendor payment/invoicing system (e.g., PowerTrack, Transportation Financial Management System, and Cargo and Billing System) is permitted.

(ii) For submitting and processing payment requests and receiving reports for contracts or task or delivery orders for rendered health care services, the use of TRICARE Encounter Data System as the electronic form is permitted.

(2) Facsimile, email, and scanned documents are not acceptable electronic forms of payment requests or receiving reports.

232.7003 Procedures.

(a) DoD officials receiving payment requests in electronic form shall process the payment requests in electronic form. The WAWF system provides the method to electronically process payment requests and receiving reports.

(1) Documents necessary for payment, such as receiving reports, invoice approvals, contracts,

contract modifications, and required certifications, shall also be processed in electronic form.

(2) Scanned documents and other commonly used file formats are only acceptable for processing supporting documentation.

(b) If one of the exceptions to submission in electronic form at 232.7002 (a) applies, the contracting officer shall—

(1) Consult the payment office and the contract administration office regarding the alternative method to be used for submission of payment requests or receiving reports (e.g., facsimile or conventional mail); and

(2) Provide procedures for invoicing in the contract administration data section of the contract or task or delivery order (e.g., section G, an addendum to FAR 52.212-4, or applicable clause) for submission of invoices by nonelectronic means. If submission of invoices by nonelectronic means is temporary, the procedures should specify the time period for which they apply.

232.7004 Contract clauses.

(a) Unless an exception to submission in electronic form at 232.7002 (a) applies and instructions for invoices are contained in the contract administration data section of the contract, task orders, or delivery order, use the clause at 252.232-7003, Electronic Submission of Payment Requests and Receiving Reports, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services.

(b) Use the clause at 252.232-7006, Wide Area WorkFlow Payment Instructions, in solicitations and contracts, task orders, or delivery orders, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, when 252.232-7003 is used and none of the exceptions at232.7002(b)(1) apply. See PGI 232.7004 for instructions on completing the clause.

Subpart 232.71 - LEVIES ON CONTRACT PAYMENTS

232.7100 Scope of subpart.

This subpart prescribes policies and procedures concerning the effect of levies pursuant to 26 U.S.C. 6331(h) on contract payments. The Internal Revenue Service (IRS) is authorized to levy up to 100 percent of all payments made under a DoD contract, up to the amount of the tax debt.

232.7101 Policy and procedures.

(a) The contracting officer shall require the contractor to—

(1) Promptly notify the contracting officer when a levy may result in an inability to perform the contract; and

(2) Advise the contracting officer whether the inability to perform may adversely affect national

security.

(b) The contracting officer shall promptly notify the Principal Director, Defense Pricing, Contracting, and Acquisition Policy (DPCAP), when the contractor's inability to perform will adversely affect national security or will result in significant additional costs to the Government. Follow the procedures at PGI 232.7101 (b) for reviewing the contractor's rationale and submitting the required notification.

(c) The Principal Director, DPCAP, will promptly evaluate the contractor's rationale and will notify the IRS, the contracting officer, and the payment office, as appropriate, in accordance with the procedures at PGI 232.7101 (c).

(d) The contracting officer shall then notify the contractor in accordance with paragraph (c) of the clause at 252.232-7010 and in accordance with the procedures at PGI 232.7101 (d).

232.7102 Contract clause.

Use the clause at 252.232-7010 , Levies on Contract Payments, in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial item products and commercial services.

Subpart 232.72 - Reserved