# Subpart 32.2 - Commercial Product and Commercial Service Purchase Financing

**Parent topic:** Part 32 - Contract Financing

## 32.200 Scope of subpart.

This subpart provides policies and procedures for commercial financing arrangements under commercial purchases pursuant to part 12.

## 32.201 Statutory authority.

10 U.S.C. 3805 and 41 U.S.C.4505 provide that payment for *commercial products* or *commercial services may* be made under such terms and conditions as the *head of the agency* determines are appropriate or customary in the commercial marketplace and are in the best interest of the *United States*.

## 32.202 General.

### 32.202-1 Policy.

(a) *Use of financing in contracts.* It is the responsibility of the contractor to provide all resources needed for performance of the contract. Thus, for purchases of *commercial products* or *commercial services*, financing of the contract is normally the contractor's responsibility. However, in some markets the provision of financing by the buyer is a commercial practice. In these circumstances, the *contracting officer may* include appropriate financing terms in contracts for commercial purchases when doing so will be in the best interest of the Government.

(b) *Authorization. Commercial interim payments* and commercial advance payments *may* be made under the following circumstances-

(1) The contract item financed is a commercial supply or service;

(2) The contract price exceeds the *simplified acquisition threshold*;

(3) The *contracting officer* determines that it is appropriate or customary in the commercial marketplace to make financing payments for the item;

(4) Authorizing this form of contract financing is in the best interest of the Government (see paragraph (e) of this sub-section);

(5) Adequate security is obtained (see 32.202-4);

(6) Prior to any performance of work under the contract, the aggregate of commercial advance payments *shall* not exceed 15 percent of the contract price;

(7) The contract is awarded on the basis of competitive procedures or, if only one *offer* is solicited, adequate consideration is obtained (based on the time value of the additional financing to be provided) if the financing is expected to be substantially more advantageous to the *offeror* than the *offeror*'s normal method of customer financing; and

(8) The *contracting officer* obtains concurrence from the payment office concerning liquidation provisions when required by 32.206(e).

(c) *Difference from other than commercial financing.* Government financing of commercial purchases under this subpart is expected to be different from that used for other than commercial purchases under subpart 32.1 and its related subparts. While the *contracting officer may* adapt techniques and procedures from the other than commercial subparts for use in implementing commercial contract financing arrangements, the *contracting officer must* have a full understanding of effects of the differing contract environments and of what is needed to protect the interests of the Government in commercial contract financing.

(d) *Unusual contract financing.* Any contract financing arrangement not in accord with the requirements of agency regulations or this part is *unusual contract financing* and requires advance approval in accordance with agency procedures. If not otherwise specified, such *unusual contract financing shall* be approved by the *head of the contracting activity*.

(e) *Best interest of the Government.* The statutes cited in 32.201 do not allow contract financing by the Government unless it is in the best interest of the *United States*. Agencies *may* establish standards to determine whether contract financing is in the best interest of the Government. These standards *may* be for certain types of *procurements*, certain types of items, or certain dollar levels of *procurements*.

## 32.202-2 Types of payments for commercial product and commercial service purchases.

These definitions incorporate the requirements of the statutory commercial financing authority and the implementation of the Prompt Payment Act.

*Commercial advance payment*, as used in this section, means a payment made before any performance of work under the contract. The aggregate of these payments *shall* not exceed 15 percent of the contract price. These payments are *contract financing payments* for prompt payment purposes (*i.e.,* not subject to the interest penalty provisions of the Prompt Payment Act in accordance with subpart 32.9). These payments are not subject to subpart 32.4, Advance Payments for Other Than Commercial *Acquisitions*.

*Commercial interim payment* (see 32.001).

*Delivery payment* (see 32.001).

## 32.202-3 Conducting market research about financing terms.

Contract financing *may* be a subject included in the *market research* conducted in accordance with part 10. If *market research* for contract financing is conducted, the *contracting officer should* consider-

(a) The extent to which other buyers provide contract financing for purchases in that market;

(b) The overall level of financing normally provided;

(c) The amount or percentages of any payments equivalent to commercial advance payments (see 32.202-2);

(d) The basis for any payments equivalent to *commercial interim payments* (see 32.001), as well as the frequency, and amounts or percentages; and

(e) Methods of liquidation of *contract financing payments* and any special or unusual payment terms applicable to *delivery payments* (see 32.001).

## 32.202-4 Security for Government financing.

(a) Policy.

(1) 10 U.S.C. 3805 and 41 U.S.C.4505 require the Government to obtain adequate security for Government financing. The *contracting officer shall* specify in the *solicitation* the type of security the Government will accept. If the Government is willing to accept more than one form of security, the *offeror shall* be required to specify the form of security it will provide. If acceptable to the *contracting officer*, the resulting contract *shall* specify the security (see 32.206(b)(1)(iv)).

(2) Subject to agency regulations, the *contracting officer may* determine the *offeror*'s financial condition to be adequate security, provided the *offeror* agrees to provide additional security *should* that financial condition become inadequate as security (see paragraph (c) of the clause at 52.232-29, Terms for Financing of Purchases of *Commercial Products* and *Commercial Services*). Assessment of the contractor's financial condition *shall* consider both net worth and liquidity. If the *contracting officer* finds the *offeror*'s financial condition is not adequate security, the *contracting officer shall* require other adequate security. Paragraphs (b), (c), and (d) of this subsection list other (but not all) forms of security that the *contracting officer may* find acceptable.

(3) The value of the security *must* be at least equal to the maximum unliquidated amount of *contract financing payments* to be made to the contractor. The value of security *may* be adjusted periodically during contract performance, as long as it is always equal to or greater than the amount of unliquidated financing.

(b) Paramount lien.

(1) The statutes cited in 32.201 provide that if the Government's security is in the form of a lien, such lien is paramount to all other liens and is effective immediately upon the first payment, without filing, notice, or other action by the *United States*.

(2) When the Government's security is in the form of a lien, the contract *shall* specify what the lien is upon, *e.g.*, the work in process, the contractor's plant, or the contractor's inventory. *Contracting officers may* be flexible in the choice of assets. The contract *must* also give the Government a right to verify the existence and value of the assets.

(3) Provision of Government financing *shall* be conditioned upon a contractor certification that the assets subject to the lien are free from any prior encumbrances. Prior liens *may* result from such

things as capital equipment loans, installment purchases, working capital loans, various lines of credit, and revolving credit arrangements.

(c) *Other assets as security. Contracting officers may* consider the guidance at 28.203 and 28.204 in determining which types of assets *may* be acceptable as security. For the purpose of applying the guidance in part 28 to this subsection, the term "*surety*" and/or "individual *surety*" *should* be interpreted to mean "*offeror*" and/or "contractor."

(d) *Other forms of security.* Other acceptable forms of security include-

(1) An *irrevocable letter of credit* from a federally insured financial institution;

(2) A bond from a *surety*, acceptable in accordance with part 28 (note that the bond *must* guarantee repayment of the unliquidated contract financing);

(3) A guarantee of repayment from a person or corporation of demonstrated liquid net worth, connected by significant ownership to the contractor; or

(4) Titleto identified contractor assets of adequate worth.

(e) *Management of risk and security.* In establishing contract financing terms, the *contracting officer must* be aware of certain risks. For example, very high amounts of financing early in the contract (front-end loading) *may* unduly increase the risk to the Government. The security and the amounts and timing of financing payments *must* be analyzed as a whole to determine whether the arrangement will be in the best interest of the Government.

## 32.203 Determining contract financing terms.

When the criteria in 32.202-1(b) are met, the *contracting officer may* either specify the financing terms in the *solicitation* (see 32.204) or permit each *offeror* to propose its own customary financing terms (see 32.205). When the *contracting officer* has sufficient information on financing terms that are customary in the commercial marketplace for the item, those terms *may* be specified in the *solicitation*.

## 32.204 Procedures for contracting officer-specified commercial contract financing.

The financing terms *shall* be included in the *solicitation*. Contract financing *shall* not be a factor in the evaluation of resulting proposals, and proposals of alternative financing terms *shall* not be accepted (but see 14.208 and 15.206 concerning amendments of *solicitations*). However, an *offer* stating that the *contracting officer*-specified contract financing terms will not be used by the *offeror* does not alter the evaluation of the *offer*, nor does it render the *offer* nonresponsive or otherwise unacceptable. In the event of award to an *offeror* who declined the proposed contract financing, the contract financing provisions *shall* not be included in the resulting contract. Contract financing *shall* not be a basis for adjusting *offerors*' proposed prices, because the effect of contract financing is reflected in each *offeror*'s proposed prices.

# 32.205 Procedures for offeror-proposed commercial contract financing.

(a) Under this procedure, each *offeror may* propose financing terms. The *contracting officer must* then determine which *offer* is in the best interests of the *United States*.

(b) *Solicitations.* The *contracting officer must* include in the *solicitation* the provision at 52.232-31, invitation to Propose Financing Terms. The *contracting officer must* also-

(1) Specify the *delivery payment* (*invoice*) dates that will be used in the evaluation of financing proposals; and

(2) Specify the interest rate to be used in the evaluation of financing proposals (see paragraph (c)(4) of this section).

(c) Evaluation of proposals.

(1) When contract financing terms vary among *offerors*, the *contracting officer must* adjust each proposed price for evaluation purposes to reflect the cost of providing the proposed financing in order to determine the total cost to the Government of that particular combination of price and financing.

(2) Contract financing results in the Government making payments earlier than it otherwise would. In order to determine the cost to the Government of making payments earlier, the *contracting officer must* compute the imputed cost of those financing payments and add it to the proposed price to determine the evaluated price for each *offeror*.

(3) The imputed cost of a single financing payment is the amount of the payment multiplied by the annual interest rate, multiplied by the number of years, or fraction thereof, between the date of the financing payment and the date the amount would have been paid as a *delivery payment*. The imputed cost of financing is the sum of the imputed costs of each of the financing payments.

(4) The *contracting officer must* calculate the time value of proposal-specified contract financing arrangements using as the interest rate the nominal discount rate specified in AppendixC of the Office of Management and Budget (OMB) CircularA-94, "Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs," appropriate to the period of contract financing. Where the period of proposed financing does not match the periods in the OMB Circular, the interest rate for the period closest to the finance period *shall* be used. AppendixC is updated yearly, and is available from the Office of Economic Policy in the Office of Management and Budget (OMB).

# 32.206 Solicitation provisions and contract clauses.

(a) The contract *shall* contain the paragraph entitled "Payment" of the clause at 52.212-4, Contract Terms and Conditions-*Commercial Products* and *Commercial Services*. If the contract will provide for contract financing, the *contracting officer shall* construct a *solicitation* provision and *contract clause*. This *solicitation* provision *shall* be constructed in accordance with 32.204 or 32.205. If the procedure at 32.205 is used, the *solicitation* provision at 52.232-31, invitation to Propose Financing Terms, *shall* be included. The *contract clause shall* be constructed in accordance with the

requirements of this subpart and any agency regulations.

(b) Each contract financing clause *shall* include:

(1) A description of the-

(i) Computation of the financing payment amounts (see paragraph (c) of this section);

(ii) Specific conditions of contractor entitlement to those financing payments (see paragraph (c) of this section);

(iii) Liquidation of those financing payments by *delivery payments* (see paragraph (e) of this section);

(iv) Security the contractor will provide for financing payments and any terms or conditions specifically applicable thereto (see 32.202-4); and

(v) Frequency, form, and any additional content of the contractor's request for financing payment (in addition to the requirements of the clause at 52.232-29, Terms for Financing of Purchases of *Commercial Products* and *Commercial Services*; and

(2) Unless agency regulations authorize alterations, the unaltered text of the clause at 52.232-29, Terms for Financing of Purchases of *Commercial Products* and *Commercial Services*.

(c) Computation of amounts, and contractor entitlement provisions.

(1) Contracts *shall* provide that *delivery payments shall* be made only for completed *supplies* and services accepted by the Government in accordance with the terms of the contract. Contracts *may* provide for commercial advance and commercial interim payments based upon a wide variety of bases, including (but not limited to) achievement or occurrence of specified events, the passage of time, or specified times prior to the delivery date(s). The basis for payment *must* be objectively determinable. The clause written by the *contracting officer shall* specify, to the extent access is necessary, the information and/or facilities to which the Government *shall* have access for the purpose of verifying the contractor's entitlement to payment of contract financing.

(2) If the contract is awarded using the *offeror*-proposed procedure at 32.205, the clause constructed by the *contracting officer* under paragraph (b)(1) of this section *shall* contain the following:

(i) A statement that the *offeror*'s proposed listing of earliest times and greatest amounts of projected financing payments submitted in accordance with paragraph (d)(2) of the provision at 52.232-31, invitation to Propose Financing Terms, is incorporated into the contract, and

(ii) A statement that financing payments *shall* be made in the lesser amount and on the later of the date due in accordance with the financing terms of the contract, or in the amount and on the date projected in the listing of earliest times and greatest amounts incorporated in the contract.

(3) If the security accepted by the *contracting officer* is the contractor's financial condition, the *contracting officer shall* incorporate in the clause constructed under paragraph (b)(1) of this section the following-

(i) A statement that the contractor's financial condition has been accepted as adequate security for commercial financing payments; and

(ii) A statement that the *contracting officer may* exercise the Government's rights to require other security under paragraph (c), Security for Government Financing, of the clause at 52.232-29, Terms for Financing of Purchases of *Commercial Products* and *Commercial Services*, in the event the contractor's financial condition changes and is found not to be adequate security.

(d) *Instructions for multiple appropriations.* If contract financing is to be computed for the contract as a whole, and if there is more than one appropriation account (or subaccount) funding payments under the contract, the *contracting officer shall* include, in the contract, instructions for distribution of financing payments to the respective funds accounts. Distribution instructions and contract liquidation instructions *must* be mutually consistent.

(e) *Liquidation.* Liquidation of *contract financing payments shall* be on the same basis as the computation of *contract financing payments*; that is, financing payments computed on a whole contract basis *shall* be liquidated on a whole contract basis; and a payment computed on a *line item* basis *shall* be liquidated against that *line item*. If liquidation is on a whole contract basis, the *contracting officer shall* use a uniform liquidation percentage as the liquidation method, unless the *contracting officer* obtains the concurrence of the cognizant payment office that the proposed liquidation provisions can be executed by that office, or unless agency regulations provide alternative liquidation methods.

(f) *Prompt payment for commercial purchase payments.* The provisions of subpart 32.9, Prompt Payment, apply to contract financing and *invoice payments* for commercial purchases in the same manner they apply to other than commercial purchases. The *contracting officer* is responsible for including in the contract all the information necessary to implement prompt payment. In particular, *contracting officers must* be careful to clearly differentiate in the contract between contract financing and *invoice payments* and between items having different prompt payment times.

(g) *Installment payment financing for commercial products and commercial services. Contracting officers may* insert the clause at 52.232-30, Installment Payments for *Commercial Products* and *Commercial Services*, in *solicitations* and contracts in lieu of constructing a specific clause in accordance with paragraphs (b) through (e) of this section, if the *contract action* qualifies under the criteria at 32.202-1(b) and installment payments for the item are either customary or are authorized in accordance with agency procedures.

(1) *Description.* Installment payment financing is payment by the Government to a contractor of a fixed number of equal interim financing payments prior to delivery and acceptance of a contract item. The installment payment arrangement is designed to reduce administrative costs. However, if a contract will have a large number of deliveries, the administrative costs *may* increase to the point where installment payments are not in the best interests of the Government.

(2) *Authorized types of installment payment financing and rates.* Installment payments *may* be made using the clause at 52.232-30, Installment Payments for *Commercial Products* and *Commercial Services*, either at the 70 percent financing rate cited in the clause or at a lower rate in accordance with agency procedures.

(3) *Calculating the amount of installment financing payments.* The *contracting officer shall* identify in the contract schedule those items for which installment payment financing is authorized. Monthly installment payment amounts are to be calculated by the contractor pursuant to the instructions in the *contract clause* only for items authorized to receive installment payment financing.

(4) *Liquidating installment payments.* If installment payments have been made for an item, the amount paid to the contractor upon acceptance of the item by the Government *shall* be reduced by

the amount of installment payments made for the item. The contractor’s request for final payment for each item is required to show this calculation.

## 32.207 Administration and payment of commercial financing payments.

(a) *Responsibility.* The *contracting officer* responsible for administration of the contract *shall* be responsible for review and approval of contract financing requests.

(b) *Approval of financing requests.* Unless otherwise provided in agency regulations, or by agreement with the appropriate payment official-

(1) The *contracting officer shall* be responsible for receiving, approving, and transmitting all contract financing requests to the appropriate payment office; and

(2) Each approval *shall* specify the amount to be paid, necessary contractual information, and the account(s) (see 32.206(d)) to be charged for the payment.

(c) *Management of security.* After contract award, the *contracting officer* responsible for approving requests for financing payments *shall* be responsible for determining that the security continues to be adequate. If the contractor’s financial condition is the Government’s security, this *contracting officer* is also responsible for monitoring the contractor’s financial condition.