

32.503-6 Suspension or reduction of payments.

(a) *General.* The Progress Payments clause provides a Government right to reduce or suspend progress payments, or to increase the liquidation rate, under specified conditions. These conditions and actions are discussed in paragraphs (b) through (g) of this subsection.

(1) The *contracting officer shall* take these actions only in accordance with the contract terms and never precipitately or arbitrarily. These actions *should* be taken only after-

(i) Notifying the contractor of the intended action and providing an opportunity for discussion;

(ii) Evaluating the effect of the action on the contractor's operations, based on the contractor's financial condition, projected cash requirements, and the existing or available credit arrangements; and

(iii) Considering the general equities of the particular situation.

(2) The *contracting officer shall* take immediate unilateral action only if warranted by circumstances such as overpayments or unsatisfactory contract performance.

(3) In all cases, the *contracting officer shall*-

(i) Act fairly and reasonably;

(ii) Base decisions on *substantial evidence*; and

(iii) Document the contract file. Findings made under paragraph (c) of the Progress Payments clause *shall be in writing*.

(b) Contractor noncompliance.

(1) The contractor *must* comply with all material requirements of the contract. This includes the requirement to maintain an efficient and reliable accounting system and controls, adequate for the proper administration of progress payments. If the system or controls are deemed inadequate, progress payments *shall* be suspended (or the portion of progress payments associated with the unacceptable portion of the contractor's accounting system *shall* be suspended) until the necessary changes have been made.

(2) If the contractor fails to comply with the contract without fault or negligence, the *contracting officer* will not take action permitted by paragraph (c)(1) of the Progress Payments clause, other than to correct overpayments and collect amounts due from the contractor.

(c) Unsatisfactory financial condition.

(1) If the *contracting officer* finds that contract performance (including full liquidation of progress payments) is endangered by the contractor's financial condition, or by a failure to make progress,

the *contracting officer shall* require the contractor to make additional operating or financial arrangements adequate for completing the contract without loss to the Government.

(2) If the *contracting officer* concludes that further progress payments would increase the probable loss to the Government, the *contracting officer shall* suspend progress payments and all other payments until the unliquidated balance of progress payments is eliminated.

(d) *Excessive inventory*. If the inventory allocated to the contract exceeds reasonable requirements (including a reasonable accumulation of inventory for continuity of operations), the *contracting officer should*, in addition to requiring the transfer of excessive inventory from the contract, take one or more of the following actions, as necessary, to avoid or correct overpayment:

(1) Eliminate the costs of the excessive inventory from the costs eligible for progress payments, with appropriate reduction in progress payments outstanding.

(2) Apply additional deductions to billings for deliveries (increase liquidation).

(e) Delinquency in payment of costs of performance.

(1) If the contractor is delinquent in paying the costs of contract performance in the ordinary course of business, the *contracting officer shall* evaluate whether the delinquency is caused by an unsatisfactory financial condition and, if so, *shall* apply the guidance in paragraph (c) of this section. If the contractor's financial condition is satisfactory, the *contracting officer shall* not deny progress payments if the contractor agrees to-

(i) Cure the payment delinquencies;

(ii) Avoid further delinquencies; and

(iii) Make additional arrangements adequate for completing the contract without loss to the Government.

(2) If the contractor has, in good faith, disputed amounts claimed by subcontractors, suppliers, or others, the *contracting officer shall* not consider the payments delinquent until the amounts due are established by the parties through litigation or arbitration. However, the amounts *shall* be excluded from costs eligible for progress payments so long as they are disputed.

(3) Determinations of delinquency in making contributions under employee pension, profit sharing, or stock ownership plans, and exclusion of costs for such contributions from progress payment requests, *shall* be in accordance with paragraph (a)(3) of the clause at 52.232-16, Progress Payments, without regard to the provisions of 32.503-6.

(f) *Fair value of undelivered work*. Progress payments *must* be commensurate with the fair value of work accomplished in accordance with contract requirements. The *contracting officer must* adjust progress payments when necessary to ensure that the fair value of undelivered work equals or exceeds the amount of unliquidated progress payments. On loss contracts, the application of a loss ratio as provided at paragraph (g) of this subsection constitutes this adjustment.

(g) Loss contracts.

(1) If the sum of the total costs incurred under a contract plus the estimated costs to complete the

performance are likely to exceed the contract price, the *contracting officer shall* compute a loss ratio factor and adjust future progress payments to exclude the element of loss. The loss ratio factor is computed as follows:

(i) Revise the current contract price used in progress payment computations (the current ceiling price under fixed-price incentive contracts) to include the not-to-exceed amount for any pending *change orders* and unpriced orders.

(ii) Divide the revised contract price by the sum of the total costs incurred to date plus the estimated additional costs of completing the contract performance.

(2) If the *contracting officer* believes a loss is probable, future progress payment requests *shall* be modified as follows:

(i) The contract price *shall* be the revised amount computed under paragraph (g)(1)(i) of this section.

(ii) The total costs eligible for progress payments *shall* be the product of-

(A) the sum of paid costs eligible for progress payments times;

(B) the loss ratio factor computed under paragraph (g)(1)(ii) of this section.

(iii) The costs applicable to items delivered, invoiced, and accepted *shall* not include costs in excess of the contract price of the items.

(3) The *contracting officer may* use audit assistance, technical services, management reports, and other sources of pertinent data to evaluate progress payment requests. If the *contracting officer* concludes that the contractor's figures in the contractor's progress payment request are not correct, the *contracting officer shall*-

(i) In the manner prescribed in paragraph (g)(4) of this section, prepare a supplementary analysis to be attached to the contractor's request;

(ii) Advise the contractor *in writing* of the differences; and

(iii) Adjust all further progress payments in accordance with paragraph (g)(1) of this section, using the *contracting officer's* figures, until the difference is resolved.

(4) The following is an example of the supplementary analysis required in paragraph (g)(3) of this subsection:

Section I:

Contract price	\$2,850,000
<i>Change orders</i> and unpriced orders (to extent funds have been obligated)	\$150,000
Revised contract price	\$3,000,000

Section II:

Total costs incurred to date	\$2,700,000
Estimated additional costs to complete	\$900,000
Total costs to complete	\$3,600,000

$$\text{Loss ratio factor} \frac{\$3,000,000}{\$3,600,000} = 83.3\%$$

Total costs eligible for progress payments	\$2,700,000
Loss ratio factor	□83.3%
Recognized costs for progress payments	\$2,249,100
Progress payment rate	□80.0%
<i>Alternate</i> amount to be used	\$1,799,280

Section III:

Factored costs of items delivered*	\$750,000
Recognized costs applicable to undelivered items (\$2,249,100-\$750,000)	\$1,499,100

*This amount *must* be the same as the contract price of the items delivered.

Parent topic: [32.503 Postaward matters.](#)