Part 5132 - Contract Financing

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5132.006 Reduction or suspension of contract payments upon finding of fraud.

5132.006-1 General.

(b) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) has the authority to reduce or suspend contract payments where there is substantial evidence that the contractor's request for advance, partial, or progress payments is based on fraud. See Appendix GG for further delegation.

5132.006-2 Definition.

The Army's remedy coordination official is the Chief, Procurement Fraud Division, Office of The Judge Advocate General; telephone (703) 693-1228.

5132.006-3 Responsibilities.

(b) Report suspected fraud related to advance, partial, or progress payments to the contracting office’s procurement fraud advisor, who will coordinate the matter as prescribed in Army Regulation 27-40.

5132.007 Contract financing payments.

(a)(3) and (4) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may prescribe the periods for payment as described in FAR 32.007(a)(3) and (4). See Appendix GG for further delegation.

Subpart 5132.1 - Non-Commercial Item Purchase Financing

5132.111 Contract clauses for non-commercial purchases.

(a)(7) The Contracting officer must document the contract file with the rationale to support the amount of payments withheld under FAR 52.232-7(a)(7).

5132.114 Unusual contract financing.

The Principal Director, Defense Pricing, Contracting, and Acquisition Policy (DPCAP), on a non-delegable basis, shall approve actions as stated in FAR 32.114 and DFARS 201.402(1)(vi).

Subpart 5132.2 - Commercial Item Purchase Financing

5132.201 Statutory authority.

The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall make the determination as described at FAR 32.201. See Appendix GG for further delegation.

5132.202 General.

5132.202-1 Policy.

(d) The Principal Director, DPCAP, on a non-delegable basis, shall approve actions as stated in FAR 32.202-1 and DFARS 201.402(1)(vi).

Subpart 5132.4 - Advance Payments for Non-Commercial

Items

5132.402 General.

(c)(1)(iii)(A) The Assistant Secretary of the Army (Acquisition, Logistics and Technology), on a non-delegable basis, shall make the determination that the advance payment is in the public interest as described at FAR 32.402(c)(1)(iii)(A).

(c)(1)(iii)(B) The Secretary of the Army, on a non-delegable basis, shall make the determination that the advance payment facilitates the national defense as described at FAR 32.402(c)(1)(iii)(B).

5132.407 Interest.

(d) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall make the authorization as described at FAR 32.407(d).

5132.409 Interest.

5132.409-1 Recommendation for approval.

The local contract financing office shall prepare the documents required by FAR 32.409-1(e) and (f).

Subpart 5132.5 - Progress Payments Based on Costs

5132.501 General.

5132.501-2 Unusual progress payments.

(a)(2) Requests for approval of unusual progress payments must include the following documentation from the contractor:

(A) Monthly cash flow forecasts for the period, which include the additional financing.

(B) Estimated profit and loss statements and balance sheets for the same period as the cash flow forecast.

(C) The most recent, audited financial statements.

(D) A description of significant events before or after preparation of financial statements that materially affect the financial condition of the company, the operating statement, or the cash flow statement.

(3) See DFARS PGI 232.501-2. Submit all unusual progress payments requests to the addressee in

AFARS 5101.290(b)(3).

Subpart 5132.6 - Contract Debts

5132.606 Debt collection.

(c)(i) Send case files to the contract financing office within 15 calendar days after the end of the 30-day period following the Contracting officer's demand for payment (see FAR 32.604). The address is as follows:

DFAS-IN/Debt and Claims

Dept. 3300

8899 East 56th Street

Indianapolis, IN 46249-3300

(ii) The case file must include a copy of the Contracting officer's demand; a statement as to whether or not the contract contains an interest clause; and, if so, a copy of the clause or a reference to the clause number.

(iii) If the debt represents excess costs incurred in purchasing supplies or services against the account of a defaulted contractor, the case file shall include –

(A) The name and address of the replacement contractor and UEI and/or CAGE code;

(B) The disbursing office voucher number;

(C) The date paid;

(D) Bills of lading numbers, if any;

(E) The name of the carrier, when applicable; and

(F) The name and symbol number of the disbursing officer.

(iv) If the debt represents liquidated damages, the case file shall include an explanation of the basis for assessing liquidated damages.

5132.607 Installment payments and deferment of collection.

5132.607-2 Deferment of collection.

(b) When a request for deferment of a contract debt is received from a contractor, the Contracting officer must notify the payment office and advise the payment office identified in the contract that the contractor's request is under consideration IAW in accordance with FAR 32.607-2(b). See AFARS PGI 5132.607-2(c)(2) for further instruction.

5132.671 Bankruptcy reporting.

Send information in accordance with the procedures at DFARS PGI 232.671 to the addressee in AFARS 5132.606(c).

Subpart 5132.7 - Contract Funding

5132.702 Policy.

(a)(i) Except as authorized in FAR subparts 17.1 and 32.7 and in paragraphs (a)(ii) and (iii) in this section, before issuing a solicitation, the Contracting officer must have a written statement or equivalent indicating that sufficient funds are available.

(ii) Contracting officers may issue solicitations for high priority requirements and Research, Development, Test and Evaluation incrementally funded contracts before ensuring availability of funds when there is a high probability that the requiring activity will not cancel the requirement. For foreign military sales cases, Contracting officers may issue solicitations after the acceptance of a foreign military sales case, but before assurance of funds availability when the United States Army Security Assistance Command determines in writing that the offer appears certain to be accepted.

(A) The Contracting officer shall not issue a solicitation under the circumstances in (a)(ii) unless the comptroller has signed the following statement on the purchase request:

“This requirement is included or provided for in the financial plan for fiscal year _____. The accounting classification will be _____. This statement is not a commitment of funds.”

(B) The Contracting officer shall include the following statement in all solicitations issued pursuant to this authority when the clause at FAR 52.232-18, Availability of Funds, is not used:

“Funds are not presently available for this acquisition. No contract award will be made until appropriated funds are made available.”

(C) The operating official designated, by local regulations or by a “delegation of authority” letter, as the official authorized to certify funds availability, must certify funds available prior to contract award.

(D) The Contracting officer shall not issue a solicitation for a research and development contract that is incrementally funded over successive years without sufficient planned funds (Future Years Defense Program) to cover the entire period of the multi-year performance. The HCA may approve an exception, provided the approval identifies steps to revise the approved Future Years Defense Program to include adequate resources.

Subpart 5132.8 - Assignment of Claims

5132.803 Policies.

(d) The Assistant Secretary of the Army (Acquisition, Logistics and Technology), on a non-delegable basis, shall make the determination as described at FAR 32.803(d).

Subpart 5132.9 - Prompt Payment

5132.901 Applicability.

(1)(ii) The HCA, after consultation with the cognizant comptroller, will make the determination at DFARS 232.901(1)(ii). See Appendix GG for further delegation.

(3) The HCA will make the determination at DFARS 232.901(3). See Appendix GG for further delegation.

5132.903 Responsibilities.

(a) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall perform the duties as set forth in FAR 32.903(a). See Appendix GG for further delegation.

5132.906 Making payments.

(a) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall make the determination as described required by FAR 32.906(a). See Appendix GG for further delegation.

Subpart 5132.11 - Electronic Funds Transfer

5132.1106 EFT mechanisms.

The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall make the determination as required by FAR 32.1106 (a) and (b). See Appendix GG for further delegation.

Subpart 5132.71 - Levies on Contract Payments

5132.7101 Policy and procedures.

(b)(4) Subject to DFARS 232.7101(b) and the procedures at the DFARS PGI 232.7101(b), the Contracting officer shall obtain written endorsement from the SCO prior to sending the notification memorandum to the Principal Director, DPCAP. The Contracting officer shall include a copy of the written endorsement by the SCO and all other communication at the lower levels, to include legal counsel in the contract file. The endorsement by the SCO is non-delegable. In addition to the assessment the contractor provides, the Contracting officer shall obtain from the appropriate requiring activity any other information necessary to prepare the notification. The Contracting

officer shall provide a copy of the notification memorandum sent to the Principal Director, DPCAP to the address at AFARS 5101.290(b)(2)(ii)(A).

(c) When the Contracting officer receives a response from the Principal Director, DPCAP, the Contracting officer shall send a copy of the response to the address at AFARS 5101.290(b)(2)(ii)(A).