5133.212-98 Dispute settlement and judgments, use of the Judgment Fund.

(a) *Judgment Fund.*

(1) The Contract Disputes statute provides for the use of the Judgment Fund ("the Fund") (31 U.S.C. 1304) to pay for adverse judgments against the Government. Under certain circumstances, the Army can convert settlement agreements in Contract Disputes statute cases before the ASBCA into consent judgments to access the Fund to pay for settlements. In Contract Disputes statute cases before Federal courts where Department of Justice represents the Army, the Department of Justice may use its independent authority to use the Fund for settlements. Contracting officers should consult with their legal counsel and their local resource management office prior to taking any actions related to the use of the Fund. Only authorized officials of a Government agency may submit a request for payment from the Fund. Requests submitted by anyone other than an authorized Government official are deemed fraudulent. Filing a false or fraudulent claim constitutes a Federal offense that is punishable by fines, imprisonment, or both (See 31 U.S.C. 3729 and 18 U.S.C. 287). The Army authorized official for use of the Fund is the Assistant Secretary of the Army for Financial Management and Comptroller (ASA(FM&C)). See Appendix GG for further delegation. Army contracting activities shall follow the policy set forth in this section of the AFARS.

(2) The Army must reimburse the Fund with funds current as of the date of the judgment. According to the DoD Financial Management Regulation, (FMR), Volume 3, Chapter 08, paragraph 4.2.7, approval authority is required from the cognizant Assistant Secretary of the Military Department for Financial Management and Comptroller or Defense Agency Comptroller for all Judgment Fund Reimbursements to the Department of the Treasury in excess of $1,000,000.

(b) *Fiscal considerations in settlements*. If funds appropriate to pay a settlement are expired but the account remains open, Contracting officers must use expired funds to pay the settlement. If the account remains open but no expired funds remain, Contracting officers must use the Judgment Fund to access current funds to pay the settlement. Access to the Fund requires a consent judgment from the Board or use of the Department of Justice's independent authority to use the Fund. The Contracting officer may use current funds to pay the settlement if appropriate accounts are canceled or closed.

(c) *Settlement procedures*.

(1) The ASA(FM&C), tracks available expired funds within the Army.

(2) The Army shall use the following procedures for settlements:

(i) In situations where contract funds have expired but the accounts have not closed, the Army shall fund settlements with expired funds if available. Contracting officers will ascertain the availability of appropriate expired funds through their resource management office.

(ii) If the resource management office determines that no expired funds exist within the Army to fund the settlement and the accounts are not closed, the Contracting officer must access the Fund through a consent judgment in order to use current year funds to pay the settlement (i.e., reimburse the Fund).

(iii) If no expired funds exist but the account remains open, use the following procedure. If current year funds are available to reimburse the Fund, then the Contracting officer may enter into a consent decree and allow the Fund to pay the judgment. If there is not sufficient current funding to reimburse the Fund, the Contracting officer must receive authorization from the ASA(FM&C) prior to entering into a consent decree.

(iv) If the accounts are closed, use the following procedure. If the Contracting officer determines there are sufficient funds to pay the settlement, he/she will not use the Fund, and pay the settlement with Agency funds. If sufficient current funds are not available, ASA(FM&C) will provide approval to access the Fund prior to the Contracting officer entering into a consent judgment.

(v) When use of the Fund is authorized, the Contracting officer shall work with the resource management office to ensure execution of the appropriate Certificate of Finality and Bureau of the Fiscal Service forms (FS Forms 195, 196, 197A and 198 (if appropriate)) and submit the payment request to the FMS. The "reimbursement contact" on FS Form 196 shall be the ASA(FM&C).

(d) *Judgments*. Use the following procedures to pay judgments using the Fund.

(1) The Contracting officer shall ascertain the availability of current funds through financial management channels. If current funds are available, the Contracting officer will not use the Fund, and will pay the judgment with Agency funds.

(2) If current funds are not available, the Contracting officer must receive authorization from the ASA(FM&C) to access the Fund prior to paying the judgment.

(e) *Settlement agreements*. All settlements converted to consent judgments and funded by the Fund shall be in writing and contain appropriate release language. The Contracting officer, local attorney and trial attorney shall ensure that all settlement amounts are fair and reasonable.

(f) *Expeditious handling*. To expedite handling of settlements, the inquiries and approvals these procedures require may be oral; however, to support the action, the Contracting officer must document the steps taken in a memorandum for record and include a copy in the contract file.

Parent topic: 5133.212 Contracting officers duties upon appeal.