MP5342 -Contract Administration and Audit Services

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DAF Contracting Compass Part 42

MP5342.9 - BANKRUPTCY

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Revised: June 2024

(a) When an office (typically contracting, financial management, or legal) first learns of bankruptcy proceedings that may involve or affect the Department of the Air Force, that office must as a minimum provide notice to its supporting contracting, financial management, and legal offices. Once the contracting office and legal office are notified, they must work as a team to carry out the following responsibilities:

(1) The contracting office must furnish notice of the bankruptcy to any affected buying activities and to the Defense Finance and Accounting Service Office of General Counsel (DFAS-HGB) at the following address:

Office of General Counsel

DFAS-HGB

Defense Finance and Accounting Service

8899 E. 56th Street

Indianapolis, IN 46249-0160

The legal office must furnish notice to the Bankruptcy Branch of the Commercial Litigation Division of the Air Force Legal Services Agency (AFLOA/JAQ) at the following address:

AFLOA/JAQ

1500 West Perimeter Road, Suite 4100

Joint Base Andrews, MD 20762

Provide notice irrespective of whether any contracts have been closed, terminated, or still have performance outstanding. Make notifications via the most expeditious method, but no later than

three days after learning of the bankruptcy. Notify promptly, whether or not all required information is initially available, and even in cases where it appears the notifying office, itself, received late notice. Ensure the notification includes:

(A) The name of the debtor/contractor, including all known affiliates who have filed for bankruptcy;

(B) The court in which the bankruptcy petition was filed;

(C) The date the bankruptcy petition was filed; and

(D) The case number assigned by the bankruptcy court.

(2) Make an assessment of each of the debtor's contracts and determine:

(A) If the Department of the Air Force has a claim or potential claim against the debtor/contractor (e.g., based on unliquidated progress payments, nonconforming goods, estimated excess reprocurement costs, etc.), whether the contract is ongoing, closed, terminated, or otherwise in litigation.

(B) The current status and performance experience of each ongoing contract. The contractor may request the court's permission to assume, sell, reject, or continue performing ongoing contracts. The contracting officer will need to coordinate with AF/JACQ to determine how best to pursue the most favorable course.

(C) If the debtor/contractor is in possession of any Government furnished equipment, Government furnished property, or work in progress for which title has passed to the Government.

(3) The contracting officer and legal office must promptly advise AF/JACQ regarding all Government property in the possession of, or under the control of, the debtor/contractor. Failure to address such property in a timely manner may result in a loss to the Government if the property is lost, sold, or otherwise improperly disposed of by the debtor/contractor or the court appointed trustee. The contracting officer must suspend payments to the contractor/debtor while making the assessment of each contract. (The contracting officer must contact the appropriate DFAS payment office if necessary to halt a previous or recurring payment request.)

(A) On those contracts where the Department of the Air Force has no claim or potential claim against the contractor, the contracting officer may resume payments to the contractor only for amounts due post-petition. The "petition date" is the date the bankruptcy was filed with the court. Post-petition payments are only for debts based on work performed, or goods delivered, after the debtor/contractor filed for bankruptcy. If an invoice does not clearly indicate whether it is based upon pre-petition or post-petition performance, the contracting officer should contact the debtor's/contractor's billing office—prior to making any payments—to request invoicing that clearly identifies whether the requested payment is for pre-petition or post-petition work. It is the debtor's/contractor's responsibility to bifurcate invoices into pre-petition and post-petition billing where a particular job spans the bankruptcy filing date. The supporting attorney will need to assist the contracting officer in obtaining appropriate invoices if the billing is being conducted by the trustee or the debtor's/contractor's bankruptcy counsel. NOTE: contracting officers must work closely with DFAS to ensure post-petition payments reference only those post-petition invoices approved and forwarded by the contracting officer for payment. Be aware that DFAS' normal business practice may be to pay the oldest invoice on file first. Inadvertent payment of pre-petition invoices, versus the intended post-petition invoices, may result in the Government's loss of security and, ultimately, reduce the potential for recovery of Government claims.

(B) The contracting officer should continue to withhold amounts due for pre-petition performance or deliveries while AFLOA/JAQ works with DFAS and the Department of Justice to determine if there are other Government claims which should be offset against those pre-petition amounts owed. Pre-petition debts are those amounts due for work performed or goods delivered before the bankruptcy petition was filed with the court. The contracting officer must not authorize pre-petition payments without prior coordination with and approval from AF/JACQ.

(C) These payment provisions augment, rather than supersede, otherwise applicable requirements regarding certification of payment requests.

(4) The contracting office and legal office must furnish information as follows:

(A) Any information required above, but not available at the time of initial reporting, must be provided to the respective office(s). Information reporting and coordination is a continuing requirement for both the contracting and legal offices.

(B) Not later than 15 days after receiving notice of a bankruptcy filing, the contracting officer must submit a report to DFAS-HGB and AF/JACQ detailing:

(i) Each contract (by debtor's/contractor's or affiliate's name) and the nature thereof;

(ii) All potential Government claims against the debtor/contractor (by contract), including the basis for each claim and the method used to determine the amount due (even when the amount is an estimate);

(iii) The status of each contract, including the percentage completed, the performance experience to date (including post-petition), and actions taken regarding the withholding or resumption of payments; and

(iv) Any available information regarding the debtor's/contractor's intent regarding the future of each contract and the contracting officers' thoughts regarding the same.

(C) All correspondence relative to the bankruptcy received from any source must be copied and forwarded to AF/JACQ within one business day of receipt.

(D) Any claims or requests for equitable adjustment from the debtor/contractor or trustee must be copied and forwarded to AF/JACQ.

(b) The contracting officer and supporting attorney must consult AF/JACQ prior to taking any of the following actions regarding the debtor/contractor:

(1) Issuing a show cause letter or cure notice;

(2) Terminating a contract, either for default or the convenience of the Government, or canceling a contract or an order under a contract;

(3) Setting off or recouping debts, or otherwise attempting to collect or recover amounts owed by the debtor/contractor;

(4) Demanding or otherwise seeking to recover Government property;

(5) Initiating reprocurement of the goods or services provided under a contract;

(6) Issuing a new contract to or exercising an option to extend a contract with the debtor/contractor;

or

(7) Beginning or continuing any judicial or administrative action or proceeding against the debtor/contractor that could have been brought before the bankruptcy petition was filed.