

32.409-3 Security, supervision, and covenants.

(a) If advance payments are approved, the contracting officer shall enter into an agreement with the contractor covering special accounts and suitable covenants protecting the Government's interest (see [32.411](#)). This requirement generally applies under all statutory authorities, but modified requirements applicable to certain specific cases are prescribed in paragraphs(e) through (g) of this section.

(b) The agency shall-

- (1) Ensure that the amount of advance payments does not exceed the contractor's financial needs, and
- (2) Closely supervise the contractor's withdrawal of funds from special accounts in which the advance payments are deposited.

(c) In the terms of the agreement, the contracting officer should provide for a paramount lien in favor of the Government. This lien may supplement or replace other security requirements. The lien should cover-

- (1) Supplies being acquired;
- (2) Any credit balance in the special account in which advance payments are deposited; and
- (3) All property that the contractor acquires for performing the contract, except to the extent to which the Government otherwise has valid title to the property.

(d) Security requirements vary to fit the circumstances of different cases. Minimum security requirements are covered by the clauses prescribed in the contract. The contracting officer may supplement these as necessary in each case for protection of the Government's interest. Examples of additional security terms are-

- (1) Personal or corporate endorsements or guarantees;
- (2) Pledges of collateral;
- (3) Subordination or standby of other indebtedness;
- (4) Controls or limitations on profit distributions, salaries, bonuses or commissions, rentals and royalties, capital expenditures, creation of liens, retirement of stock or debt, and creation of additional obligations; and

(5) Advance payment bonds (rarely required).

(e) In an advance payment agreement with an instrumentality of the Government, a State, a local government, or an agency or instrumentality of a State or local government, the contracting officer may omit the requirement for deposit of the advances in a special account, if the official approving the advance determines that other adequate security exists to protect the Government's interest.

(f) The requirements of this [32.409-3](#) do not apply when using letters of credit if an agency's procedures provide for-

(1) The use under a cost-reimbursement contract of Federal funds deposited in the contractor's account at a financial institution (without the contractor acquiring title to the funds); and

(2) The security of such deposit of public moneys in accordance with governing regulations of the Treasury Department.

(g) If a separate special account is not required; *e.g.*, advance payment by a letter of credit, an agency may require a special account for an individual case, or classes of cases, if the circumstances warrant.

Parent topic: [32.409 Contracting officer action.](#)