

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 32 and 52**

[FAR Case 2001-006]

RIN 9000-AJ23

**Federal Acquisition Regulation;
Progress Payment Requests Under
Indefinite-Delivery Contracts**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to require, under indefinite-delivery contracts, the contractor to account for and submit progress payment requests under individual orders as if each order constitutes a separate contract, unless otherwise specified in the contract.

DATES: Interested parties should submit comments in writing on or before January 14, 2002 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: farcase.2001-006@gsa.gov. Please submit comments only and cite FAR case 2001-006 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Jeremy Olson, Procurement Analyst, at (202) 501-3221. Please cite FAR case 2001-006.

SUPPLEMENTARY INFORMATION:**A. Background**

FAR 32.503-5(c) provides that under indefinite-delivery contracts, the contracting officer should administer progress payments made under each individual order as if the order constituted a separate contract, unless agencies provide otherwise. However, there is no related language in the

clause at FAR 52.232-16, Progress Payments.

The language in FAR 32.503-5(c) recognizes that funds on indefinite-delivery contracts are normally obligated on each individual order; deliveries and contract performance, which factor into progress payment calculations, are monitored at the order level, as opposed to the basic contract level; and that progress payments normally are administered at the order level. However, there is currently an inconsistency between the direction to the contracting officer at FAR 32.503-5(c) and the provisions binding on the contractor in FAR 52.232-16.

This proposed rule revises—

- FAR 32.503-5, Administration of progress payments, to require, when the indefinite-delivery contract will be administered by an agency other than the awarding agency, the contracting officer to coordinate with the contract administration office if the administration of progress payments will be on a basis other than order-by-order; and

- FAR 52.232-16, Progress payments, to require the contractor to account for and submit progress payment requests under individual orders in indefinite-delivery contracts as if each order constitutes a separate contract, unless otherwise specified in the contract.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities have a dollar value less than the simplified acquisition threshold, and, therefore, do not have the progress payment type of financing. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2001-006), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 32 and 52

Government procurement.

Dated: November 5, 2001.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 32 and 52 as set forth below:

1. The authority citation for 48 CFR parts 32 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 32—CONTRACT FINANCING

2. Revise paragraph (c) of section 32.503-5 to read as follows:

32.503-5 Administration of progress payments.

* * * * *

(c) Under indefinite-delivery contracts, the contracting officer should administer progress payments made under each individual order as if the order constituted a separate contract, unless agency procedures provide otherwise. When the contract will be administered by an agency other than the awarding agency, the contracting officer must coordinate with the contract administration office if the awarding agency wants the administration of progress payments to be on a basis other than order-by-order.

**PART 52—SOLICITATION PROVISIONS
AND CONTRACT CLAUSES**

3. Amend 52.232-16 by—

- a. Revising the clause date;
- b. Adding paragraph (l);
- c. Revising the introductory text of Alternate II;
- d. Redesignating paragraphs (l) and (m) of Alternate II as (m) and (n) respectively;
- e. Revising the introductory text of the newly designated (m), paragraphs (m)(3) and (n);
- f. Revising the introductory text of Alternate III; and
- g. Redesignating paragraph (l) of Alternate III as paragraph (m).

52.232-16 Progress Payments.

As prescribed in 32.502-4(a), insert the following clause:

PROGRESS PAYMENTS [DATE]

* * * * *

(l) *Progress Payments under indefinite-delivery contracts.* The Contractor shall account for and submit progress payment requests under individual orders as if the order constituted a separate contract, unless otherwise specified in this contract.

(End of clause)

* * * * *

Alternate II (DATE). If the contract is a letter contract, add paragraphs (m) and (n). The amount specified in paragraph (n) must not exceed 80 percent of the maximum liability of the Government under the letter

contract. The contracting officer may specify separate limits for separate parts of the work.

(m) The Contracting Officer will liquidate progress payments made under this letter contract, unless previously liquidated under paragraph (b) of this clause, using the following procedures:

(1) * * *

(2) * * *

(3) If this letter contract is partly terminated and partly superseded by a contract, the Government will allocate the unliquidated progress payments to the terminated and unterminated portions as the Government deems equitable, and will liquidate each portion under the relevant

procedure in paragraphs (m)(1) and (m)(2) of this clause.

* * * * *

(n) The amount of unliquidated progress payments will not exceed _____ (specify dollar amount).

Alternate III (DATE). As prescribed in 32.502-4(d), add the following paragraph (m) to the basic clause. If Alternate II is also being used, redesignate the following paragraph as paragraph (o):

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