

231.303

business combination are based on audited cost data and should result in overall reduced costs for the Department.

(ii) The audited projected savings for DoD will exceed the costs allowed by a factor of at least two to one.

(iii) The business combination will result in the preservation of a critical capability that might otherwise be lost to DoD, and the audited projected savings will exceed the costs allowed.

[63 FR 7309, Feb. 13, 1998; 63 FR 12862, Mar. 16, 1998]

Subpart 231.3—Contracts With Educational Institutions

231.303 Requirements.

(1) Pursuant to section 841 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103-160), no limitation may be placed on the reimbursement of otherwise allowable indirect costs incurred by an institution of higher education under a DoD contract awarded on or after November 30, 1993, unless that same limitation is applied uniformly to all other organizations performing similar work under DoD contracts. The 26 percent limitation imposed on administrative indirect costs by OMB Circular No. A-21 shall not be applied to DoD contracts awarded on or after November 30, 1993, to institutions of higher education because the same limitation is not applied to other organizations performing similar work.

(2) The cognizant administrative contracting officer may waive the prohibition in 231.303(1) if the governing body of the institution of higher education requests the waiver to simplify the institution's overall management of DoD cost reimbursements under DoD contracts.

(3) Under 10 U.S.C. 2249, the costs cited in 231.205-22(a) are unallowable.

[59 FR 26144, May 19, 1994, as amended at 60 FR 2331, Jan. 9, 1995; 61 FR 36306, July 10, 1996; 62 FR 47155, Sept. 8, 1997; 63 FR 14641, Mar. 26, 1998]

48 CFR Ch. 2 (10-1-98 Edition)

Subpart 231.6—Contracts With State, Local, and Federally Recognized Indian Tribal Governments

231.603 Requirements.

Under 10 U.S.C. 2249, the costs cited in 231.205-22(a) are unallowable.

[61 FR 36306, July 10, 1996, as amended at 62 FR 47155, Sept. 8, 1997; 63 FR 14641, Mar. 26, 1998]

Subpart 231.7—Contracts With Nonprofit Organizations

231.703 Requirements.

Under 10 U.S.C. 2249, the costs cited in 231.205-22(a) are unallowable.

[61 FR 36306, July 10, 1996, as amended at 62 FR 47155, Sept. 8, 1997; 63 FR 14641, Mar. 26, 1998]

PART 232—CONTRACT FINANCING

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AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36409, July 31, 1991, unless otherwise noted.

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

232.006-5 Reporting.

Departments and agencies in accordance with department/agency procedures, shall prepare and submit to the Under Secretary of Defense (Acquisition and Technology), through the Director of Defense Procurement, annual reports (Report Control Symbol DD-ACQ(A) 1891) containing the information required by FAR 32.006-5.

[63 FR 11535, Mar. 9, 1998]

232.070 Responsibilities.

(a) The Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition and Technology) (OUSD(A&T)DP) is responsible for ensuring uniform administration of DoD contract financing, including DoD contract financing policies and important related procedures. Agency discretion under FAR Part 32 is at the DoD level and is not delegated to the departments and agencies. Proposals by the departments and agencies, to exercise agency discretion, shall be submitted to OUSD(A&T)DP through the DoD Contract Finance Committee (see 232.071).

(b) Departments and agencies are responsible for their day-to-day contract financing operations. Refer specific cases involving financing policy or important procedural issues to

OUSD(A&T)DP for consideration through the department/agency Contract Finance Committee members (also see Subpart 204.1 for deviation request and approval procedures).

(c) The Under or Assistant Secretary, or other designated official, responsible for the comptroller function within the department or agency is the focal point for financing matters at the department/agency headquarters. Departments and agencies may establish contract financing offices at operational levels.

(1) Department/agency contract financing offices are—

(i) Army: Office of the Assistant Secretary of the Army (Financial Management);

(ii) Navy: Office of the Assistant Secretary of the Navy (Financial Management and Comptroller), Office of Financial Operations;

(iii) Air Force: Air Force Contract Financing Office (SAF/FMPB);

(iv) Defense agencies: Office of the agency comptroller.

(2) Contract financing offices should participate in—

(i) Developing regulations for contract financing;

(ii) Developing contract provisions for contract financing; and

(iii) Resolving specific cases that involve unusual contract financing requirements.

[63 FR 11535, Mar. 9, 1998]

232.071 Contract Finance Committee.

(a) The Contract Finance Committee consists of—

(1) A representative of OUSD(A&T)DP, serving as the Chair;

(2) A representative of the Comptroller of the Department of Defense;

(3) A representative of the Defense Finance and Accounting Service;

(4) A representative of the Civilian Agency Acquisition Council (for matters pertaining to the FAR);

(5) A representative of the National Aeronautics and Space Administration (for matters pertaining to the FAR);

(6) An advisory consultant from the Defense Contract Audit Agency; and

(7) Two representatives of each military department and the Defense Logistics Agency (one representing con-

tracting and one representing the contract finance office).

(b) The Committee—

(1) Advises and assists OUSD(A&T)DP in ensuring proper and uniform application of policies, procedures, and forms;

(2) Is responsible for formulating, revising, and promulgating uniform contract financing regulations;

(3) May recommend to the Secretary of Defense through OUSD(A&T)DP further policy directives on financing; and

(4) Meets at the request of the Chair or a member.

[63 FR 11535, Mar. 9, 1998]

232.072 Financial responsibility of contractors.

Use the policies and procedures in this section in determining the financial capability of current or prospective contractors.

[63 FR 11535, Mar. 9, 1998]

232.072-1 Required financial reviews.

The contracting officer shall perform a financial review when the contracting officer does not otherwise have sufficient information to make a positive determination of financial responsibility. In addition, the contracting officer shall consider performing a financial review—

(a) Prior to award of a contract, when—

(1) The contractor is on a list requiring preaward clearance or other special clearance before award;

(2) The contractor is listed on the Consolidated List of Contractors Indebted to the Government (Hold-Up List), or is otherwise known to be indebted to the Government;

(3) The contractor may receive Government assets such as contract financing payments or Government property;

(4) The contractor is experiencing performance difficulties on other work; or

(5) The contractor is a new company or a new supplier of the item.

(b) At periodic intervals after award of a contract, when—

(1) Any of the conditions in paragraphs (a)(2) through (a)(5) of this subsection are applicable; or

(2) There is any other reason to question the contractor's ability to finance performance and completion of the contract.

[63 FR 11535, Mar. 9, 1998]

232.072-2 Appropriate information.

(a) The contracting officer shall obtain the type and depth of financial and other information that is required to establish a contractor's financial capability or disclose a contractor's financial condition. While the contracting officer should not request information that is not necessary for protection for the Government's interests, the contracting officer must insist upon obtaining the information that is necessary. The unwillingness or inability of a contractor to present reasonably requested information in a timely manner, especially information that a prudent business person would be expected to have and to use in the professional management of a business, may be a material fact in the determination of the contractor's responsibility and prospects for contract completion.

(b) The contracting officer shall obtain the following information to the extent required to protect the Government's interest. In addition, if the contracting officer concludes that information not listed in paragraphs (b)(1) through (b)(10) of this subsection is required to comply with 232.072-1, that information should be requested. The information must be for the person(s) who are legally liable for contract performance. If the contractor is not a corporation, the contracting officer shall obtain the required information for each individual/joint venturer/partner:

(1) Balance sheet and income statement—

(i) For the current fiscal year (interim);

(ii) For the most recent fiscal year and, preferably, for the 2 preceding fiscal years. These should be certified by an independent public accountant or by an appropriate officer of the firm; and

(iii) Forecasted for each fiscal year for the remainder of the period of contract performance.

(2) Summary history of the contractor and its principal managers, disclosing any previous insolvencies—cor-

porate or personal, and describing its products or services.

(3) Statement of all affiliations disclosing—

(i) Material financial interests of the contractor;

(ii) Material financial interests in the contractor;

(iii) Material affiliations of owners, officers, directors, major stockholders; and

(iv) The major stockholders if the contractor is not a widely-traded, publicly-held corporation.

(4) Statement of all forms of compensation to each officer, manager, partner, joint venturer, or proprietor, as appropriate—

(i) Planned for the current year;

(ii) Paid during the past 2 years; and

(iii) Deferred to future periods.

(5) Business base and forecast that—

(i) Shows, by significant markets, existing contracts and outstanding offers, including those under negotiation; and

(ii) Is reconcilable to indirect cost rate projections.

(6) Cash forecast for the duration of the contract (see 232.072-3).

(7) Financing arrangement information that discloses—

(i) Availability of cash to finance contract performance;

(ii) Contractor's exposure to financial crisis from creditor's demands;

(iii) Degree to which credit security provisions could conflict with Government title terms under contract financing;

(iv) Clearly stated confirmations of credit with no unacceptable qualifications;

(v) Unambiguous written agreement by a creditor if credit arrangements include deferred trade payments or creditor subordinations/repayment suspensions.

(8) Statement of all state, local, and Federal tax accounts, including special mandatory contributions, e.g., environmental superfund.

(9) Description and explanation of the financial effect of issues such as—

(i) Leases, deferred purchase arrangements, or patent or royalty arrangements;

(ii) Insurance, when relevant to the contract;

(iii) Contemplated capital expenditures, changes in equity, or contractor debt load;

(iv) Pending claims either by or against the contractor;

(v) Contingent liabilities such as guarantees, litigation, environmental, or product liabilities;

(vi) Validity of accounts receivable and actual value of inventory, as assets; and

(vii) Status and aging of accounts payable.

(10) Significant ratios such as—

(i) Inventory to annual sales;

(ii) Inventory to current assets;

(iii) Liquid assets to current assets;

(iv) Liquid assets to current liabilities;

(v) Current assets to current liabilities; and

(vi) Net worth to net debt.

[63 FR 11535, Mar. 9, 1998]

232.072-3 Cash flow forecasts.

(a) A contractor must be able to sustain a sufficient cash flow to perform the contract. When there is doubt regarding the sufficiency of a contractor's cash flow, the contracting officer should require the contractor to submit a cash flow forecast covering the duration of the contract.

(b) A contractor's inability of refusal to prepare and provide cash flow forecasts or to reconcile actual cash flow with previous forecasts is a strong indicator of serious managerial deficiencies or potential contract cost or performance problems.

(c) Single or one-time cash flow forecasts are of limited forecasting power. As such, they should be limited to preaward survey situations. Reliability of cash flow forecasts can be established only by comparing a series of previous actual cash flows with the corresponding forecasts and examining the causes of any differences.

(d) Cash flow forecasts must—

(1) Show the origin and use of all material amounts of cash within the entire business unit responsible for contract performance, period by period, for the length of the contract (or until the risk of a cash crisis ends); and

(2) Provide an audit trail to the data and assumptions used to prepare it.

(e) Cash flow forecasts can be no more reliable than the assumptions on which they are based. Most important of these assumptions are—

(1) Estimated amounts and timing of purchases and payments for materials, parts, components, subassemblies, and services;

(2) Estimated amounts and timing of payments of purchase or production of capital assets, test facilities, and tooling;

(3) Amounts and timing of fixed cash charges such as debt installments, interest, rentals, taxes, and indirect costs;

(4) Estimated amounts and timing of payments for projected labor, both direct and indirect;

(5) Reasonableness of projected manufacturing and production schedules;

(6) Estimated amounts and timing of billings to customers (including progress payments), and customer payments;

(7) Estimated amounts and timing of cash receipts from lenders or other credit sources, and liquidation of loans; and

(8) Estimated amount and timing of cash receipt from other sources.

(f) The contracting officer should review the assumptions underlying the cash flow forecasts. In determining whether the assumptions are reasonable and realistic, the contracting officer should consult with—

(1) The contractor;

(2) Government personnel in the areas of finance, engineering, production, cost, and price analysis; or

(3) Prospective supply, subcontract, and loan or credit sources.

[63 FR 11536, Mar. 9, 1998]

Subpart 232.1—Non-Commercial Item Purchase Financing

SOURCE: 63 FR 11536, Mar. 9, 1998, unless otherwise noted.

232.102 Description of contract financing methods.

(e)(2) Progress payments based on percentage or stage of completion are authorized only for contracts for construction (as defined in FAR 36.102),

shipbuilding, and ship conversion, alteration, or repair. However, percentage or state of completion methods of measuring contractor performance may be used for performance-based payments in accordance with FAR Subpart 32.10.

232.102-70 Provisional delivery payments.

(a) The contracting officer may establish provisional delivery payments to pay contractors for the costs of supplies and services delivered to and accepted by the Government under the following contract actions if undefinitized:

(1) Letter contracts contemplating a fixed-price contract.

(2) Orders under basic ordering agreements.

(3) Spares provisioning documents annexed to contracts.

(4) Unpriced equitable adjustments on fixed-price contracts.

(5) Orders under indefinite-delivery contracts.

(b) Provisional delivery payments shall be—

(1) Used sparingly;

(2) Priced conservatively; and

(3) Reduced by liquidating previous progress payments in accordance with the Progress Payments clause.

(c) Provisional delivery payments shall not—

(1) Include profit;

(2) Exceed funds obligated for the undefinitized contract action; or

(3) Influence the definitized contract price.

232.108 Financial consultation.

See 232.070 for offices to be consulted regarding financial matters with DoD.

Subpart 232.2—Commercial Item Purchase Financing

SOURCE: 63 FR 11537, Mar. 9, 1998, unless otherwise noted.

232.202-4 Security for Government financing.

(a)(2) When determining whether an offeror's financial condition is adequate security, see 232.072-2 and 232.072-3 for guidance. It should be noted that an offeror's financial condition may be

sufficient to make the contractor responsible for award purposes, but may not be adequate security for commercial contract financing.

232.206 Solicitation provisions and contract clauses.

(d) *Instructions for multiple appropriations.* If the contract contains foreign military sales requirements, the contracting officer shall provide instructions for distribution of the contract financing payments to each country's account.

(f) *Prompt payment for commercial purchase payments.* The contracting officer shall incorporate the following standard prompt payment terms for commercial item contract financing:

(i) *Commercial advance payments:* The contractor entitlement date specified in the contract, or 30 days after receipt by the designated billing office of a proper request for payment, whichever is later.

(ii) *Commercial interim payments:* The contractor entitlement date specified in the contract, or 14 days after receipt by the designated billing office of a proper request for payment, whichever is later. The prompt payment standards for commercial delivery payments shall be the same as specified in FAR Subpart 32.9 for invoice payments for the item delivered.

(g) *Installment payment financing for commercial items.* Installment payment financing shall not be used for DoD contracts, unless market research has established that this form of contract financing is both appropriate and customary in the commercial marketplace. When installment payment financing is used, the contracting officer shall use the ceiling percentage of contract price that is customary in the particular marketplace (not to exceed the maximum rate established in FAR 52.232-30).

232.207 Administration and payment of commercial financing payments.

(b)(2) If the contract contains foreign military sales requirements, each approval shall specify the amount of contract financing to be charged to each country's account.

Subpart 232.3—Loan Guarantees for Defense Production

232.302 Authority.

(a) The use of guaranteed loans as a contract financing mechanism requires the availability of certain congressional authority. The DoD has not requested such authority in recent years, and none is now available.

Subpart 232.4—Advance Payments

232.404 Exclusions.

(a)(9) The requirements of FAR subpart 32.4 do not apply to advertisements in high school and college publications for military recruitment efforts under 10 U.S.C. 503 when the contract cost does not exceed \$500.

232.409 Contracting officer action.

232.409-1 Recommendation for approval.

To ensure uniform application of this subpart (see FAR 32.402(e)(1)), the departmental/agency contract financing office shall prepare the documents required by FAR 32.409-1 (e) and (f).

232.410 Findings, determination, and authorization.

(b) If an advance payment procedure is used without a special bank account, replace paragraph (a)(4) of the Findings, Determination, and Authorization for Advance Payments at FAR 32.410 with:

(4) The proposed advance payment clause contains appropriate provisions as security for advance payments. These provisions include a requirement that the outstanding advance payments will be liquidated from cost reimbursements as they become due the contractor. This security is considered adequate to protect the interest of the Government.

232.412 Contract clause.

232.412-70 Additional clauses.

(a) Use the clause at 252.232-7000, Advance Payment Pool, in any contract that will be subject to the terms of an advance payment pool agreement with a nonprofit organization or educational institution. Normally, use the clause in

all cost reimbursement type contracts with the organization or institution.

(b) Use the clause at 252.232-7001, Disposition of Payments, in contracts when payments under the contract are to be made by a disbursing office not designated in the advance payment pool agreement.

(c) Use the clause at 252.232-7005, Reimbursement of Subcontractor Advance Payments-DoD Pilot Mentor-Protege Program, when advance payments will be provided by the contractor to a subcontractor pursuant to an approved mentor-protege agreement (See subpart 219.71).

[56 FR 36409, July 31, 1991, as amended at 56 FR 67217, Dec. 30, 1991]

232.470 Advance payment pool.

(a) An advance payment pool agreement—

(1) Is a means of financing the performance of more than one contract held by a single contractor;

(2) Is especially convenient for the financing of cost-type contracts with nonprofit educational or research institutions for experimental or research and development work when several contracts require financing by advance payments. When appropriate, pooled advance payments may also be used to finance other types of contracts held by a single contractor; and

(3) May be established—

(i) Without regard to the number of appropriations involved;

(ii) To finance contracts for one or more department(s) or contracting activity(ies); or

(iii) In addition to any other advance payment pool agreement at a single contractor location when it is more convenient or otherwise preferable to have more than one agreement.

Subpart 232.5—Progress Payments Based on Costs

232.501 General.

In DoD, customary progress payments may be either uniform or flexible (FAR 32.501-1(a)). See also 232.501-1 and 232.502-1-71.

232.501-1 Customary progress payment rates.

(a)(i) The customary uniform progress payment rate for DoD contracts is 75 percent for large businesses, 90 percent for small businesses, and 95 percent for small disadvantaged businesses.

(ii) The progress payment rates applicable to foreign military sale requirements are the same rates applicable to DoD requirements.

(iii) For customary flexible progress payments, determine the appropriate rate using the appropriate CASH computer program (see 232.502-1-71).

[56 FR 36409, July 31, 1991, as amended at 56 FR 67217, Dec. 30, 1991; 58 FR 62046, Nov. 24, 1993]

232.501-2 Unusual progress payments.

(a) Unusual progress payment arrangements require the advance approval of the USD(A&T)DP. Contracting officers shall submit all unusual progress payment requests to the department or agency contract financing office for approval, coordination with the Contract Finance Committee (232.171), and submission to the USD(A&T)DP.

[56 FR 36409, July 31, 1991, as amended at 60 FR 61598, Nov. 30, 1995]

232.501-3 Contract price.

(b) The contracting officer may approve progress payments when the contract price exceeds the funds obligated under the contract; provided, the contract contains an appropriate Limitation of Funds clause. However, the contracting officer shall limit such payments to the lesser of—

(i) The applicable rate (i.e., the lower of the progress payment rate, the liquidation rate, or the loss-ratio adjusted rate); or

(ii) 100 percent of the funds obligated.

232.502 Preaward matters.**232.502-1 Use of customary progress payments.**

(b)(1) If the contractor is a small disadvantaged business, progress payments may be provided when the contract will involve \$50,000 or more.

232.502-1-70 Customary foreign military sale progress payments.

(a) Foreign military sale (FMS) progress payments apply to DoD acquisitions on behalf of foreign governments or international organizations (Section 22 of the Arms Export Control Act).

(b) FMS progress payments do not apply to acquisitions—

(1) For replenishing U.S. Government inventories or stocks; and

(2) Made under DoD cooperative logistic support arrangements.

232.502-1-71 Customary flexible progress payments.

(a) *General.* (1) Progress payments reduce contractor investment in work in process inventory. In addition to progress payments, other factors influence a contractor's actual investment in work in process inventory, e.g., delivery schedules, cash management practices, and Government payment practices.

(2) Progress payment amounts that are determined by using customary uniform rates are insensitive to the other factors influencing contractor investment in work in process inventory. Consequently, contractor investments in work in process inventory vary among contractors and contracts.

(3) Flexible progress payment rates are designed to tailor the progress payment rate to more closely match the contractor's cash needs for financing contract performance. The flexible rate is expressed as a percentage which is applied to costs to determine the amount payable as a progress payment, in the same manner as customary uniform rates are applied.

(4) For flexible progress payments, cash needs are measured and projected based on the investment required for the work in process inventory over the life of the contract. Total investment is measured by a weighted average of total costs paid by the contractor. The contractor's investment is the weighted average of the amount not paid by the Government.

(5) DoD, as a matter of policy, requires contractors to retain a minimum investment level in work in process inventory over the life of the contract (see Table 32-1, Customary Uniform Progress Payment Rates). This minimum investment level is based on the customary uniform progress payment rate and its related investment percentage. Accordingly, the DoD will make progress payments at a rate (expressed as a whole number) that is the highest rate which yields a corresponding investment by the contractor in work in process inventory of not less than the minimum investment percentage.

(6) The customary flexible progress payment rate will be determined by using the DoD Cash Flow Computer Model. The rate computed shall not—

- (i) Exceed 100 percent; or

(ii) Be less than the customary uniform progress payment rate that would have been applied to the contract in the absence of customary flexible progress payments.

(7) Table 32-1, Customary Uniform Progress Payment Rates, shows the customary uniform progress payment rates for other than small or small disadvantaged businesses (see also 232.501-1), minimum contractor investment (except for contracts funded with FY87 appropriations), and the applicable DoD Cash Flow Computer Model. For contracts or line items that are funded with FY87 appropriations, a contractor must retain at least a 25 percent investment in work in process inventory over the life of the contract or over the contract performance period applicable to the contract line item.

TABLE 32-1—CUSTOMARY UNIFORM PROGRESS PAYMENT RATES

Contract award date	Uniform rate percentage	Investment percentage	Cash flow model
Prior to May 1, 1985	90	5	CASH-II
May 1, 1985 through October 17, 1986	80	15	CASH-III
October 18, 1986 through September 30, 1988	75	25	CASH-IV
October 1, 1988 through June 30, 1991	80	20	CASH-V
After June 30, 1991*	85	20	CASH-VI**

* Flexible progress payments shall not be used for contracts awarded as a result of solicitations issued on or after November 11, 1993.

** See paragraph (b)(5)(ii) for implementation instructions.

(b) *Using customary flexible progress payments.* (1) Use a flexible progress payment rate at the time of award or definitization instead of the customary uniform rate if—

- (i) The contractor requests flexible progress payments;
- (ii) The contractor agrees to the requirements of this section;
- (iii) The contract contains the clause at FAR 52.232-16, Progress Payments. However, small business contractors may get flexible progress payments if they agree to use the clause at FAR 52.232-16 without its Alternate I; and
- (iv) The criteria in paragraphs (b)(2) and (3) of this subsection are met.

(2) Do not use flexible progress payments for—

- (i) Sealed bid contracts;
- (ii) Undefined contract actions; or
- (iii) Contracts awarded and performed entirely outside of the United States, its possessions or territories.

(3) Contractors who submit cost or pricing data, as defined in FAR 15.401, for negotiated fixed-price contracts in excess of \$1 million may request flexible progress payments.

(4) Subcontractors who request flexible progress payments, meet the criteria in paragraph (b)(3) of this subsection, and agree to the requirements of this subsection are to receive flexible progress payments. The prime contractor determines the flexible progress payment rate without regard to the rate in the prime contract. In determining the appropriate customary flexible rate, the prime contractor will use the DoD Cash Flow Computer Model and review the cash flow data provided by the subcontractor.

(5) Prior to contract award, the contracting officer shall determine the customary flexible progress payment

rate by applying the appropriate version of the DoD Cash Flow Computer Model.

(i) The model takes into account key cash flow factors including contract cost profile, delivery schedules, sub-contractor progress payments, liquidation rates, and payment/reimbursement cycles. For contracts funded with FY87 appropriations, use the CASH-IV model.

(ii) From time to time the Department of Defense may change the uniform progress payment rate and/or the minimum contractor investment rate, which may have an effect upon the variables within the DoD Cash Flow Computer Program. In order to avoid frequent revision and redistribution of the computer program, the program is designed to permit use of either a particular model (CASH-II, CASH-V, etc.) or a program option to input the equivalent uniform progress payment rate and minimum contractor investment rate (90%/5%, 80%/20%, etc.), as shown in the table at (a)(7). Either method will result in the same flexible progress payment rate calculation. When the Cash Flow Computer Program does not contain the model needed for a particular situation, the contracting officer shall use the program option.

(6) If the contractor requests flexible progress payments after contract award or definitization, the contracting officer may, if warranted, grant their use. However, the contractor must provide adequate new consideration (see FAR 32.501-4).

(c) *Contractor cash flow and cost information.* (1) Contractors shall furnish to the contracting officer cash flow data in the form and context specified for use in the DoD Cash Flow Computer Model. Contractors should furnish cash flow data prior to the start of negotiations. This data includes—

(i) Actual and projected incurred cost, broken down by element of cost and by month, for the duration of the contract;

(ii) Float times for each element of cost;

(iii) Dates and lag times of actual and projected progress payment and delivery payment receipts; and

(iv) Associated contract price and profit percentage.

(2) Contracting officers shall verify the cash flow data using the procedures normally used to verify contractor cost and pricing data, and establish the customary flexible progress payment rate during the negotiation of the contract price.

(3) If any customary flexible progress payment rate is later determined to be overstated because factual data submitted in support of the rate computation was not current, accurate, or complete at the time the rate was established, the flexible progress payment clause at 252.232-7003 provides for—

(i) Reduction of the flexible progress payment rate; and

(ii) Contractor payment of interest.

(4) The contracting officer will assess the interest charge on the amount of the overpayment resulting from facts that were not current, accurate, or complete, whether or not the overpayment has been liquidated. Calculate the interest from the date of the overpayment to the date of liquidation of the overpayment. In determining the amount of interest, the contracting officer may determine an average overpayment amount and duration as the basis for the interest computation. Interest rates change periodically; therefore, calculate average amounts and durations separately for each interest period that has a different interest rate.

(5) Administrative contracting officers are encouraged to establish advance agreements at contractor locations for payment float and lag times which are common to several contracts. Float and lag times may vary significantly from one contract to another due to variances in efficiency at different payment offices or due to differing procedures for high dollar versus low dollar value contracts. It may, therefore, be appropriate to establish advance agreements on several different float and lag profiles to suit different contract situations.

(d) *Rate review.* (1) The flexible progress payment clause at 252.232-7003 provides for redetermination of the customary flexible progress payment rate whenever the computed investment percentage is more than two points above or below the specific minimum investment in work in process

inventory (see Table at 232.502-1-71(a)(7)). When such a redetermination is made—

(i) Apply the new customary flexible progress payment rate to the next contractor progress payment request; and

(ii) Adjust the unliquidated progress payment balance.

(2) Either the Government or the contractor may request a rate review at any time to determine if the computed investment percentage in work in process inventory is outside of the investment tolerance in paragraph (d)(1) of this subsection. For contracts funded with FY87 appropriations, the investment range is 23 to 27 percent with a target of 25 percent.

(3) The administrative contracting officer shall assess changes in the following factors during each periodic review required by FAR 32.503-5 and shall review the customary flexible progress payment rate whenever there has been—

(i) A significant change in the float or lag factors;

(ii) A significant change in the delivery schedule; or

(iii) Substantial work added to or deleted from the contract.

(e) *Letter contracts and undefinitized orders.* When flexible progress payments are contemplated for use on a definitized contract superseding a letter contract or an unpriced BOA order, the applicable uniform customary progress payment rate shall be used until definitization. The flexible progress payment rate shall be determined by the contracting officer before definitizing the contract or order.

(f) *Availability of CASH program and user's guide.* The flexible progress payment program CASH and the user's guide are available to offerors and contractors from the contracting officer.

[56 FR 36409, July 31, 1991, as amended at 56 FR 67217, Dec. 30, 1991; 58 FR 62046, Nov. 24, 1993; 58 FR 64353, Dec. 6, 1993; 62 FR 40473, July 29, 1997; 63 FR 11537, Mar. 9, 1998]

232.502 Contract clauses.

232.502-4-70 Additional clauses.

(a) Use the clause at 252.232-7002, Progress Payments for Foreign Military Sales Acquisitions, in any contract that provides for progress pay-

ments and contains foreign military sale requirements.

(b) Use the clauses at 252.232-7003, Flexible Progress Payments, and 252.232-7004, DoD Progress Payment Rates, in contracts using a customary flexible progress payment rate.

(c) Use the clause at 252.232-7004, DoD Progress Payment Rates, in addition to the clauses prescribed at FAR 32.502-4.

[56 FR 36409, July 31, 1991, as amended at 56 FR 67217, Dec. 30, 1991]

232.503 Postaward matters.

232.503-6 Suspension or reduction of payments.

(b) *Contractor noncompliance.* See also 242.7503.

(g) *Loss contracts.* Use the following loss ratio adjustment procedures for making adjustments required by FAR 32.503-6(f) and (g)—

(i) Except as provided in paragraph (g)(ii) of this subsection, the contracting officer shall prepare a supplementary analysis of the contractor's request for progress payments and calculate the loss ratio adjustment using the procedures in FAR 32.503-6(g).

(ii) The contracting officer may request the contractor to prepare the supplementary analysis as an attachment to the progress payment request when the contracting officer determines that the contractor's methods of estimating the "Costs to Complete" are reliable, accurate, and not susceptible to improper influences.

(iii) To maintain an audit trail and permit verification of calculations, do not make the loss ratio adjustments by altering or replacing data on the contractor's original request for progress payment (SF 1443, Contractor's Request for Progress Payment, or computer generated equivalent).

[56 FR 36409, July 31, 1991, as amended at 60 FR 29499, June 5, 1995]

232.503-15 Application of Government title terms.

(d) An administrative contracting officer (ACO) determination that the contractor's material management and accounting system conforms to the standard at 252.242-7004(f)(7) constitutes the contracting officer approval requirement of FAR 32.503-15(d).

Prior to granting blanket approval of cost transfers between contracts, the ACO should determine that—

(i) The contractor retains records of the transfer activity that took place in the prior month;

(ii) The contractor prepares, at least monthly, a summary of the transfer activity that took place in the prior month; and

(iii) The summary report includes as a minimum, the total number and dollar value of transfers.

[56 FR 36409, July 31, 1991, as amended at 57 FR 42632, Sept. 15, 1992]

Subpart 232.6—Contract Debts

232.605 Responsibilities and cooperation among Government officials.

(b) Disbursing officers are those officials designated to make payments under a contract or to receive payments of amounts due under a contract. At installations where integrated accounting is in effect, the finance and accounting officer is a disbursing officer. The disbursing officer is responsible for determining the amount and collecting contract debts whenever overpayments or erroneous payments have been made. The disbursing officer also has primary responsibility when the amounts due and dates for payment are contained in the contract, and a copy of the contract has been furnished to the disbursing officer with notice to collect as amounts become due.

232.606 Debt determination and collection.

(c)(9)(vii) Upon transfer of a case to the contract financing office, the contracting officer shall close the debt record by reference to the date of transfer.

232.610 Demand for payment of contract debt.

(a)(i) For contract debts resulting from other than a termination for default, the office which first determines an amount due, whether it be the contract administration office, the contracting office, the disbursing office, or the selling office/agency, shall—

(A) Make a demand for payment; and

(B) Provide a copy of the demand to the payment office cited in the contract.

(ii) For contract debts resulting from a termination for default, the contracting officer shall make the demand and direct the debtor to make such payment to the designated office.

(b)(3) The contracting office shall forward deferment requests to the contract financing office of the contracting department or agency for a decision on granting the deferment.

232.616 Compromise actions.

Only the department/agency contract financing offices (232.108(1)) are authorized to compromise debts covered by this subpart.

232.617 Contract clause.

(a) The DoD Contract Finance Committee, with the approval of the USD(A&T)DP, may exempt the contracts in FAR 32.617(a) (2) through (5) and other contracts, in exceptional circumstances, from the administrative interest charges required by this subpart.

(a)(7) Other exceptions—

(A) Contracts for instructions of military or ROTC personnel at civilian schools, colleges, and universities;

(B) Basic agreements with telephone companies for communications services and facilities, and purchases under such agreements; and

(C) Transportation contracts with common carriers for common carrier services.

[56 FR 36409, July 31, 1991, as amended at 60 FR 61598, Nov. 30, 1995]

232.670 Transfer of responsibility for debt collection.

Disbursing officers will transfer responsibility for debt collection to departmental/agency contract financing offices in accordance with comptroller regulations. Notwithstanding the transfer of the debt collection responsibility, contracting officers shall continue to provide assistance as requested by the debt collection office.

232.671 Bankruptcy reporting.

(a) For those debts covered by this subpart, the department or agency

which awarded the contract shall furnish the Department of Justice any claims in bankruptcy, insolvency, or in proceedings for reorganization or arrangement. Furnish claims which—

(1) Have been transferred to a contract financing office;

(2) Are on the way to a contract financing office at the inception of bankruptcy or insolvency proceedings;

(3) Are pending and not forwarded to a contract financing office at the inception of bankruptcy or insolvency proceedings; and

(4) Are the result of bankruptcy or insolvency proceedings.

(b) The contract financing office or other office designated within a department or agency will furnish proof of claims to the Department of Justice.

(c) The office of origin of a debt will provide, as soon as possible, information on a bankruptcy, insolvency, reorganization, or rearrangement to the office designated within a department/agency to receive this information.

(d) The information and proof of claim requirements in paragraphs (b) and (c) of this section do not apply to debts of less than \$600.

Subpart 232.7—Contract Funding

SOURCE: 58 FR 46092, Sept. 1, 1993, unless otherwise noted.

232.702 Policy.

Fixed-price contracts shall be fully funded except as permitted by 232.703-1.

232.703 Contract funding requirements.

232.703-1 General.

(1) A fixed-price contract may be incrementally funded only if—

(i) The contract is funded with research and development appropriations;

(ii) Congress has otherwise incrementally appropriated program funds; or

(iii) The head of the contracting activity approves the use of incremental funding for either base services contracts or hazardous/toxic waste remediation contracts.

(2) Incrementally funded fixed-price contracts shall be fully funded as soon as practicable after full funding is available.

232.703-70 Military construction appropriations act restriction.

Annual military construction appropriations acts restrict the use of funds appropriated by the acts for payments under cost-plus-fixed-fee contracts (see 216.306(c)).

[61 FR 7744, Feb. 29, 1996]

232.704 Limitation of cost or funds.

232.704-70 Incrementally funded fixed-price contracts.

(a) Upon receipt of the contractor's notice under paragraph (c) of the clause at 252.232-7007, Limitation of Government's Obligation, the contracting officer shall promptly provide written notice to the contractor that the Government is—

(1) Allotting additional funds for continued performance and increasing the Government's limitation of obligation in a specified amount;

(2) Terminating the contract; or

(3) Considering whether to allot additional funds; and

(i) The contractor is entitled by the contract terms to stop work when the Government's limitation of obligation is reached; and

(ii) Any costs expended beyond the Government's limitation of obligation are at the contractor's risk.

(b) Upon learning that the contract will receive no further funds, the contracting officer shall promptly give the contractor written notice of the Government's decision and terminate for the convenience of the Government.

(c) The contracting officer shall ensure that, in accordance with paragraph (b) of the clause at 252.232-7007, Limitation of Government's Obligation, sufficient funds are allotted to the contract to cover the total amount payable to the contractor in the event of termination for the convenience of the Government.

232.705 Contract clauses.**232.705-70 Clause for limitation of Government's obligation.**

Use the clause at 252.232-7007, Limitation of Government's Obligation, in solicitations and resultant incrementally funded fixed-price contracts. The contracting officer may revise the contractor's notification period, in paragraph (c) of the clause, from "ninety" to "thirty" or "sixty" days, as appropriate.

Subpart 232.8—Assignment of Claims**232.803 Policies.**

(b) Only contracts for personal services may prohibit the assignment of claims.

(d) Pursuant to Section 3737(e) of the Revised Statutes (41 U.S.C. 15), and in accordance with Presidential delegation dated October 3, 1995, Secretary of Defense delegation dated February 5, 1996, and Under Secretary of Defense for Acquisition and Technology delegation dated February 23, 1996, the Director of Defense Procurement determined on May 10, 1996, that a need exists for DoD to agree not to reduce or set off any money due or to become due under the contract when the proceeds under the contract have been assigned in accordance with the Assignment of Claims provision of the contract. This determination was published in the FEDERAL REGISTER on June 11, 1996, as required by law. Nevertheless, if departments/agencies decide it is in the Government's interests, or if the contracting officer makes a determination in accordance with FAR 32.803(d) concerning a significantly indebted offeror, they may exclude the no-setoff commitment.

[56 FR 36409, July 31, 1991, as amended at 61 FR 50454, Sept. 26, 1996]

232.805 Procedure.

(b) The assignee shall forward—
 (i) To the administrative contracting officer (ACO), a true copy of the instrument of assignment and an original and three copies of the notice of assignment. The ACO shall acknowledge re-

ceipt by signing and dating all copies of the notice of assignment and shall—

(A) File the true copy of the instrument of assignment and the original of the notice in the contract file;

(B) Forward two copies of the notice to the disbursing officer of the payment office cited in the contract;

(C) Return a copy of the notice to the assignee; and

(D) Advise the contracting officer of the assignment.

(ii) To the surety or sureties, if any, a true copy of the instrument of assignment and an original and three copies of the notice of assignment. The surety shall return three acknowledged copies of the notice to the assignee, who shall forward two copies to the disbursing officer designated in the contract.

(iii) To the disbursing officer of the payment office cited in the contract, a true copy of the instrument of assignment and an original and one copy of the notice of assignment. The disbursing officer shall acknowledge and return to the assignee the copy of the notice and shall file the true copy of the instrument and original notice.

232.806 Contract clause.

(a)(1) Use the clause at 252.232-7008, Assignment of Claims (Overseas), instead of the clause at FAR 52.232-23, Assignment of Claims, in solicitations and contracts when contract performance will be in a foreign country.

(2) Use Alternate I with the clause at FAR 52.232-23, Assignment of Claims, unless otherwise authorized under 232.803(d).

[62 FR 34126, June 24, 1997]

Subpart 232.9—Prompt Payment**232.903 Policy.**

DoD policy is to assist small disadvantaged business concerns by paying them as quickly as possible after invoices are received and before normal payment due dates established in the contract (see 232.905(2)).

232.905 Invoice payments.

(1) In most cases, Government acceptance or approval can occur within

the 7 day constructive acceptance period specified in the FAR Prompt Payment clauses. Government payment of construction progress payments can, in most cases, be made within the 14 day period allowed by the Prompt Payment for Construction Contracts clause. While the contracting officer may specify a longer period because the period specified in the contract is not reasonable or practical, such change should be coordinated with the Government offices responsible for acceptance or approval and for payment. Reasons for specifying a longer period include but are not limited to: the nature of the work or supplies or services, inspection or testing requirements, shipping and acceptance terms, and resources available at the acceptance activity. A constructive acceptance period of less than the cited 7 or 14 days is not authorized.

(2) Designated payment offices are encouraged to pay small disadvantaged business (SDB) concerns as quickly as possible after invoices are received and before normal payment due dates established in the contract. The restrictions of FAR 32.903 prohibiting early payment do not apply to invoice payments made to SDBs. Contractors shall not, however, be entitled to interest penalties if invoice payments are not made before the normal payment due dates established in the contract.

(f)(6) DoD Manual 4000.25-5-M, Military Standard Contract Administration Procedures (MILSCAP), authorizes electronic signature of receiving reports.

232.906 Contract financing payments.

(a)(i) DoD policy is to make contract financing payments as quickly as possible. Generally, the contracting officer shall insert the standard due dates of 7 days for progress payments and 14 days for interim payments on cost type contracts in subparagraphs (b)(2) of the Prompt Payment clauses at FAR 52.232-25, 52.232-26, and 52.232-27.

(ii) The contracting officer should coordinate payment terms with offices that will be involved in the payment process to ensure that terms specified can be met. Where justified, the contracting officer may insert a due date greater than but not less than the

standard. In determining payment terms, consider—

- (A) Geographical separation;
- (B) Workload;
- (C) Contractor ability to submit a proper request; and
- (D) Other factors that could affect timing of payment.

Subpart 232.10—Performance-Based Payments

SOURCE: 63 FR 11537, Mar. 9, 1998, unless otherwise noted.

232.1001 Policy.

(d) The contracting officer shall use the following standard prompt payment terms for performance-based payments: The contractor entitlement date, if any, specified in the contract, or 14 days after receipt by the designated billing office of a proper request for payment, whichever is later.

232.1004 Procedure.

(c) *Instructions for multiple appropriations.* If the contract contains foreign military sales requirements, the contracting officer shall provide instructions for distribution of the contract financing payments to each country's account.

232.1007 Administration and payment of performance-based payments.

(b)(2) If the contract contains foreign military sales requirements, each approval shall specify the amount of contract financing to be charged to each country's account.

Subpart 232.11—Electronic Funds Transfer

SOURCE: 63 FR 27683, May 20, 1998, unless otherwise noted.

232.1101 Policy.

(a) If the payment office is not capable of making payment by electronic funds transfer (EFT), the payment office is relieved of the requirement to pay by EFT if DoD complies with 31 CFR 208.3, which requires written notice and submittal of an implication plan to the Department of the Treasury, Financial Management Service.

233.1103 Contract clause.

If the solicitation or contract includes the clause at 252.204-7004, Required Central Contractor Registration, and payment under the contract will be made by electronic funds transfer, use the clause at 252.232-7009, Payment by Electronic Funds Transfer (CCR), instead of the clause at FAR 52.232-33, Mandatory Information for Electronic Funds Transfer Payment, or the clause at FAR 52.232-34, Optional Information for Electronic Funds Transfer Payment.

PART 233—PROTESTS, DISPUTES, AND APPEALS

Subpart 233.2—Disputes and Appeals

- Sec.
- 233.204 Policy.
- 233.204-70 Limitations on payment.
- 233.210 Contracting officer's authority.
- 233.215 Contract clause.
- 233.215-70 Additional contract clause.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36416, July 31, 1991, unless otherwise noted.

Subpart 233.2—Disputes and Appeals

233.204 Policy.

When it would be helpful in reviewing the current claim, the contracting officer should get information on claims previously filed by the contractor with other contracting officers.

233.204-70 Limitations on payment.

See 10 U.S.C. 2410(b) for limitations on Congressionally directed payment of

a claim under the Contract Disputes Act of 1978, a request for equitable adjustment to contract terms, or a request for relief under Pub. L. 85-804.

[63 FR 11537, Mar. 9, 1998]

233.210 Contracting officer's authority.

DFARS 243.105(a) limits contracting officer authority.

233.215 Contract clause.

Use Alternate I of the clause at FAR 52.233-1, Disputes, when—

- (1) The acquisition is for—
 - (i) Aircraft
 - (ii) Spacecraft and launch vehicles
 - (iii) Naval vessels
 - (iv) Missile systems
 - (v) Tracked combat vehicles
 - (vi) Related electronic systems;
- (2) The contracting officer determines that continued performance is—
 - (i) Vital to the national security, or
 - (ii) Vital to the public health and welfare; or
- (3) The head of the contracting activity determines that continued performance is necessary pending resolution of any claim that might arise under or be related to the contract.

[56 FR 36416, July 31, 1991. Redesignated at 62 FR 34126, June 24, 1997]

233.215-70 Additional contract clause.

Use the clause at 252.233-7001, Choice of Law (Overseas), in solicitations and contracts when contract performance will be outside of the United States, its possessions, and Puerto Rico, unless otherwise provided for in a government-to-government agreement.

[62 FR 34126, June 24, 1997]