

PART 431—CONTRACT COST PRINCIPLES AND PROCEDURES

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 431.1—Applicability

431.101 Objectives.

(a) The SPE is designated as the official authorized to give advance approval of an individual deviation concerning cost principles.

(b) The SPE is designated as the official authorized to give advance approval of a class deviation concerning cost principles after coordination with the Civilian Agency Acquisition Council.

(c) Requests for advance approval of class deviations concerning cost principles must be submitted to the SPE through the HCA.

[61 FR 53646, Oct. 15, 1996]

PART 432—CONTRACT FINANCING

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AUTHORITY: 40 U.S.C. 121, 41 U.S.C. 421.

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

432.001 Definitions.

The *agency contract finance office* is the office, other than the office of the requisitioner, providing funding or performing funding record keeping for the contract action.

Responsible fiscal authority is that officer in the agency contract finance office with the responsibility to ensure that adequate funds are available and usable for the intended purpose.

432.003 Simplified acquisition procedures financing.

(a) The chief of the contracting office may approve contract financing on a contract to be entered under the simplified acquisition procedures. Class approvals may not be made.

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(b) The signed approval must contain the supporting rationale for the action and an estimate of the cost and/or risk to the government.

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

432.006-2 Definitions.

(a) The USDA *remedy coordination official* (RCO) is the Assistant Secretary for Administration.

(b) For the purposes of this part, *head of the agency* means, exclusively, the Secretary or the Deputy Secretary.

432.006-3 Responsibilities.

When a contracting officer suspects that a request for advance, partial, or progress payment is based on fraud, the request shall be referred directly to the Office of Inspector General (OIG) in accordance with their instructions. A copy of the referral shall be submitted through the head of the contracting activity (HCA) to the Senior Procurement Executive (SPE).

432.006-4 Procedures.

(a) Immediately upon submittal of the referral described in 432.006-3, the HCA and the contracting officer shall confer with the SPE and representatives of the OIG to discuss the potential for reduction or suspension of further payments based on the considerations listed in FAR 32.006-4(d) (1) through (5).

(b) The SPE will determine whether the contractor has contracts with other Departments or contracting activities and will involve them, as necessary, in the decision making process.

(c) The OIG will determine the need for and the extent of an investigation.

(d) Immediately upon completion of the OIG investigation (or, if deemed necessary by the OIG and the SPE, before completion of the investigation) the SPE, in coordination with the HCA, the contracting officer, and the OIG, shall make a report on the action to the RCO.

(e) Upon receipt of the report, the RCO will submit a recommendation to the Secretary.

(f) Upon receipt of the RCO's report the Secretary will:

(1) Notify the contractor in writing, allowing 30 calendar days after receipt of the notice, that the contractor may submit in writing information and arguments in opposition to the recommendation; and

(2) Consider the RCO's recommendation, the SPE's report, the response of the contractor, and any other relevant information in order to make an appropriate final determination.

(g) This determination will be provided to the contractor and to the SPE for distribution to the agencies involved and for appropriate action under the determination.

(h) The determination and the supporting documentation will be placed in the contract file(s) and a copy will be maintained by the SPE.

(i) The contracting officer will advise the SPE of the actual date of the reduction or suspension action.

(j) Not later than 150 calendar days after the actual date of the reduction or suspension action, the SPE will prepare for the RCO a review of the agency head's determination, and will propose a recommendation from the RCO to the agency head as to whether the reduction or suspension action should continue. The RCO will submit the recommendation (including a recommendation for the time period of a follow up review) to the agency head. This recommendation will be considered by the Secretary and handled as a final action described in paragraph (f) of this section.

(k) The contract may not be closed nor final payment made prior to a final determination by the Secretary.

432.006-5 Reporting.

The annual report required by FAR 32.006-5 is to be prepared by the SPE and to be submitted to the Secretary within 90 calendar days after the end of the fiscal year. When signed by the Secretary, the report is to be maintained by the SPE.

432.007 Contract financing payments.

The HCA may prescribe, on a case-by-case basis, a shorter period for financing payments.

[61 FR 53646, Oct. 15, 1996. Redesignated at 70 FR 48, Jan. 3, 2005]

Subpart 432.1—Non-Commercial Item Purchase Financing

432.102 Description of contract financing methods.

Progress payments based on a percentage or stage of completion are authorized for use as a payment method under USDA contracts or subcontracts for construction, alteration or repair, and shipbuilding and conversion. Such payments also are authorized for service contracts, if the contracting officer determines that progress payments based on costs are not practicable and adequate safeguards are provided to administer progress payments based on a percentage or stage of completion. For all other contracts, progress payment provisions shall be based on costs except that the HCA may authorize progress payments based on a percentage or stage of completion on a case-by-case basis. Each authorization by the HCA shall include a determination and finding that progress payments based on costs cannot be employed practically and that there are adequate safeguards provided for the administration of progress payments based on a percentage or stage of completion.

432.103 Progress payments under construction contracts.

(a) When approving a progress payment under a construction contract, the contracting officer shall indicate the amount to be paid by the payment office and include in the contract file the rationale in support of the payment.

(b) When a retainage is made on a progress payment under a construction contract, the contracting officer shall place in the contract file a written determination stating the reason(s) for the retainage.

(c) When a progress payment under a construction contract has been approved, the amount to be paid, the amount of any retainage withheld, and the reason(s) for the retainage shall be provided to the contractor by the contracting officer in writing before the payment due date.

(d) When the contractor, under a fixed-price construction contract, furnishes evidence to the contracting officer that the surety has been paid in

full for bond premiums and requests reimbursement, the first subsequent progress payment shall include the total amount attributable to such bond premiums and the Government shall pay that amount in full. This amount paid for the bond premiums is not an amount in addition to the stated contract price.

432.111 Contract clauses for non-commercial purchases.

The contracting officer shall insert the clause at 452.232-70, Reimbursement for Bond Premiums—Fixed Price Construction Contracts, whenever the clause at FAR 52.232-5, Payments under Fixed-Price Construction Contracts, is used in a contract.

[61 FR 53646, Oct. 15, 1996, as amended at 63 FR 26995, May 15, 1998]

432.113 Customary contract financing.

The contracting officer may determine the necessity for customary contract financing. The determination and finding that customary contract financing is needed shall be placed in the contract file.

432.114 Unusual contract financing.

The HCA is authorized to approve unusual contract financing. The signed determination and finding supporting this approval shall be included in the contract file.

Subpart 432.2—Commercial Item Purchase Financing

432.202 General.

432.202-1 Policy.

In the case of unusual contract financing, the approval by the HCA shall be recorded in a determination and finding and maintained in the contract file.

432.202-4 Security for Government financing.

Prior to determining that an offeror's financial condition is adequate security, the contracting officer must obtain the concurrence of the funding activity in the proposed determination.

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432.206 Solicitation provisions and contract clauses.

The responsibility for administration of the liquidation provisions of a contract may not be transferred from the contracting officer.

432.207 Administration and payment of commercial financing payments.

The responsibility for receiving, reviewing, and approval of contract financing requests may not be transferred from the contracting officer.

Subpart 432.3—Loan Guarantees for Defense Production

432.301 Definitions.

Within this subpart, the “agency” or “guaranteeing agency” is the “head of the contracting activity” (HCA) and may not be redelegated.

Subpart 432.4—Advance Payments for Non-Commercial Items

432.402 General.

The HCA is designated as the individual responsible for making the findings and determination, and for approval of the contract terms concerning advance payments.

432.406 Letters of credit.

The HCA is designated as the individual responsible for coordination with the Department of Treasury concerning letters of credit.

432.407 Interest.

(a) The HCA is designated as the individual who may authorize, on a case by case basis, advance payments without interest for the contract types described in FAR 32.407(d)(1), (2), (3), and (4). The signed determination and findings supporting these authorizations shall be included in the contract files.

(b) The SPE is designated as the individual who may authorize advance payments without interest other than those described in paragraph (a) of this section.

432.412 Contract clause.

The decision to use Alternates I or III to clause 52.232-12 must be supported by a determination and finding.

Subpart 432.6—Contract Debts

432.601 Definition.

Responsible official means the contracting officer.

432.616 Compromise actions.

Compromise of a debt within the proceedings under appeal to the Civilian Board of Contract Appeals is the responsibility of the contracting officer.

[72 FR 31438, June 7, 2007]

Subpart 432.7—Contract Funding

432.703 Contract funding requirements.

432.703-3 Contracts crossing fiscal years.

Funds appropriated to USDA may be used for one-year contracts which are to be performed in two fiscal years so long as the total amount for such contracts is obligated in the year for which the funds are appropriated (7 U.S.C. 2209c).

432.770 USDA specific funding limitations.

(a) The USDA is authorized to subscribe for newspapers as may be necessary to carry out its authorized work: *Provided*, that such subscriptions shall not be made unless provision is made therefor in the applicable appropriation and the cost thereof is not in excess of limitations prescribed therein (7 U.S.C. 2258).

(b) The expenditure of any USDA appropriation for any consulting service through any contract, pursuant to section 3109 of Title 5 of the U.S. Code shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive Order issued pursuant to existing law (7 U.S.C. 2225a).

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Subpart 432.8—Assignment of Claims

432.802 Conditions.

Written notices of assignment and a true copy of the assigned instrument are to be sent to the contracting officer rather than the agency head. Other copies are distributed as directed in FAR 32.802.

432.803 Policies.

The HCA may make a determination of need to include a no-setoff commitment in a contract.

432.805 Procedure.

The information described in FAR 32.805 shall be filed with the contracting officer.

432.806 Contract clauses.

The contracting officer may make the determination whether to include the clause at FAR 52.232-23 in any purchase order expected to exceed the micro-purchase threshold.

Subpart 432.9—Prompt Payment

432.904 Determining payment due dates.

The payment terms for supplies and services on the Procurement List and provided by a Javits-Wagner-O'Day Act participating nonprofit agency are governed by FAR 8.709.

[61 FR 53646, Oct. 15, 1996. Redesignated at 70 FR 48, Jan. 3, 2005]

Subpart 432.10—Performance-Based Payments

432.1007 Administration and payment of performance-based payments.

The responsibility for receiving, reviewing, and approval of performance-based payment requests may not be transferred from the contracting officer.

PART 433—PROTESTS, DISPUTES AND APPEALS

Subpart 433.1—Protests

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433.102 General.

433.103 Protests to the agency.
433.104 [Reserved]

Subpart 433.2—Disputes and Appeals

433.203 Applicability.
433.203-70 Civilian Board of Contract Appeals.
433.209 Suspected fraudulent claims.

AUTHORITY: 40 U.S.C. 121, 41 U.S.C. 421.

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

Subpart 433.1—Protests

433.102 General.

(a) The Senior Procurement Executive (SPE) is responsible for coordinating the handling of bid protests lodged with the Government Accountability Office (GAO).

(b) The head of the contracting activity (HCA), on a non-delegable basis, may resolve protests and authorize reimbursement of costs in accordance with FAR 33.102(b).

[61 FR 53646, Oct. 15, 1996, as amended at 70 FR 48, Jan. 3, 2005]

433.103 Protests to the agency.

(a) Actual or prospective bidders or offerors may file protests either with the HCA, as provided by 433.102(b), or with the contracting officer. Protesters who file protests with the HCA shall furnish a complete copy to the contracting officer no later than 1 day after the protest is filed with the HCA.

(b) When a protest is received, the adjudicating official shall take prompt action towards resolution and notify the protester in writing of the action taken. The written final decision shall include a paragraph substantially as follows:

This decision shall be final and conclusive unless a further written notice of protest is filed with the Government Accountability Office in accordance with 4 CFR part 21. Neither the filing of a protest with USDA nor the filing of a protest with the Government Accountability Office affects your right to file an action in a district court of the United States or the United States Court of Federal Claims.

[61 FR 53646, Oct. 15, 1996, as amended at 70 FR 48, Jan. 3, 2005]