

# Subpart 32.6 - Contract Debts

Parent topic: [Part 32 - Contract Financing](#)

## 32.600 Scope of subpart.

This subpart prescribes policies and procedures for identifying, collecting, and deferring collection of contract debts (including interest, if applicable). Sections [32.607](#), [32.608](#), and [32.610](#) of this subpart do not apply to *claims* against common carriers for transportation overcharges and *freight* and cargo losses ([31 U.S.C. 3726](#)).

## 32.601 General.

(a) Contract debts are amounts that-

- (1) Have been paid to a contractor to which the contractor is not currently entitled under the terms and conditions of the contract; or
- (2) Are otherwise due from the contractor under the terms and conditions of the contract.

(b) Contract debts include, but are not limited to, the following:

- (1) Billing and price reductions resulting from contract terms for price redetermination or for determination of prices under incentive type contracts.
- (2) Price or cost reductions for defective *certified cost or pricing data*.
- (3) Financing payments determined to be in excess of the contract limitations at [52.232-16\(a\)\(7\)](#), Progress Payments, or [52.232-32\(d\)\(2\)](#), Performance-Based Payments, or any *contract clause* for financing of *commercial products* or *commercial services*.
- (4) Increases to financing payment liquidation rates.
- (5) Overpayments disclosed by quarterly statements required under price redetermination or incentive contracts.
- (6) Price adjustments resulting from Cost Accounting Standards (CAS) noncompliances or changes in cost accounting practice.
- (7) Reinspection costs for nonconforming *supplies* or services.
- (8) Duplicate or erroneous payments.
- (9) Damages or excess costs related to defaults in performance.
- (10) Breach of contract obligations concerning progress payments, performance-based payments, advance payments, financing of *commercial products* or *commercial services*, or Government-furnished property.

(11) Government expense of correcting defects.

(12) Overpayments related to errors in quantity or billing or deficiencies in quality.

(13) Delinquency in contractor payments due under agreements or arrangements for deferral or postponement of collections.

(14) Reimbursement of amounts due under [33.102\(b\)\(3\)](#) and [33.104\(h\)\(8\)](#).

## **32.602 Responsibilities.**

(a) The *contracting officer* has primary responsibility for identifying and demanding payment of contract debts except those resulting from errors made by the payment office. The *contracting officer shall* not collect contract debts or otherwise agree to *liquidate* contract debts (*e.g.*, offset the amount of the debt against existing unpaid bills due the contractor, or allow contractors to retain contract debts to cover amounts that *may* become payable in future periods).

(b) The payment office has primary responsibility for-

(1) Collecting contract debts identified by *contracting officers*;

(2) Identifying and collecting duplicate and erroneous payments; and

(3) Authorizing the liquidation of contract debts in accordance with agency procedures.

## **32.603 Debt determination.**

(a) If the *contracting officer* has any indication that a contractor owes money to the Government under a contract, the *contracting officer shall* determine promptly whether an actual debt is due and the amount. Any unnecessary delay *may* contribute to-

(1) Loss of timely availability of the funds to the program for which the funds were initially provided;

(2) Increased difficulty in collecting the debt; or

(3) Actual monetary loss to the Government.

(b) The amount of indebtedness determined by the *contracting officer shall* be an amount that-

(1) Is based on the merits of the case; and

(2) Is consistent with the contract terms.

## **32.604 Demand for payment.**

(a) Except as provided in paragraph (c) of this section, the *contracting officer shall* take the following actions:

(1) Issue the demand for payment as soon as the *contracting officer* has determined that an actual debt is due the Government and the amount.

(2) Issue the demand for payment even if-

(i) The debt is or will be the subject of a bilateral modification;

(ii) The contractor is otherwise obligated to pay the money under the existing contract terms; or

(iii) The contractor has agreed to repay the debt.

(3) Issue the demand for payment as a part of the final decision, if a final decision is required by 32.605(a).

(b) The demand for payment *shall* include the following:

(1) A description of the debt, including the debt amount.

(2) A distribution of the principal amount of the debt by line(s) of accounting subject to the following:

(i) If the debt affects multiple lines of accounting, the *contracting officer shall*, to the maximum extent practicable, identify all affected lines of accounting. If it is not practicable to identify all affected lines of accounting, the *contracting officer may* select representative lines of accounting in accordance with paragraph (b)(2)(ii) of this section.

(ii) In selecting representative lines of accounting, the *contracting officer shall*-

(A) Consider the affected departments or agencies, years of appropriations, and the predominant types of appropriations; and

(B) Not distribute to any line of accounting an amount of the principal in excess of the total obligation for the line of accounting; and

(iii) Include the lines of accounting even if the associated funds are expired or cancelled. While cancelled funds will be deposited in a miscellaneous receipt account of the Treasury if collected, the funds are tracked under the closed year appropriation(s) to comply with the Anti-Deficiency Act.

(iv) If the debt affects multiple contracts and the lines of accounting are not readily available, the *contracting officer shall*-

(A) Issue the demand for payment without the distribution of the principal amount to the affected lines of accounting;

(B) Include a statement in the demand for payment advising when the distribution will be provided; and

(C) Provide the distribution by the date identified in the demand for payment.

(3) The basis for and amount of any accrued interest or penalty.

(4)

(i) For debts resulting from specific contract terms (*e.g.*, debts resulting from incentive clause provisions, Quarterly Limitation on Payments Statement, Cost Accounting Standards, price reduction for defective *pricing*), a notification stating that payment *should* be made promptly, and that interest is due in accordance with the terms of the contract. Interest *shall* be computed from the date specified in the applicable *contract clause* until repayment by the contractor. The interest rate *shall* be the rate specified in the applicable *contract clause*. In the case of a debt arising from a price reduction for defective *pricing*, or as specifically set forth in a Cost Accounting Standards (CAS) clause in the contract, interest is computed from the date of overpayment by the Government until repayment by the contractor at the underpayment rate established by the Secretary of the Treasury, for the periods affected, under 26 U.S.C . 6621(a)(2).

(ii) For all other contract debts, a notification stating that any amounts not paid within 30 days from the date of the demand for payment will bear interest. Interest *shall* be computed from the date of the demand for payment until repayment by the contractor. The interest rate *shall* be the interest rate established by the Secretary of the Treasury, as provided in [41 U.S.C. 7109](#), which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six-month period as established by the Secretary until the amount is paid.

(5) A statement advising the contractor-

(i) To contact the *contracting officer* if the contractor believes the debt is invalid or the amount is incorrect; and

(ii) If the contractor agrees, to remit a check payable to the agency's payment office annotated with the contract number along with a copy of the demand for payment to the payment office identified in the contract or as otherwise specified in the demand letter in accordance with agency procedures.

(6) Notification that the payment office *may* initiate procedures, in accordance with the applicable statutory and regulatory requirements, to offset the debt against any payments otherwise due the contractor.

(7) Notification that the debt *may* be subject to administrative charges in accordance with the requirements of [31 U.S.C. 3717\(e\)](#) and the Debt Collection Improvement Act of 1996.

(8) Notification that the contractor *may* submit a request for installment payments or deferment of collection if immediate payment is not practicable or if the amount is disputed.

(c) Except as provided in paragraph (d) of this section, the *contracting officer should* not issue a demand for payment if the *contracting officer* only becomes aware of the debt when the contractor-

(1) Provides a lump sum payment or submits a credit *invoice*. (A credit *invoice* is a contractor's request to *liquidate* the debt against existing unpaid bills due the contractor); or

(2) Notifies the *contracting officer* that the payment office overpaid on an *invoice payment*. When the contractor provides the notification, the *contracting officer shall* notify the payment office of the overpayment.

(d) If a demand for payment was not issued as provided for in paragraph (c) of this section, the *contracting officer shall* issue a demand for payment no sooner than 30 days after the *contracting officer* becomes aware of the debt unless-

(1) The contractor has liquidated the debt;

(2) The contractor has requested an installment payment agreement; or

(3) The payment office has issued a demand for payment.

(e) The *contracting officer shall*-

(1) Furnish a copy of the demand for payment to the contractor by certified mail, return receipt requested, or by any other method that provides evidence of receipt; and

(2) Forward a copy of the demand to the payment office.

## **32.605 Final decisions.**

(a) The *contracting officer shall* issue a final decision as required by [33.211](#) if-

(1) The *contracting officer* and the contractor are unable to reach agreement on the existence or amount of a debt in a timely manner;

(2) The contractor fails to *liquidate* a debt previously demanded by the *contracting officer* within the timeline specified in the demand for payment unless the amounts were not repaid because the contractor has requested an installment payment agreement; or

(3) The contractor requests a deferment of collection on a debt previously demanded by the *contracting officer* (see [32.607-2](#)).

(b) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision *shall* identify the same *due date* as the original demand for payment.

(c) The *contracting officer shall*-

(1) Furnish the decision to the contractor by certified mail, return receipt requested, or by any other method that provides evidence of receipt; and

(2) Forward a copy to the payment office identified in the contract.

## **32.606 Debt collection.**

(a) If the contractor has not liquidated the debt within 30 days of the date due or requested installment payments or deferment of collection, the payment office *shall* initiate withholding of principal, interest, penalties, and administrative charges. In the event the contract is assigned under the *Assignment of Claims Act of 1940* (31 U.S .C. 3727 and 41U.S .C. 6305), the rights of the assignee will be scrupulously respected and withholding of payments *shall* be consistent with those rights. For additional information on *assignment of claims*, see [subpart 32.8](#).

(b) As provided for in the Debt Collection Improvement Act of 1996 (31 U.S .C. 3711(g)(1)), payment offices are required to transfer any debt that is delinquent more than 180 days to the Department of Treasury for collection.

(c) The *contracting officer shall* periodically follow up with the payment office to determine whether

the debt has been collected and credited to the correct appropriation(s).

## **32.607 Installment payments and deferment of collection.**

(a) The *contracting officer shall* not approve or deny a contractor's request for installment payments or deferment of collections. The office designated in agency procedures is responsible for approving or denying requests for installment payments or deferment of collections.

(b) If a contractor has not appealed the debt or filed an action under the Disputes clause of the contract and the contractor has submitted a proposal for debt deferment or installment payments-

(1) The office designated in agency procedures *may* arrange for deferment/installment payments if the contractor is unable to pay at once in full or the contractor's operations under *national defense* contracts would be seriously impaired. The arrangement *shall* include appropriate covenants and securities and *should* be limited to the shortest practicable maturity; and

(2) The deferment/installment agreement *shall* include a specific schedule or plan for payment. It *should* permit the Government to make periodic financial reviews of the contractor and to require payments earlier than required by the agreement if the Government considers the contractor's ability to pay improved. It *should* also provide for required stated or measurable payments on the occurrence of specific events or contingencies that improve the contractor's ability to pay.

(c) If not already applicable under the contract terms, interest on contract debt *shall* be made an element of any agreement entered into for installment payments or deferment of collection.

### **32.607-1 Installment payments.**

If a contractor requests an installment payment agreement, the *contracting officer shall* notify the contractor to send a written request for installment payments to the office designated in agency procedures.

### **32.607-2 Deferment of collection.**

(a) All requests for deferment of collection *must* be submitted *in writing* to the *contracting officer*.

(1) If the contractor has appealed the debt under the procedures of the Disputes clause of the contract, the information with the request for deferment *may* be limited to an explanation of the contractor's financial condition.

(2) Actions filed by contractors under the Disputes Clause *shall* not suspend or delay collection.

(3) If there is no appeal pending or action filed under the Disputes clause of the contract, the following information about the contractor *should* be submitted with the request:

(i) Financial condition.

(ii) Contract backlog.

(iii) Projected cash receipts and requirements.

(iv) The feasibility of immediate payment of the debt.

(v) The probable effect on operations of immediate payment in full.

(b) Upon receipt of the contractor's written request, the *contracting officer shall* promptly provide a notification to the payment office and advise the payment office that the contractor's request is under consideration.

(c)

(1) The *contracting officer should* consider any information necessary to develop a recommendation on the deferment request.

(2) The *contracting officer shall* forward the following to the office designated in agency procedures for a decision:

(i) A copy of the contractor's request for a deferment of collection.

(ii) A written recommendation on the request and the basis for the recommendation including the advisability of deferment to avoid possible overcollections.

(iii) A statement as to whether the contractor has an appeal pending or action filed under the Disputes clause of the contract and the docket number if the appeal has been filed.

(iv) A copy of the *contracting officer's* final decision (see [32.605](#)).

(d) The office designated in agency procedures *may* authorize a deferment pending the resolution of appeal to avoid possible overcollections. The agency is required to use unexpired funds to pay interest on overcollections.

(e) Deferments pending disposition of appeal *may* be granted to small business concerns and financially weak contractors, balancing the need for Government security against loss and undue hardship on the contractor.

(f) The deferment agreement *shall* not provide that a *claim* of the Government will not become due and payable pending mutual agreement on the amount of the *claim* or, in the case of a dispute, until the decision is reached.

(g) At a minimum, the deferment agreement *shall* contain the following:

(1) A description of the debt.

(2) The date of first demand for payment.

(3) Notice of an interest charge, in conformity with [32.608](#) and the FAR clause at [52.232-17](#), Interest; or, in the case of a debt arising from a defective *pricing* or a CAS noncompliance overpayment, interest, as prescribed by the applicable Price Reduction for Defective *Certified Cost or Pricing Data* or CAS clause (see [32.607\(c\)](#)).

(4) Identification of the office to which the contractor is to send debt payments.

(5) A requirement for the contractor to submit financial information requested by the Government and for reasonable access to the contractor's records and property by Government representatives.

(6) Provision for the Government to terminate the deferment agreement and accelerate the maturity of the debt if the contractor defaults or if bankruptcy or insolvency proceedings are instituted by or against the contractor.

(7) Protective requirements that are considered by the Government to be prudent and feasible in the specific circumstances. The coverage of protective terms at [32.409](#) and [32.501-5](#) may be used as a guide.

(h) If a contractor appeal of the debt determination is pending, the deferment agreement *shall* also include a requirement that the contractor *shall*-

(1) Diligently prosecute the appeal; and

(2) Pay the debt in full when the appeal is decided, or when the parties reach agreement on the debt amount.

(i) The deferment agreement *may* provide for the right to make early payments without prejudice, for refund of overpayments, and for crediting of interest.

## **32.608 Interest.**

### **32.608-1 Interest charges.**

Unless specified otherwise in the clause at [52.232-17](#), Interest, interest charges *shall* apply to any contract debt unpaid after 30 days from the issuance of a demand unless-

(a) The contract is a kind excluded under [32.611](#); or

(b) The contract or debt has been exempted from interest charges under agency procedures.

### **32.608-2 Interest credits.**

(a) An equitable interest credit *shall* be applied under the following circumstances:

(1) When the amount of debt initially determined is subsequently reduced; *e.g.*, through a successful appeal.

(2) When any amount collected by the Government is in excess of the amount found to be due on appeal under the Disputes Clause of the contract.

(3) When the collection procedures followed in a given case result in an overcollection of the debt due.

(4) When the responsible official determines that the Government has unduly delayed payments to the contractor on the same contract at some time during the period to which the interest charge applied, provided an interest penalty was not paid for such late payment.

(b) Any appropriate interest credits *shall* be computed under the following procedures:

(1) Interest at the rate under [52.232-17](#) *shall* be charged on the reduced debt from the date of collection by the Government until the date the monies are remitted to the contractor.

(2) Interest *may* not be reduced for any time between the *due date* under the demand and the period covered by a deferment of collection, unless the contract includes an interest clause; *e.g.*, the clause prescribed in [32.611](#).

(3) Interest *shall* not be credited in an amount that, when added to other amounts refunded or released to the contractor, exceeds the total amount that has been collected, or withheld for the purpose of collecting the debt. This limitation *shall* be further reduced by the amount of any limitation applicable under paragraph (b)(2) of this subsection.

## **32.609 Delays in receipt of notices or demands.**

If interest is accrued based on the date of the demand letter and delivery of the demand letter is delayed by the Government (*e.g.*, undue delay after dating at the originating office or delays in the mail), the date of the debt and accrual of interest *shall* be extended to a time that is fair and reasonable under the particular circumstances.

## **32.610 Compromising debts.**

For debts under \$100,000, excluding interest, the designated agency official *may* compromise the debt pursuant to the Federal *Claims* Collection Standards (31 CFR part 902) and agency regulations. Unless specifically authorized by agency procedures, *contracting officers* cannot compromise debts.

## **32.611 Contract clause.**

(a) The *contracting officer shall* insert the clause at [52.232-17](#), Interest, in *solicitations* and contracts unless it is contemplated that the contract will be in one or more of the following categories:

(1) Contracts at or below the *simplified acquisition threshold*.

(2) Contracts with Government agencies.

(3) Contracts with a State or local government or instrumentality.

(4) Contracts with a foreign government or instrumentality.

(5) Contracts without any provision for profit or fee with a nonprofit organization.

(6) Contracts described in [subpart 5.5](#), Paid Advertisements.

(7) Any other exceptions authorized under agency procedures.

(b) The *contracting officer may* insert the FAR clause at [52.232-17](#), Interest, in *solicitations* and

contracts when it is contemplated that the contract will be in any of the categories specified in 32.611(a).