

# AGAR PART 432

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## PART 432

### CONTRACT FINANCING

#### **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.

(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.

### **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.

#### **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.

#### **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 Board of Contract Appeals is the responsibility of the contracting officer.

## **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).

## **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](#).

## **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.