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Contracting Officer's Role in Debt Collection

An Additional Help for ADS Chapter 302

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1. PURPOSE:

This additional help document provides guidance to Contracting Officers (COs) on their responsibilities in collecting debt owed by contractors to the U.S. Government.

2. BACKGROUND:

Debt Collection Improvement Act of 1996 (DCIA)

Congress passed the DCIA in response to a steady increase in the amount of delinquent debt owed to the United States, and a concern that appropriate aggressive actions were not being taken to collect this delinquent debt. This law mandated Agencies to comply with standard, government-wide debt collection procedures, centralized the government-wide collection of delinquent debt, and gave the Department of Treasury significant new responsibilities in this area. The requirements of the DCIA as they apply to debts owed to the government by contractors were incorporated in [FAR Subpart 32.6 - Contract Debts](#).

In addition, applicable USAID policy and procedures are incorporated in [22 CFR 213 – Claims Collection](#) and [ADS 625, Accounts Receivable and Debt Collection](#).

3. GUIDANCE:

This document provides a summary of the applicable regulations and policy, but does not contain any new policy. Contracting personnel are encouraged to become familiar with [FAR Subpart 32.6](#), [22 CFR 213](#), and [ADS 625](#), and to review them before issuing a demand for debt. In the case of a conflict between this guidance and the FAR, CFR, and ADS, the FAR, CFR, and ADS take precedence. If there is a conflict between the guidance in the FAR, CFR, and the ADS, consult with your legal advisor.

In accordance with [FAR 32.602](#), the CO has primary responsibility for identifying and demanding payment of contract debts, except those resulting from errors made by the payment office. If a CO has any indication of any money owed by the contractor, [FAR 32.603](#) requires the CO to promptly determine whether an actual debt is owed and the amount of the debt owed. [ADS 625](#) states that the CO is responsible for determining if a debt is owed as a result of disallowed costs billed under a contract ([ADS 625.3.4.1 Claims Originating Under Acquisition and Assistance Instruments](#)) or questioned costs under financial audits ([ADS 625.3.4.2 Claims Originating Under Financial Audit](#)), and the amount of the debt. The CO is not responsible for collection of contract debts; collection of the debt is the responsibility of the paying office. Also, the CO must not 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).

A. Issuance of Demands

Per [FAR Subpart 32.6](#), as soon as the CO has determined the amount of debt due, the CO must issue a demand letter for payment. Preferably, the amount of the debt will be

determined by a negotiated settlement between the CO and the contractor. However, if the parties do not agree on the amount, the CO must unilaterally determine the amount of the debt.

A proper written notice ensures the Agency has a legally enforceable debt. The initial demand letter must include the appropriate information and due process procedures. See [FAR 32.604](#) and [22 CFR 213.8](#) for detailed instructions on what needs to be included in the demand letter, which includes the following:

- (1) A description of the debt, including the debt amount, a distribution of the principal amount of the debt by line(s) of accounting, and the basis for and amount of any accrued interest or penalty. If the CO does not know the full amount of the debt owed, the CO must demand the amount known to be owed, and state that the remainder of the debt will be demanded once the full amount is determined.
- (2) Notification that debts resulting from specific contract terms (See [FAR 32.604\(b\)\(4\)\(i\)](#), should be paid promptly and interest is due according to the terms of the contract and will be computed from the date and at 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 stated in a Cost Accounting Standards (CAS) clause in the contract, interest will run 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); and for all other contract debts, payment is due within 30 days, and any amounts not paid within 30 days from the date of the demand will be considered delinquent and will bear interest from the date of the demand at the rate established by the Secretary of the Treasury, as provided in Section 611 of the Contract Disputes Act of 1978 (Public Law 95-563), for the period affected. Additionally, fees or administrative costs may be included.
- (3) Notification that the contractor may submit a proposal for installment payments or deferment of collection if immediate payment is not practicable or if the amount is disputed. Include a statement that if the contractor disputes the government's demand for a debt, the contractor must submit a claim under the Disputes clause in the contract.
- (4) Notification that, unless a deferment is authorized, if payment is not received within 30 days from the date of the demand, USAID intends to use non-centralized administrative offset to collect the debt plus any additional administrative expenses if appropriate. If collection cannot be accomplished by offset, that no later than 90 days after the date of the demand letter, the Bureau for Management, Office of the Chief Financial Officer, Washington Financial Services (M/CFO/WFS) will transfer the debt to the Financial Management Service (FMS) in the Department of Treasury, which will collect

the amount owed to USAID plus their Treasury processing and administrative costs from the debtor in addition to the amount owed to USAID, and will use all means available to the Federal government for debt collection, including the possibility of referral to the Department of Justice for litigation if the debt cannot be collected.

- (5) A notification that the contractor may inspect and copy any USAID records related to the debt.
- (6) A statement that the contractor may contact the CO if the contractor believes the debt is invalid or the amount is incorrect; and if the contractor agrees, to remit a check payable to the paying office in the contract. Provide the name, address and telephone number of the CO designated to determine the amount and discuss the debt and instructions for making electronic payments and the contact information for the paying office for its collection. The paying office generally is the billing office responsible for collection of the debt. Overseas, this is the Mission Controller. In Washington, it is the M/CFO/WFS.

Even if the debt is or will be the subject of a bilateral modification or the contractor has agreed to repay the debt, the CO must issue a demand letter as soon as the CO has determined that an actual debt is due. The best practice is to send the demand letter with the modification to the contractor for signature.

The CO must send a copy of each demand letter to the billing office immediately upon issuance, and request acknowledgement of receipt.

B. Dispute or Deferment of Collection

A contractor may appeal the demand for payment to the CO. In such a case, the CO must provide a final decision within the time frames of the Disputes clause of the contract. Actions filed by contractors under the Disputes clause will not suspend or delay collection.

If the contractor requests a deferment and appeals the debt under the procedures of the Disputes clause in the contract, the information with the request for deferment may be limited to an explanation of the contractor's financial condition. If there is no appeal pending or action filed under the Disputes clause of the contract, the contractor must submit with the request, its

- (i) Financial condition;
- (ii) Contract backlog;
- (iii) Projected cash receipts and requirements;
- (iv) The feasibility of immediate payment of the debt; and
- (v) The probable effect on operations of immediate payment in full.

If the contractor is not successful in its appeal, interest will be calculated based on the initial demand.

[FAR 32.607-1](#), "Installment payments," and [FAR 32.607-2](#), "Deferment of collection," state that the CO must not approve or deny a contractor's request for installment payments or deferment of collections. The M/CFO's office has been designated by agency procedures for approving or denying requests for installment payments or deferment of collections.

If the CO receives a written request for a deferment of payment based on the contractor's financial condition, the CO must promptly notify the paying office of the request. The CO must review the contractor's financial condition considering the effect on the contractor's operations if it were to make an immediate full payment and prepare a recommendation on the deferment request and submit it to M/CFO/WFS. Based on the CO's recommendation, the M/CFO/WFS may then authorize a deferment of collection and prepare a deferment agreement following the requirements in [FAR 32.607.2](#).

C. Collection

Collection is the responsibility of the billing office (Mission Controller or M/CFO/WFS).

Payment may be made either by a lump sum cash payment, a negotiated installment schedule, or by credit against unpaid bills due to the contractor. If the debt is collected through offset and the amount immediately available is not sufficient to cover the full debt, the contractor is still in debt for the remainder and interest still accrues. The payment is first applied to accrued interest, then to any additionally charged fees, and the remainder is applied against the indebtedness.

If the CO receives the contractor's check, the CO must immediately send the check to the payment office, with a request for confirmation of receipt. In Washington, the check must be sent to the cashier in the Bureau for Management, Office of the Chief Financial Officer, Central Accounting and Reporting Division (M/CFO/CAR).

If the M/CFO does not agree to deferment of payment of the debt, the DCIA requires Federal agencies to refer non-tax debts that are over 180 days delinquent to FMS at the Department of Treasury for collection. Eligible debt may in fact be transferred to the Department of Treasury as soon as the debt is determined to be delinquent. Agency policy requires that M/CFO/WFS transfer delinquent debts to Treasury not later than 90 days after the date of the demand letter. The Agency's policy on debt transfer to Treasury for collection is included in [ADS 625.3.9 Automatic Transfer to Treasury for Continued Collection](#).

D. Process for the Collection of Debt Related to Audits

The audit events that are mandatory tasks for establishing and completing the Accounts Receivable process are as follows:

- (1) Audit Reports from audits conducted on USAID contractors or non-profit organizations are received by the Agency's Office of the Inspector General (OIG) or the Regional Inspector General (RIG). OIG or RIG forwards the reports to the Bureau for Management, Office of Acquisition and Assistance, Contract Audit Support (M/OAA/CAS) Team for resolution of USAID/Washington funded awards and to the respective Mission for resolution of Mission funded awards.
- (2) The M/OAA/CAS team or the designated office in the Mission notifies the contractor of questioned costs noting areas in question and requesting data in order to make a management decision within six months.
- (3) If questioned costs remain, the CO must issue a CO's Final Determination as part of the demand letter. The CO must send a copy of the demand letter to the Mission Controller or M/CFO/WFS for establishment of Accounts Receivable.
- (4)
 - (a) In the event questioned costs cannot be resolved in six months, the CO must issue a Management Decision based on the information available at that time, and continue to negotiate a resolution of the questioned costs. The CO must forward a copy of the Management Decision to the M/CFO or Controller to establish and suspend the Accounts Receivable. The Accounts Receivable will remain suspended until the CO renders a Final Determination.
 - (b) At the conclusion of negotiations, the CO must issue a revised Management Decision reflecting the Final Contracting Officer Determination. The CO must then issue a Final Determination letter to the contractor.
 - (c) The CO must send a copy of the Final Determination Letter, under separate cover, to the M/CFO or Controller along with the revised Management Decision requesting removal of the suspension from the Accounts Receivable.
- (5) When the M/CFO or Controller receives payment of the unallowable questioned costs, the M/CFO or Controller must notify the M/OAA/CAS team for USAID/Washington awards or the Mission CO for Mission awards, by email that Accounts Receivable has been satisfied.

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