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ACQUISITION AND
TECHNOLOGY

DP/CPF

OFFICE OF THE UNDER SECRETARY OF DEFENSE

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MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES
DEPUTY FOR ACQUISITION AND BUSINESS MANAGEMENT,
ASN(RD&A)/ABM
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
DIRECTOR, PROCUREMENT POLICY, ASA(RD&A)/SARD-PP
DEPUTY DIRECTOR (ACQUISITION), DEFENSE LOGISTICS
AGENCY

SUBJECT: Contract Debt Collection

The Inspector General has identified a number of problems associated with the contract debt collection process. In order to ensure there is no confusion about procedures that must be followed, we have prepared the attached guidance. Please ensure your contracting officers are furnished copies.

Eleanor R. Spector
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Director, Defense Procurement

Attachment

CONTRACT DEBT COLLECTION

I. DETERMINATION OF CONTRACT DEBTS.

A. RESPONSIBILITIES:

The contracting officer is responsible for determining the principal amount of most contract debts. The Comptroller of the Department or agency concerned is responsible for accounting for debts, deciding on deferments, and collecting contract debts.

B. ISSUANCE OF DEMANDS:

1. Demands for payment shall be issued as soon as the contracting officer has determined the amount of refund due. Such a determination is a final decision, and issuing "preliminary" decisions as a basis for demands for payment is prohibited. If the contracting officer does not know the full extent of a debt (e.g., when there is a default termination), demand the amount known to be owed. Inform the contractor of the incremental nature of the demand, and demand the remainder when the full amount becomes known.

2. Demands for payment of debts shall be issued as business letters; they shall not be incorporated into contract modifications. It is acceptable to include the demand in the contracting officer's final decision. The demand shall comply with the requirements in FAR 32.610(b), and any other requirements of the FAR or DFARS related to the specific type of debt (e.g., FAR 15.804-7(b)(7) for defective pricing and FAR 30.602-2(c) for Cost Accounting Standards (CAS) noncompliances). The demand shall direct the contractor to make payment for the debt to the payment office or, in the case of terminations for default, to the accounting office.

3. Even though a debt will be the subject of a bilateral modification, the contracting officer must still issue a demand for payment. The best practice is to send the demand letter with the bilateral modification to the contractor for signature.

4. The contracting officer shall send a copy of each demand to the payment office and request acknowledgment of receipt. Contracting officers shall provide the payment office with a distribution of the principal amount of the debt by appropriation, preferably attached to the payment office copy of the demand letter. The deobligation of funds on an SF 30 (Amendment of Solicitation/Modification of Contract) does not provide sufficient notice of debt disposition.

5. The contracting officer shall follow-up periodically with the payment office to ensure that contract debts have been collected and credited to the proper appropriations.

C. DEBTS ARISING FROM DEFECTIVE PRICING OR CAS NONCOMPLIANCES:

1. Unlike most contract debts which accrue interest only if not paid within 30 days of the date of the contracting officer's demand, debts arising from defective pricing and CAS noncompliances have interest charges from the date of overpayment by the Government to the date of repayment by the contractor (see FAR 15.804-7(b)(7) and 30.602-2(c)(2)). Therefore, when issuing a demand letter, the best practice is to identify separately the overpayment principal amount, the interest amount calculated through a specified date, and any penalty amount. The demand letter should also include a statement that interest will continue to accrue until repayment is made. A copy of this demand letter should be sent to the payment office. The payment office will refund interest and penalty amounts to the U.S. Treasury, while principal amounts will be credited to the original appropriation or to Miscellaneous Receipts.

2. The amount of the contract price reduction and the contract debt will not be the same. For example, if defective pricing is found after partial deliveries have been paid for by the Government, the contracting officer must calculate the debt—i.e., the amount of overpayment, interest on the overpayment through a specified date, and any penalty amount. The contract price will be reduced by the total amount of defective pricing determined by the contracting officer.

3. Interest and penalty assessments for defective pricing and CAS noncompliances are required by statute. These amounts cannot be negotiated away in "bottom line" settlements, and contracting officers are not authorized to waive these charges or offset them against amounts owed the contractor. Contracting officers may not accept credits or adjustments on contracts not affected by defective pricing or CAS noncompliances instead of obtaining price reductions on the affected contracts. Such action could result in illegal augmentation of appropriations.

II. COMPROMISE, WAIVER, OR SUSPENSION OF DEBTS, INTEREST, OR PENALTIES

A. AUTHORITY:

Contracting officers do not have the authority to compromise, waive, or suspend collection of a debt. Any decision to suspend or defer collection action, accept an installment payment arrangement, or compromise the amount of the debt must be

made by the Contract Financing Office or, in some situations, by the General Accounting Office. Contractor requests for any type of deferment or compromise of a debt should be handled expeditiously in accordance with the procedures at FAR 32.613, 32.616, and DFARS 232.616. The contracting officer shall forward deferment requests to the Contract Financing Office of the Department or agency for a decision on granting the deferment in accordance with DFARS 232.610(b)(3). Contract Financing Offices are set forth at DFARS 232.108.

B. PAYMENT OF DEBTS:

1 The contractor shall be required to liquidate debts either by cash payment in a lump sum on demand, or by credit against unpaid bills due the contractor, unless an agreement has been entered into to defer collection (see FAR 32.606(d)). A credit memorandum (also known as a credit invoice) is a request by the contractor that the Government collect the debt by offset against unpaid bills due the contractor. Such requests should be forwarded to the payment office. Upon receipt of a credit memorandum, the payment office will offset the debt against current invoices due and payable. If the debt is not immediately and fully collected by that offset, the contractor is still in debt for the remainder, and interest still accrues. The payment office should notify the contractor of the continued existence of the debt and the accruing interest on the unpaid balance.

2. If the contracting officer receives the contractor's check, it should immediately be sent to the payment office, with a request for confirmation of receipt.