

## Federal Acquisition Regulation

32.412

the Contracting Officer executing this agreement, \_\_\_\_\_ [Insert the name of the Contractor], a \_\_\_\_\_ [Insert the name of the State of incorporation] corporation (the Contractor), and \_\_\_\_\_, a financial institution operating under the laws of \_\_\_\_\_, located at \_\_\_\_\_ (the financial institution).

### Recitals

(a) Under date of \_\_\_\_\_, 20\_\_\_\_, the Government and the Contractor entered into Contract No. \_\_\_\_\_, or a related supplemental agreement, providing for advance payments to the Contractor. A copy of the advance payment terms was furnished to the financial institution.

(b) The contract or supplemental agreement requires that amounts advanced to the Contractor be deposited separate from the Contractor's general or other funds, in a Special Account at a member bank of the Federal Reserve System, any "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (12 U.S.C. 1811), or a credit union insured by the National Credit Union Administration. The parties agree to deposit the amounts with the financial institution, which meets the requirement.

(c) This Special Account is designated "\_\_\_\_\_ [Insert the Contractor's name], \_\_\_\_\_ [Insert the name of the Government agency] Special Account."

### Covenants

In consideration of the foregoing, and for other good and valuable considerations, the parties agree to the following conditions:

(a) The Government shall have a lien on the credit balance in the account to secure the repayment of all advance payments made to the Contractor. The lien is paramount to any lien or claim of the financial institution regarding the account.

(b) The financial institution is bound by the terms of the contract relating to the deposit and withdrawal of funds in the Special Account, but is not responsible for the application of funds withdrawn from the account. The financial institution shall act on written directions from the Contracting Officer, the administering office, or a duly authorized representative of either. The financial institution is not liable to any party to this agreement for any action that complies with the written directions. Any written directions received by the financial institution through the Contracting Officer on \_\_\_\_\_ [Insert the name of the agency] stationery and purporting to be signed by, or by the direction of \_\_\_\_\_ or duly authorized representative, shall be, as far as the rights, duties, and liabilities of the financial institution are concerned, considered as being properly issued and filed with the financial institu-

tion by the \_\_\_\_\_ [Insert the name of the agency].

(c) The Government, or its authorized representatives, shall have access to the books and records maintained by the financial institution regarding the Special Account at all reasonable times and for all reasonable purposes, including (but not limited to), the inspection or copying of the books and records and any and all pertinent memoranda, checks, correspondence, or documents. The financial institution shall preserve the books and records for a period of 6 years after the closing of this Special Account.

(d) In the event of the service of any writ of attachment, levy of execution, or commencement of garnishment proceedings regarding the Special Account, the financial institution will promptly notify \_\_\_\_\_ [Insert the name of the administering office].

(e) While this Special Account exists, the financial institution shall inform the Government each month of the financial institution's published prime interest rate and changes to the rate during the month. The financial institution shall give this information to the Contracting Officer on the last business day of the month. [This covenant will not be included in the Special Account Agreements covering interest-free advance payments.]

Each of the parties to this agreement has executed the agreement on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
[Signatures and Official Titles]

[66 FR 2138, Jan. 10, 2001]

### 32.412 Contract clause.

(a) The contracting officer shall insert the clause at 52.232-12, Advance Payments, in solicitations and contracts under which the Government will provide advance payments, except as provided in 32.412(b).

(b) If the agency desires to waive the countersignature requirement because of the contractor's financial strength, good performance record, and favorable experience concerning cost disallowances, the contracting officer shall use the clause with its *Alternate I*.

(c) If a cost-reimbursement contract is contemplated, the contracting officer shall use the clause with its *Alternate II*.

(d) If the agency considers a more rapid liquidation appropriate, the contracting officer shall use the clause with its *Alternate III*.

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(e) If the agency provides advance payments under the contract at no interest to the prime contractor, the contracting officer shall use the clause with its *Alternate IV*.

(f) If the requirement for a special account is eliminated in accordance with 32.409-3 (e) or (g), the contracting officer shall insert in the solicitation or contract the clause set forth in *Alternate V* of 52.232-12, Advance Payments, instead of the basic clause.

[48 FR 42328, Sept. 19, 1983, as amended at 55 FR 25530, June 21, 1990; 66 FR 2138, Jan. 10, 2001]

### Subpart 32.5—Progress Payments Based on Costs

#### 32.500 Scope of subpart.

This subpart prescribes policies, procedures, forms, solicitation provisions, and contract clauses for providing contract financing through progress payments based on costs. This subpart does not apply to—

(a) Payments under cost-reimbursement contracts, but see 32.110 for progress payments made to subcontractors under cost-reimbursement prime contracts; or

(b) Contracts for construction or for shipbuilding or ship conversion, alteration, or repair, when the contracts provide for progress payments based on a percentage or stage of completion.

[48 FR 42328, Sept. 19, 1983, as amended at 65 FR 16279, Mar. 27, 2000]

#### 32.501 General.

Progress payments may be customary or unusual. Customary progress payments are those made under the general guidance in this subpart, using the customary progress payment rate, the cost base, and frequency of payment established in the Progress Payments clause, and either the ordinary liquidation method or the alternate method as provided in subsections 32.503-8 and 32.503-9. Any other progress payments are considered unusual, and may be used only in exceptional cases when authorized in accordance with subsection 32.501-2.

## 48 CFR Ch. 1 (10-1-05 Edition)

### 32.501-1 Customary progress payment rates.

(a) The customary progress payment rate is 80 percent, applicable to the total costs of performing the contract. The customary rate for contracts with small business concerns is 85 percent.

(b) The contracting officer must—

(1) Consider any rate higher than those permitted in paragraph (a) of this section an unusual progress payment; and

(2) Not include a higher rate in a contract unless advance agency approval is obtained as prescribed in 32.501-2.

(c) When advance payments and progress payments are authorized under the same contract, the contracting officer must not authorize a progress payment rate higher than the customary rate.

(d) In accordance with 10 U.S.C. 2307(e)(2) and 41 U.S.C. 255, the limit for progress payments is 80 percent on work accomplished under undefinitized contract actions. The contracting officer must not authorize a higher rate under unusual progress payments or other customary progress payments for the undefinitized actions.

[65 FR 16279, Mar. 27, 2000]

### 32.501-2 Unusual progress payments.

(a) The contracting officer may provide unusual progress payments only if—

(1) The contract necessitates predelivery expenditures that are large in relation to contract price and in relation to the contractor's working capital and credit;

(2) The contractor fully documents an actual need to supplement any private financing available, including guaranteed loans; and

(3) The contractor's request is approved by the head of the contracting activity or a designee. In addition, see 32.502-2.

(b) The excess of the unusual progress payment rate approved over the customary progress payment rate should be the lowest amount possible under the circumstances.

(c) Progress payments will not be considered unusual merely because