

**32.503-11**

$$\frac{\$2,000,000 \times 80\%}{\$2,200,000} = 72.7\%$$

(ii) If the progress payment rate is 85 percent, the minimum liquidation rate should be 77.3 percent, computed as follows:

$$\frac{\$2,000,000 \times 85\%}{\$2,200,000} = 77.3\%$$

(4) Minimum liquidation rates will generally be expressed to tenths of a percent. Decimals between tenths will be rounded up to the next highest tenth (not necessarily the nearest tenth), since rounding down would produce a rate below the minimum rate calculated.

[48 FR 42328, Sept. 19, 1983, as amended 52 FR 30077, Aug. 12, 1987; 65 FR 16281, Mar. 27, 2000]

**32.503-11 Adjustments for price reduction.**

(a) If a retroactive downward price reduction occurs under a redeterminable contract that provides for progress payments, the contracting officer shall—

- (1) Determine the refund due and obtain repayment from the contractor for the excess of payments made for delivered items over amounts due as recomputed at the reduced prices; and
- (2) Increase the unliquidated progress payments amount for overdeductions made from the contractor's billings for items delivered.

(b) The contracting officer shall also increase the unliquidated progress payments amount if the contractor makes an interim or voluntary price reduction under a redeterminable or incentive contract.

**32.503-12 Maximum unliquidated amount.**

(a) The contracting officer shall ensure that any excess of the unliquidated progress payments over the contractual limitation in paragraph (a) of the Progress Payments clause in the contract is promptly corrected through one or more of the following actions:

- (1) Increasing the liquidation rate.
- (2) Reducing the progress payment rate.
- (3) Suspending progress payments.

(b) The excess described in paragraph (a) above is most likely to arise under the following circumstances:

- (1) The costs of performance exceed the contract price.
- (2) The alternate method of liquidation (see 32.503-9) is used and the actual costs of performance exceed the cost estimates used to establish the liquidation rate.
- (3) The rate of progress or the quality of contract performance is unsatisfactory.
- (4) The rate of rejections, waste, or spoilage is excessive.

(c) As required, the services of the responsible audit agency or office should be fully utilized, along with the services of qualified cost analysis and engineering personnel.

[48 FR 42328, Sept. 19, 1983, as amended at 63 FR 9061, Feb. 23, 1998]

**32.503-13 [Reserved]**

**32.503-14 Protection of Government title.**

(a) Since the Progress Payments clause gives the Government title to all of the materials, work-in-process, finished goods, and other items of property described in paragraph (d) of the Progress Payments clause, under the contract under which progress payments have been made, the ACO must ensure that the Government title to these inventories is not compromised by other encumbrances. Ordinarily, the ACO, in the absence of reason to believe otherwise, may rely upon the contractor's certification contained in the progress payment request.

(b) If the ACO becomes aware of any arrangement or condition that would impair the Government's title to the property affected by progress payment, the ACO shall require additional protective provisions (see 32.501-5) to establish and protect the Government's title.

(c) The existence of any such encumbrance is a violation of the contractor's obligations under the contract, and the ACO may, if necessary, suspend or reduce progress payments under the terms of the Progress Payments clause covering failure to comply with any material requirement of the contract. In addition, if the contractor fails to

disclose an existing encumbrance in the progress payments certification, the ACO should consult with legal counsel concerning possible violation of 31 U.S.C. 3729, the False Claims Act.

[48 FR 42328, Sept. 19, 1983, as amended at 51 FR 2665, Jan. 17, 1986]

**32.503-15 Application of Government title terms.**

(a) Property to which the Government obtains title by operation of the Progress Payments clause solely is not, as a consequence, Government-furnished property.

(b) Although property title is vested in the Government under the Progress Payments clause, the acquisition, handling, and disposition of certain types of property are governed by other clauses, as follows:

(1) The clause at 52.245-17, Special Tooling, for special tooling.

(2) The termination clauses at 52.249, for termination inventory.

(c) The contractor may sell or otherwise dispose of current production scrap in the ordinary course of business on its own volition, even if title has vested in the Government under the Progress Payments clause. The contracting officer shall require the contractor to credit the costs of the contract performance with the proceeds of the scrap disposition.

(d) When the title to materials or other inventories is vested in the Government under the Progress Payments clause, the contractor may transfer the inventory items from the contract for its own use or other disposition only if, and on terms, approved by the contracting officer. The contractor shall (1) eliminate the costs allocable to the transferred property from the costs of contract performance, and (2) repay or credit to the Government an amount equal to the unliquidated progress payments, allocable to the transferred property.

(e) If excess property remains after the contract performance is complete and all contractor obligations under the contract are satisfied, including full liquidation of progress payments, the excess property is outside the scope of the Progress Payments clause. Therefore, the contractor holds title to it.

**32.503-16 Risk of loss.**

(a) Under the Progress Payments clause, and except for normal spoilage, the contractor bears the risk for loss, theft, destruction, or damage to property affected by the clause, even though title is vested in the Government, unless the Government has expressly assumed this risk. The clauses prescribed in this regulation related to progress payments, default, and terminations do not constitute a Government assumption of this risk.

(b) If a loss occurs in connection with property for which the contractor bears the risk, the contractor is obligated to repay to the Government the amount of unliquidated progress payments based on costs allocable to the property.

(c) The contractor is not obligated to pay for the loss of property for which the Government has assumed the risk of loss. However, a serious loss may impede the satisfactory progress of contract performance, so that the contracting officer may need to act under paragraph (c)(5) of the Progress Payments clause.

**32.504 Subcontracts under prime contracts providing progress payments.**

(a) Subcontracts may include either performance-based payments, provided they meet the criteria in 32.1003, or progress payments, provided they meet the criteria in subpart 32.5 for customary progress payments, but not both. Subcontracts for commercial purchases may include commercial item purchase financing terms, provided they meet the criteria in 32.202-1.

(b) The contractor's requests for progress payments may include the full amount of commercial item purchase financing payments, performance-based payments, or progress payments to a subcontractor, whether paid or unpaid, provided that unpaid amounts are limited to amounts that the contractor will pay—

(1) In accordance with the terms and conditions of a subcontract or invoice; and

(2) Ordinarily prior to the submission of the contractor's next progress payment request to the Government.

(c) If the contractor is considering making unusual progress payments to