

## Federal Acquisition Regulation

## 32.612

clause at 52.233-1, Disputes. Such decision shall include a demand for payment (see 32.610(a)(4)(vi)). No demand for payment under 32.610 shall be issued prior to a contracting officer's final decision. A copy of the final decision shall be sent to the appropriate finance office.

[48 FR 42328, Sept. 19, 1983, as amended at 54 FR 34755, Aug. 21, 1989]

### **32.609 Memorandum of pricing agreement with refund.**

(a) If a refund to the Government is agreed upon in negotiations under a price revision type of contract, the responsible official shall promptly write a memorandum to document the agreement and the contract debt. The memorandum shall be signed by the negotiators for the Government and the contractor. If the procedures of either the agency or the contractor require approval of the negotiation results by higher authority, the memorandum shall be written without prejudice to the final pricing. After negotiations are completed, a supplemental agreement shall be executed without delay.

(b) The amount of refund shall be computed promptly, without waiting for itemization of adjustment of past billings, accounting adjustments, or the adjusted invoices.

### **32.610 Demand for payment of contract debt.**

(a) A demand for payment shall be made as soon as the responsible official has computed the amount of refund due. If the debt arises from excess costs for a default termination, the demand shall be made without delay, as explained in 49.402-6.

(b) The demand shall include the following:

(1) A description of the debt, including the debt amount.

(2) Notification that any amounts not paid within 30 days from the date of the demand will bear interest from the date of the demand, or from any earlier date specified in the contract, and that the interest rate shall be the rate established by the Secretary of the Treasury, for the period affected, under Public Law 92-41. In the case of a debt arising from a price reduction for defective pricing, or as specifically

set forth in a Cost Accounting Standards (CAS) clause in the contract, that 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).

(3) A notification that the contractor may submit a proposal for deferment of collection if immediate payment is not practicable or if the amount is disputed.

(4) Identification of the responsible official designated for determining the amount of the debt and for its collection.

(c) If subparagraph (b)(3) of the clause at 52.232-17, Interest, applies, the demand mentioned in paragraph (a) above shall accompany or be included in the transmittal mentioned in the clause.

[48 FR 42328, Sept. 19, 1983, as amended at 54 FR 34755, Aug. 21, 1989; 55 FR 52794, Dec. 21, 1990; 56 FR 29128, June 25, 1991; 61 FR 18922, Apr. 29, 1996]

### **32.611 Routine setoff.**

If a disbursing officer is the responsible official for collection of a contract debt, or is notified of the debt by the responsible official and has contractor invoices on hand for payment, the disbursing officer shall make an appropriate setoff. The disbursing officer shall give the contractor an explanation of the setoff. To the extent that the setoff reduces the debt, the explanation shall replace the demand prescribed in 32.610.

### **32.612 Withholding and setoff.**

During the 30 days following the issuance of a demand, the advisability of withholding payments otherwise due to the contractor shall be considered based on the circumstances of the individual cases. If payment is not completed within 30 days, and deferment is not requested, withholding of principal and interest shall be initiated immediately. In the event the contract is assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 15), the rights of the assignee will be scrupulously respected and withholding of payments shall be consistent with