



Acquisition & Assistance Policy Directive (AAPD)

From the Director, Office of Office of Acquisition and Assistance

Issued: 9/30/04

AAPD 03-07 (Revised)

Instructions to Contracting/Agreement Officers on their Role in the Debt Collection Process

Subject Category: Acquisition Management, Assistance, PSCs, Miscellaneous
Type: General Information

AAPDs provide information of significance to all agency personnel and partners involved in the Acquisition and Assistance process. Information includes (but is not limited to): advance notification of changes in acquisition or assistance regulations; reminders; procedures; and general information. Also, AAPDs may be used to implement new requirements on short-notice, pending formal amendment of acquisition or assistance regulations.

AAPDs are **EFFECTIVE AS OF THE ISSUED DATE** unless otherwise noted in the guidance below; the directives remain in effect until this office issues a notice of cancellation.

This AAPD: Is New Replaces/ Amends
CIB/AAPD No: AAPD-03-07

Precedes change to: AIDAR Part(s) Appendix
 USAID Automated Directives System (ADS) Chapters
 Code of Federal Regulations
 Other
 No change to regulations

Applicable to: Existing awards; Modification required:
 Effective immediately
 No later than
 As noted in guidance below
 RFPs/RFAs issued on or after the effective date of this AAPD; all other Pending Awards, i.e., 8(a), sole source...
 Other or N/A

New Provision/Clause Provided Herein: Yes; Scheduled update to Prodoc: (insert date)
 No

(electronic signature)
Jeffery Bell, Acting Director, OAA

1. PURPOSE: The purpose of this AAPD is to provide guidance to Contracting/Agreement Officers on their responsibilities in collecting debt owed to the United States Government by contractors or recipients.

2. BACKGROUND:

A recent audit faulted the Agency for not having policies and procedures for its Missions and the Office of Acquisition and Assistance for not immediately recognizing Accounts Receivable. This inability to recognize Accounts Receivable renders USAID's financial statements inaccurate, and interferes with the Agency's ability to have an unqualified audit. It also makes USAID unable to comply with the Debt Collection Improvement Act.

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 insofar as they apply to debts owed to the government by contractors were incorporated in FAR Part 32.6. While there is no similar coverage regarding debts owed by recipients of grants or cooperative agreements, the same basic requirements apply through ADS 625, Administrative Accounts Receivable.

3. GUIDANCE:

This AAPD provides a summary of the applicable regulations and policy and establishes procedures for recognizing and reporting Accounts Receivable. Contracting personnel are encouraged to become familiar with FAR 32.6 and ADS 625, and to review them before issuing a demand for debt. Note that while the FAR only applies to contracts, the guidance in ADS 625 and its attachments apply to all government debt, including contracts and assistance. In the case of a conflict between this AAPD and the guidance in those documents, the FAR and ADS take precedence. If there is a conflict between the guidance in the FAR and in the ADS, please consult with your legal advisor.

The Contracting/Agreement Officer is responsible for determining the principal amount of most debts owed by contractors or recipients.

Please note that debt collection procedures preceding the issuance of a demand letter, including initial notification to the contractor/recipient and negotiations, are outlined in FAR 32.6 and ADS 625.

A. Issuance of Demands

As soon as a Contracting/Agreement Officer has any indication of any debt owed by the contractor or recipient, he or she must promptly determine whether an actual debt is owed and the amount of the debt owed. As soon as he/she has determined the amount of the refund due, he/she must issue a demand letter for payment. Preferably, the amount of the debt will be determined by a negotiated settlement between the Contracting/Agreement Officer and the contractor/recipient. However, if the parties do not agree on the amount, the Contracting/Agreement Officer must unilaterally determine the amount of the debt.

The demand letter must include the following:

- (1) A description of the debt, including the basis for the debt and the debt amount. If the Contracting/Agreement Officer does not know the full amount of the debt owed, he/she must demand the amount known to be owed, and state that the remainder of the debt will be demanded once the full amount becomes known.

(2) Notification that payment is due within 30 days, and that 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, or from any earlier date specified in the contract, at the rate established by the Secretary of the Treasury, for the period affected, under Public Law 92-41. Additionally, fees or administrative costs may be included. 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, 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) Notification that the contractor or recipient may submit a proposal for deferment of collection if immediate payment is not practicable or if the amount is disputed. In the case of a contract, include a statement that if the contractor disputes the government's demand for a debt, the contractor should submit a claim under the Disputes clause in the contract. In the case of a grant or cooperative agreement, a statement that if the recipient disputes the demand, the recipient may provide evidence supporting its position, which will be considered by the agreement officer, in accordance with 22 CFR 226.90 for U.S. recipients, and the Disputes provision in agreements with non-U.S. recipients shall be appended.

(4) A notification that the contractor or recipient may inspect and copy any USAID records related to the debt.

(5) Identification of the responsible official designated for determining the amount of the debt (the Contracting/Agreement Officer) and for its collection. Include the name, address, and telephone number for the person available to discuss the debt. 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 Accounting Division of the Office of Financial Management (M/FM/A).

(6) 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, and if collection cannot be accomplished by offset, that not later than 90 days after the date of the demand letter, M/FM/A 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 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.

Even if the debt is the subject of a bilateral modification, the demand letter must be issued. The best practice is to send the demand letter with the modification to the contractor or recipient for signature.

The Contracting/Agreement Officer must send a copy of each demand letter to the billing office, and request acknowledgement of receipt.

B. Dispute of Collection

A contractor/recipient may challenge the demand for payment to the Contracting/Agreement Officer. In such a case, the Contracting/Agreement Officer must provide his/her final decision within the time frames of the Disputes clause of the contract or agreement. If a recipient appeals the Agreement Officer's final decision to the Procurement Executive, ADS E303.5.19b requires that the demand for payment be

suspended pending resolution of the appeal. If a contractor/recipient challenges the decision, the Contracting/Agreement Officer may authorize a deferment pending resolution of the appeal.

In either case, if the contractor/recipient is not successful in its appeal, interest will be calculated based on the initial demand.

C. Collection

Collection is the responsibility of the billing office (Mission Controller or M/FM/A).

Payment may be either a lump sum cash payment, a negotiated installment schedule, or by credit against unpaid bills due to the contractor/recipient. If the debt can not immediately be collected through offset, 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 Contracting/Agreement Officer receives the contractor/recipient's check, he/she should 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 Central Accounting and Reporting Division of the Office of Financial Management (M/FM/CAR).

If the Contracting/Agreement Officer receives a written request for a deferment of payment based on the contractor/recipient's financial condition, the Contracting/Agreement Officer must review the contractor/recipient's financial condition, and consider the effect on the contractor/recipient's operations if it were to make an immediate full payment. If the contractor/recipient has not appealed the debt or filed an action under the Disputes clause, the Contracting/Agreement Officer may arrange for deferment or installment payments. In the case of a contract, the required content of the deferment agreement is described in FAR 32.613(h).

If the Contracting/Agreement Officer 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 in Treasury for collection. Eligible debt may in fact be transferred to Treasury as soon as the debt is determined to be delinquent. Agency policy requires that M/FM/A transfer delinquent debts to Treasury not later than 90 days after the date of the demand letter. The Agency's financial treatment of debt collection is included in ADS 625.3.6.

The types of debts referred to FMS include vendor debt, unpaid loans, overpayments or duplicate payments made to Federal salary or benefit payment recipients, misused grant funds, and fines, penalties or fees assessed by Federal agencies. FMS sends demand letters to debtors on Treasury letterhead, and enters into repayment arrangements with debtors.

D. Process for Recognizing and Reporting Accounts Receivable

The delineation of Management Decision 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) and forwarded to the Office of Acquisition and Assistance Contract Audit Support (CAS) Team for resolution.
2. The CAS team notifies the contractor/recipient of questioned costs noting areas in question and requests data in order to make a management decision within six months.

3. If questioned costs are sustained the Contracting/Agreement Officer will issue a Contracting/Agreement Officer's Final Determination as part of the demand letter. A copy of the demand letter will be sent to the Office of Financial Management (FM) Agent/Cashier for establishment of Accounts Receivable.

4(a). In the event questioned cost cannot be resolved in six months, the Contracting/Agreement Officer will issue a Management Decision based on the information available at that time, and continue to negotiate a resolution of the questioned costs. A copy of the Management Decision will be forwarded to FM/Accounting to establish and suspend the Accounts Receivable. The Accounts Receivable will remain suspended until the Contracting/Agreements Officer renders a Final Determination.

4(b). At the conclusion of negotiations, the Contracting/Agreement Officer will issue a revised Management Decision reflecting the Final Contracting/Agreement Officer Determination. A Final Determination letter will be issued to the contractor/recipient.

4(c). A copy of the Final Determination Letter, under separate cover, will be forwarded to FM along with the revised Management Decision requesting removal of the suspension from the Accounts Receivable.

5. When FM receives payment of the sustained question costs, FM will notify the Office of Acquisition and Assistance Contract Audit Support team via e-mail that Accounts Receivable has been satisfied.

4. POINT OF CONTACT:

Please direct any questions to Raquel Powell, M/OAA/P, Phone: (202) 712-0778, e-mail: rpowell@usaid.gov.