

UNIT 67: COLLECTING CONTRACTOR DEBTS

October 2003

Duty	Determine and recover debts from contractors.
Conditions	Given the terms of a contract and set of circumstances that may require a collection of debt from the contractor.
Overall Standard(s)	Recover money due the Government with minimum delay using available contractual and legal means. Avoid actual monetary loss to Government.

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Policies

<i>FAR</i>	<i>Agency Suppl.</i>	<i>Subject</i>
32.6		Contract debts.
52.223-1 [Reserved]		Disputes.
52.232-17		Interest.

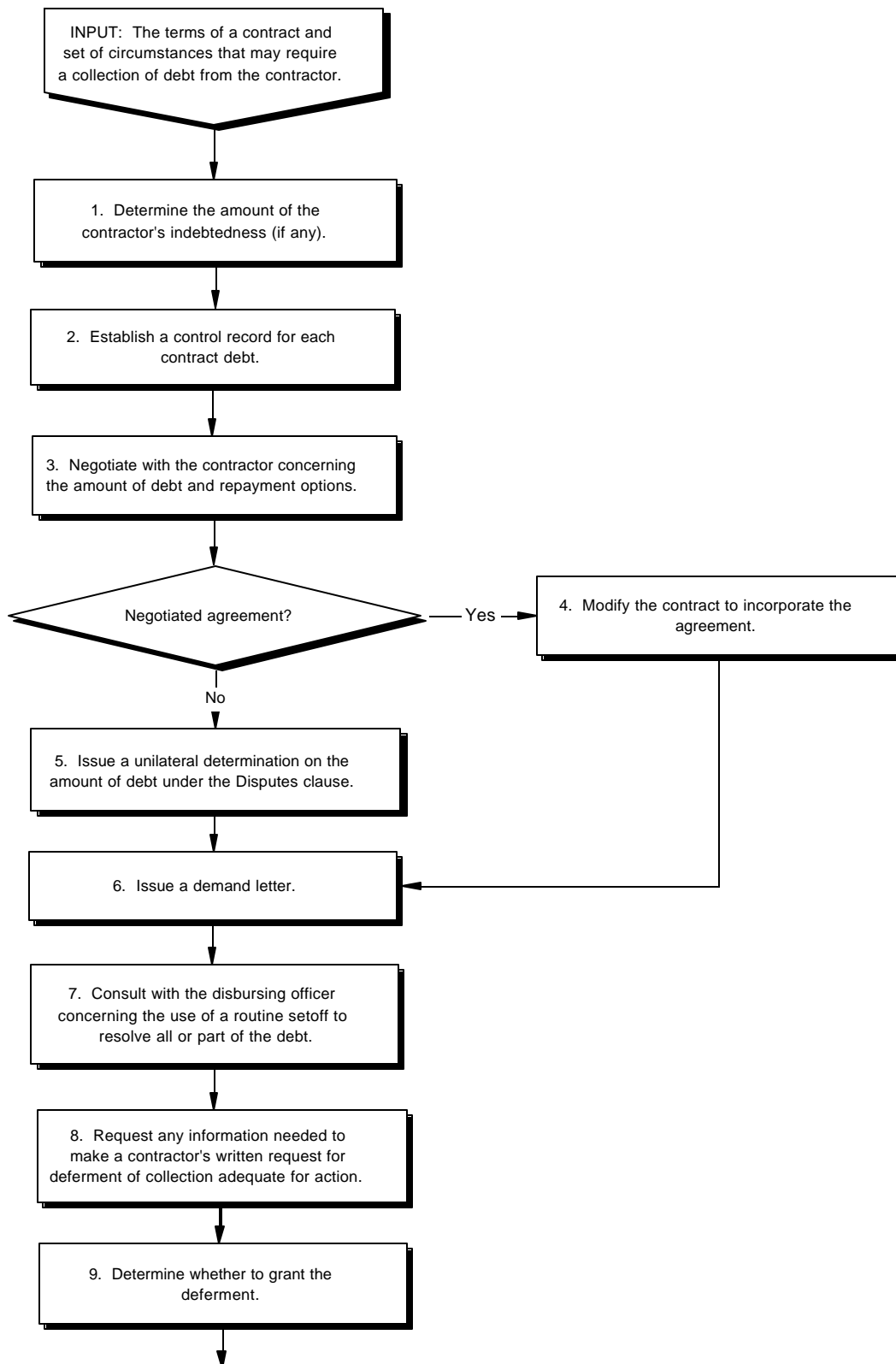
Other KSAs

1. Knowledge of business finance, organization and management, commercial law, and quantitative analysis.
2. Knowledge of typical reasons for contractor indebtedness.
3. Knowledge of options or methods of debt collection and the potential impact on the contractor.
4. Ability to select and apply the quantitative methods required to calculate contractor debt, including interest.
5. Ability to demonstrate tact and empathy in collecting contractor debt.
6. Ability to communicate orally and in writing with the contractor and Government personnel involved in determining the amount of contractor debt and how that debt will be collected.
7. Ability to conscientiously complete the detailed process of debt collection.
8. Ability to make sound, well-informed, and objective decisions, including, when appropriate, the decision to terminate or suspend debt collection efforts.
9. Ability to maintain the honesty and integrity of the acquisition process.

Other Policies and References (Annotate As Necessary):

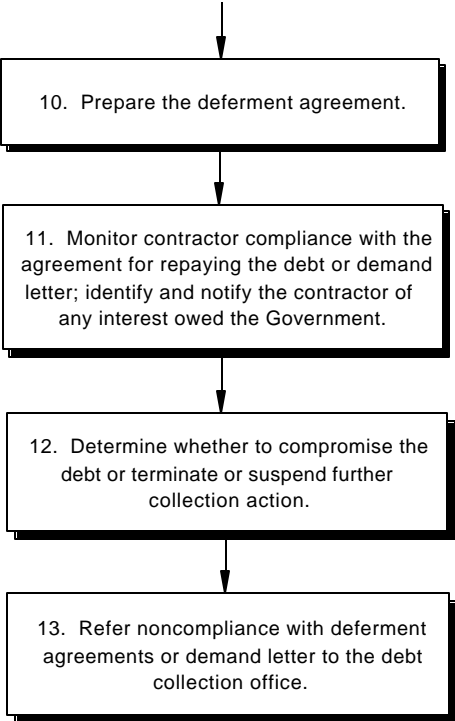
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Related Standards

<p>1. Determine the amount of the contractor's indebtedness (if any).</p>	<p>Follow FAR, agency policy, or other applicable guidelines in calculating the contractor's debt to the Government. Fairly consider both the Government's claim and any contract claims by the contractor against the Government.</p> <p>Typical reasons for indebtedness include:</p> <ul style="list-style-type: none">• Damages or excess costs related to defaults in performance;• Breach of contract obligations concerning progress payments, advance payments, or Government furnished property or material;• Government expense for correcting defects;• Overpayments related to quantity, billing, or quality deficiencies;• Retroactive price reductions resulting from contract terms for price redetermination or for determination of prices under incentive contracts;• Overpayments disclosed by quarterly statements required under price fixed-price redetermination or incentive contracts;• Delinquency in contractor payments due under agreements or arrangements for deferral or postponement; and• Notification by another Government agency (if for tax debts, IRS furnishes instructions on debt collection).
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Related Standards

<p>2. Establish a control record for each contract debt.</p>	<p>Include, at least, the following information:</p> <ul style="list-style-type: none">• The name and address of the contractor.• The contract number, if any.• A description of the debt.• The amount of debt and the appropriation to be credited.• The date the debt was determined.• The date of demand for payment.• The amounts and dates of collections, as they occur.• The date of any appeal filed or action brought in the Court of Claims under the Disputes clause.• The status of collections, for example:<ul style="list-style-type: none">– Actions reported to the disbursing officer (name, location, and date);– Funds requested to be withheld by the disbursing officer;– Funds requested to be withheld by other offices (date and office);– Deferment or installment payment arrangement requested;– Deferment or installment request reviewed;– Supplemental information requested to support deferment requests; or– Actions transferred to the contract financing office.
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<p>3. Negotiate with the contractor concerning the amount of debt and repayment options.</p>	<p>Approach negotiations as the quickest most amicable method of collecting the debt.</p> <ul style="list-style-type: none"> • Schedule negotiations. • Develop a negotiation strategy. • Conduct negotiations covering such considerations as: <ul style="list-style-type: none"> – Validity of the debt; – Amount of the debt; – Recognition of tax credit under Section 1481 of the Internal Revenue Code; and – Repayment options. • If a refund to the Government is agreed upon in negotiations under a price revision type of contract, promptly write a memorandum to document the agreement and the contract debt. <ul style="list-style-type: none"> – Negotiators for the Government and the contractor must sign the agreement. – If the procedures of either party require approval of the negotiation results, write the memorandum without prejudice to final pricing. • Compute the amount of refund promptly, without waiting for itemization of adjustment of past billings, accounting adjustments, or the adjusted invoices.
<p>4. Modify the contract to incorporate the agreement.</p>	<p>Execute a bilateral contract modification without delay. Assure that the modification clearly establishes the:</p> <ul style="list-style-type: none"> • Amount of debt; • Method of payment; and • Payment terms, such as: <ul style="list-style-type: none"> – Cash payment; – Setoff; or – Deferment.

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<p>5. Issue a unilateral determination on the amount of debt under the Disputes clause.</p>	<p>If consistent with the contract, make a unilateral determination if the contractor is delinquent in:</p> <ul style="list-style-type: none">• Furnishing pertinent information;• Negotiating expeditiously;• Entering into an agreement on a fair and reasonable price revision;• Signing the interim memorandum evidencing a negotiated pricing agreement for the refund; or• Executing a bilateral contract modification reflecting negotiation results. <p>The unilateral debt determination of amount must:</p> <ul style="list-style-type: none">• Be proper based on the merits of the case;• Not exceed the amount that would have been considered acceptable in a negotiated agreement; and• Be consistent with the contract terms. <p>Distribute the determination to the contractor and the appropriate finance office.</p>
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<p>6. Issue a demand letter.</p>	<p>Make the demand for payment as soon as the responsible official has computed the amount of refund due.</p> <p>The demand letter must include the following:</p> <ul style="list-style-type: none">• A description of the debt, including the debt amount.• Notification of applicable interest in accordance with FAR 32.610(b)(2).• 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.• Identification of the responsible official designated for determining the amount of the debt and for its collection. <p>The demand letter may also include other relevant information, such as the following:</p> <ul style="list-style-type: none">• Any deadline or other instructions on submitting payment.• Future efforts to collect debt (e.g., withholding and offset on future invoices).• Appeal rights. <p>If FAR 52.232-17(b)(3) applies, the demand letter must accompany or be included in the transmittal mentioned in the clause.</p>
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<p>7. Consult with the disbursing officer concerning the use of a routine setoff to resolve all or part of the debt.</p>	<p>If a disbursing officer is notified of the debt and has contractor invoices on hand for payment, the disbursing officer must:</p> <ul style="list-style-type: none">• Make an appropriate setoff; and• Give the contractor an explanation of the setoff. <p>However, during the 30 days following the issuance of a demand letter, consider the advisability of withholding and setoff based on the circumstances of the individual case.</p> <ul style="list-style-type: none">• If payment is not completed within 30 days, and deferment is not requested, withholding of principal and interest must be initiated immediately.• In the event the contract is assigned under the Assignment of Claims Act of 1940, scrupulously respect the rights of the assignee. Withholding of payments must be consistent with those rights.
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<p>8. Request any information needed to make a contractor's written request for deferment of collection adequate for action.</p>	<p>Promptly review the request to see if the information included is adequate for action on the request.</p> <ul style="list-style-type: none">• Ask the contractor to furnish any needed information that was not provided.<ul style="list-style-type: none">– If there is an appeal or action filed under the Disputes clause of the contract, the information with the request for deferment may be limited to an explanation of the contractor's financial condition.– If there is no appeal pending or action filed under the Disputes clause of the contract, the following information about the contractor should be submitted with the request:<ul style="list-style-type: none">? Financial condition.? Contract backlog.? Projected cash receipts and requirements.? The feasibility of immediate payment of the debt.? The probable effect on operations of immediate payment in full.• Suggest any necessary changes to the terms of the proposed deferment/installment agreement.
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<p>9. Determine whether to grant the deferment.</p>	<p>The responsible official must weigh the benefit of demanding immediate repayment against impact on contract performance and cost. Consider:</p> <ul style="list-style-type: none">• Deferment for a small business or a financially weak firm based on an evaluation of the need for Government security vs. the loss and undue hardship on the contractor;• Deferment for an amount under the dispute to avoid possible over collection; or• Deferment/installment payments if the contractor is unable to pay at once in full or the contractor's operations under national defense contracts would be seriously impaired. The arrangement must include appropriate covenants and securities and should be limited to the shortest practicable maturity. <p>In making the determination, confer with other members of the Government acquisition team (e.g., the finance officer) as necessary. Evaluate the likely effect:</p> <ul style="list-style-type: none">• On contractor of requiring immediate payment.• On contract performance.• Of reprocurring if contract performance would be jeopardized, in terms of cost and lead time. <p>An action filed by a contractor under the Disputes clause must not suspend or delay collection. Until the action is decided, only grant deferments if, within 30 days after the filing of such action, the contractor presents a good and sufficient bond, or other collateral acceptable to the responsible official, in the amount of the claim, and approved by the responsible official.</p>
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Tasks	Related Standards
10. Prepare the deferment agreement.	<p>The deferment agreement should conform to the requirements of FAR 32.613.</p> <ul style="list-style-type: none">• At a minimum, the deferment agreement must contain the following:<ul style="list-style-type: none">– A description of the debt.– The date of first demand for payment.– Notice of the applicable interest charge.– Identification of the office to which the contractor is to send debt payments.– A requirement for the contractor to submit financial information requested by the Government and for reasonable access to the contractor's records and property by Government representatives.– Provision for the Government to terminate the deferment agreement and accelerate the maturity of the debt if the contractor defaults or if bankruptcy or insolvency proceedings are instituted by or against the contractor.– Protective requirements that are considered by the Government to be prudent and feasible in the specific circumstances.• If a contractor appeal of the debt determination is pending, the deferment agreement must also include a requirement that the contractor:<ul style="list-style-type: none">– Diligently prosecute the appeal; and– Pay the debt in full when the appeal is decided, or when the parties reach agreement on the debt amount.• If the contractor does not plan to appeal the debt or file an action under the Disputes clause of the contract, the deferment/installment agreement must include a specific schedule or plan for payment.• If desired by the contractor, the deferment agreement may provide for the right to make prepayments without prejudice, for refund of overpayments, and for crediting of interest.

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11. Monitor contractor compliance with the agreement for repaying the debt or demand letter; identify and notify the contractor of any interest owed the Government.	Determine interest debt or credit: <ul style="list-style-type: none">• In conformance with FAR 32.614 and the contract Interest clause (FAR 52.232-17); or• In the case of debt arising from a defective pricing or a CAS noncompliance overpayment, as prescribed by the applicable Price Reduction for Defective Cost or Pricing Data or CAS clause. <p>If the Government delays delivery of the demands or notices required by the Interest clause (e.g., undue delay after dating at the originating office or delays in the mail), extend the date of the debt and accrual of interest to a time that is fair and reasonable under the particular circumstances.</p>
12. Determine whether to compromise the debt or terminate or suspend further collection action.	Compromise the debt when the amount is under \$100,000, excluding interest, and further collection is not practicable or would cost more than the amount of recovery.
13. Refer noncompliance with deferment agreements or demand letter to the debt collection office.	Take action in accordance with FAR and agency guidelines.