

APD ALERT



PAYMENT FOR STORED MATERIALS UNDER CONSTRUCTION CONTRACTS

1. Purpose

The purpose of this Alert is to provide information and guidance on dealing with contractor requests for payment for materials stored either on the job site or at another location.

2. Reference

FAR Clause 52.232-5, Payments under Fixed-Price Construction Contracts

3. Background

Progress payments are the norm for most construction contracts and are usually made monthly, based on a schedule of values outlined on an approved Agricultural Research Service (ARS) Form 371, Construction Progress and Payment Schedule (or similar form). Occasionally, a construction contractor will request the Contracting Officer (CO) consider allowing payment for materials they purchase and store either at the job site or at a site away from the location of the construction project. Payment(s) for stored materials is authorized by Federal Acquisition Regulation (FAR) Clause 52.232-5, Payments under Fixed-Price Construction Contracts. Paragraph (b)(2) of the clause states, in part, that the CO may authorize such payment; however, for materials stored off-site, the contract must include a provision that specifically authorizes such payments and the contractor must submit evidence that the materials have been delivered to and paid for by the contractor.

4. Procedures

Payment to a contractor for stored materials is approved on a case-by-case basis, but certain conditions must first be met. Stored material considered acceptable for payment would include equipment and/or material of large dollar value and that will be incorporated into the specific project, such as boilers, transformers, windows, concrete block, brick, steel, etc. Smaller items, such as screws, nails, wiring, conduit, fittings, fasteners, and other items that are readily available from suppliers or other materials that are delivered on an ongoing basis, are not eligible for payment as stored material off-site.

- a. Stored Materials on the Job Site: In order to be eligible for payment for materials stored on the job site, the contractor must provide the following to the CO:
 1. Identify the specific materials, including a full description, manufacturer, model numbers, quantity, etc.;
 2. Demonstrate clear title to the material (e.g., submission of paid invoice(s)); and,
 3. Provide a written acknowledgement that they, the construction contractor, are fully responsible and liable for the security of the materials.

The CO does not have to modify the contract to authorize payment for stored materials on the job site; however, the materials and their value must be itemized on the ARS Form 372, Contractor's Request for Payment Transmittal. The Contracting Officer's Representative/Technical Representative (COR/COTR) or other personnel designated by the CO (e.g., Resident Inspector) must verify the presence and quantity of the materials on site to the CO.

- b. Stored Materials Off-Site: For materials stored off-site, the CO must advise the contractor that, in order to be eligible for payment, certain actions must be taken and certain conditions must be met before payment can be made for stored materials.
 1. The Contractor must:
 - i. Submit the request in writing and identify the specific materials, including a full description, manufacturer, model numbers, and quantity;
 - ii. Provide the full name and address of the storage facility, as well as a description of the physical location (e.g., warehouse, room number, building number, lot number, etc.);
 - iii. Provide a written certified acknowledgment from the storage facility management that recognizes the ARS as the owner of the materials. This is to protect the Government in case the construction contractor defaults on its obligations to the storage facility;
 - iv. Provide evidence that the storage facility is bonded and insured;
 - v. Demonstrate clear title to the material (e.g., submission of paid invoice(s));
 - vi. Provide a written acknowledgment that they, as the construction contractor, are fully responsible and liable for the security of the materials. Materials that are damaged, destroyed, or lost due to theft or vandalism shall be replaced by the contractor at no additional cost to the Government; and,

- vii. The materials and their value must be itemized on the ARS Form 372.
2. Conditions that must be met include:
- i. The storage facility must be in close proximity to the job site for periodic inspection by the COR/COTR or other personnel designated by the CO and to minimize the transportation to the site and the attendant hazards;
 - ii. The COR/COTR or other personnel designated by the CO must visit the storage facility and verify the presence and accuracy of the quantity/quality of the materials and provide a recommendation to the CO regarding payment for the materials; and,
 - iii. The materials must be actually in the storage facility, not in transit, and must not be susceptible to deterioration or physical damage in either the storage facility or during transportation to the job site.

The CO must modify the contract to authorize payment for stored materials off-site. The contractor must provide the CO with the documentation stated in Paragraph 4.b.1, above, and comply with the requirements in Paragraph 4.b.2, above, to be eligible for such payment. The COR/COTR or other personnel designated by the CO must verify the location and status of the materials and submit a recommendation to the CO. Photographs from the contractor and from the COR/COTR of the facility and the material should be submitted to the CO to substantiate the situation.

The modification should be bilateral and state that authorization to pay for stored materials is granted in accordance with FAR Clause 52.232-5(b)(2). The following is suggested verbiage for the modification:

“Payment for material delivered to the Contractor at off-site location(s) is authorized in accordance with FAR Clause 52.232-5 (b)(2); provided, the Contractor fully complies with the following conditions:

- a. Contractor furnishes evidence to the Contracting Officer that it has acquired title to such material (e.g., paid invoice(s), bill(s) of sale, etc.);
- b. Contractor fully identifies the material (description, manufacturer, model number, quantities, etc.) in storage and certifies that said material will be used to perform this contract;
- c. Contractor furnishes the exact location of the storage facility and material within it;
- d. Contractor furnishes evidence that the storage facility is bonded and insured;

- e. Contractor furnishes a written certified acknowledgment from the storage facility that they recognize the USDA Agricultural Research Service, as the owner of the materials;
- f. Contractor provides written acknowledgment that it is fully responsible and liable for the security of the materials; and,
- g. Contractor furnishes photographs of the material and the storage facility.

The contractor must include on each invoice the address of the storage facility and an itemized breakdown of the stored materials. Only the cost for the materials will be paid. The cost for installation must be excluded from the invoiced amount since it will occur at a later time. The costs associated with storing the materials in a storage facility (e.g., rent, lease, etc.) shall not be charged to or paid for by the Government.”

Only after the contract has been modified and the documentation has been submitted by the contractor and approved by the CO shall payment for stored materials off-site be made.

5. Point of Contact

Acquisition Programs and Oversight Branch, E-mail at APOB@ars.usda.gov or phone at 301-504-1725.

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