



DEPARTMENT OF DEFENSE
Defense Contract Management Agency

IMMEDIATE POLICY CHANGE

Contract Debts

Contracts Directorate
OPR: DCMA-AQ

DCMA-INST 104 (IPC-1)
May 19, 2015

1. **POLICY.** This Immediate Policy Change (IPC) implements changes to DCMA-INST 104, “Contract Debts,” December 11, 2012.
2. **PURPOSE.** This IPC establishes requirements for the ACO to complete a demand letter worksheet to be maintained in the official records management system for each demand letter issued. It adds a requirement for the ACO to submit contractor debt deferment request packages to the HQ Contract Debts Inbox at HQContractDebtsInBox@dcma.mil. This IPC also adds a Contract Debt Deferment Request Checklist listing the required documents to be submitted and for the ACO to periodically follow-up with the payment office on the status of the request for deferment and to provide any updates to the HQContractsDebtsInBox@dcma.mil.
3. **APPLICABILITY.** This IPC applies to all DCMA activities that prepare, manage, review, validate, approve, and use DCMA policies.
4. **NEW GUIDANCE.** DCMA-INST 104, “Contract Debts” has been rewritten to include the following updates:
 - a. Change paragraph 3.2.10. to read:

3.2.10. The ACO shall furnish the contractor and the payment office with a copy of the demand for payment by certified mail, return receipt requested, or by other method that provides evidence of receipt ***and evidence of receipt shall be maintained in the official records management system.*** [PGI 232.610 and FMR Volume 10, Chapter 18, (References (r) and (o))] ***A demand letter worksheet (see policy Resource page) shall be completed for each demand letter the ACO issues. The worksheet shall be signed by an individual (Contract Administrator or ACO supervisor) other than the ACO who signs the resulting demand letter and it shall be maintained in the official records management system. For DCMA Special Programs Directorate (DCMAS), distribution is limited to DCMAS security restrictions.*** The ACO shall not advise the payment office to withhold payments otherwise due to the contractor before the payment due date specified in the demand for payment without the prior approval of the cognizant CFO.
 - b. Add new paragraph 3.2.11.:

3.2.11. The ACO shall forward the demand for payment along with a completed Defense Finance and Accounting Service (DFAS) Contract Debt System (CDS) Submission Checklist with signature (see instruction resource page) to cco-aps-debts@dfas.mil.

c. Change paragraph 3.4.1.2. to read:

3.4.1.2. The ACO shall prepare a debt deferral package and route it through the appropriate Contract Management Office (CMO) channels to the cognizant Directorate Contracts Director ***to be submitted to the HQ Contract Debts In-box (HQContractDebtsInBox@dcma.mil)*** for processing. The ACO shall review the information in FAR 32.607, (Reference (v)) for the documentation requirements.

NOTE: DCMA Special Programs (DCMAS) will comply with this Agency policy to the extent commensurate with the security requirements of the administered classified contracts. Where DCMAS is required to deviate from this Agency policy, the intent of this Agency policy shall be followed. Any exceptions or deviations from this Agency policy will be documented in a Supplemental Instruction (SI) maintained by the DCMAS Directorate.

d. Change paragraph 3.4.2. to read:

3.4.2. The ACO should consider any information necessary to develop a recommendation on the deferment request. ***The ACO shall forward the following documents (see Contract Debt Deferment Request Checklist located on the instruction resource page) to HQContractDebtsInBox@dcma.mil:***

e. Add new paragraph 3.6.1.:

3.6.1. The ACO shall periodically follow-up with the payment office to determine whether the debt has been collected and credited to the correct appropriation(s).

f. Add new paragraph 3.6.2.:

3.6.2. The ACO will provide updates of any changes to the debt deferral request (Settlement Agreement reached, case dismissed, etc.) to the HQContractDebtsInBox@dcma.mil.

g. Add new paragraph 3.6.3.:

3.6.3. Once DCMA-AQCF provides the ACO with DPAP's decision on the deferment request, the ACO will inform DCMA-AQCF via the HQContractDebtsInBox@dcma.mil within 30 days of action taken and cc DCMAO (Operations Directorate) at DCMAOInbox@dcma.mil.

h. Add new paragraph 3.6.3.1.:

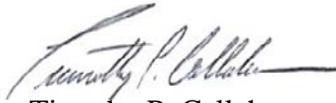
3.6.3.1. If DPAP concurs with the request for deferment, the ACO will obtain the contractor's signature on the Deferment of Payment Agreement and provide a copy of signed Agreement to the HQContractDebtsInBox@dcma.mil.

i. Add new paragraph 3.6.3.2.:

3.6.3.2. If DPAP non-concurs with the request for deferment, the ACO will issue a written notice of disapproval to the contractor and provide a copy of the notification to the HQContractDebtsInBox@dcma.mil.

5. RELEASABILITY – UNLIMITED. This IPC is approved for public release and is located on DCMA’s Internet Web site, www.dcms.mil/policy.

6. EFFECTIVE DATE. By order of the Director, DCMA, this IPC is effective immediately and shall remain in effect until rescinded, superseded, or incorporated in a DMCA policy, whichever is sooner.



Timothy P. Callahan
Executive Director, Contracts



DEPARTMENT OF DEFENSE
Defense Contract Management Agency

INSTRUCTION

Contract Debts

Contracts Directorate
OPR: DCMA-AQCF

DCMA-INST 104
December 11, 2012

Validated Current, November 25, 2013

1. PURPOSE. This Instruction:

- a. Updates the Agency policy and assigns roles and responsibilities for DCMA Instruction (DCMA-INST), “Contract Debt” (Reference (a)).
- b. Implements Government policy pursuant to the references on pages 3 and 4.
- c. Is established in compliance with DoD Directive (DoDD) 5105.64 (Reference (b)).

2. APPLICABILITY. This Instruction applies to all DCMA activities unless higher-level regulations, policy, guidance, or agreements take precedence.

3. MANAGERS’ INTERNAL CONTROL PROGRAM. This instruction contains managers’ internal control provisions that are subject to evaluation and testing as required by DCMA-INST 710 (Reference (c)). The process flowchart is located at Appendix A.

4. RELEASABILITY – UNLIMITED. This Instruction is approved for public release.

5. POLICY RESOURCE PAGE. <https://home.dcma.mil/policy/104r>

6. PLAS CODE.

- a. Processes: Process Code for the process associated with the contract debt.
 - Process Code 115 - Cost Accounting Standards (CAS) Administration for contract debts resulting from CAS
 - Process Code 145 - Progress Payment Based on Costs for contract debts resulting from changes to liquidations for progress payments, etc.
- b. Programs: ACAT/Other Customers
- c. Other National; Training and Travel; Local Programs (when applicable)

7. EFFECTIVE DATE. By order of the Director, DCMA, this Instruction is effective immediately.


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REFERENCES

- (a) DCMA-INST, "Contract Debt," May 2004 (hereby canceled)
- (b) DoDD 5105.64, "Defense Contract Management Agency (DCMA)," January 20, 2013
- (c) DCMA-INST 710, "Managers' Internal Control Program," September 12, 2011
- (d) FAR 32.602(a), Responsibilities
- (e) FAR 32.602(b), Responsibilities
- (f) FAR 32.601(a), General
- (g) FAR 32.603(a), Debt determination
- (h) FAR 32.601(b), General
- (i) Department of Defense FAR Supplement (DFARS) 232.616, Reference
- (j) Procedures Guidance, and Information (PGI) 232.070, Reference
- (k) Section 6621(a)(2) of title 526, United States Code (U.S.C.), Determination of rate interest
- (l) FAR 32.604(b)(4)(i), Demand for Payment
- (m) Section 7109 of title 41, United States Code, Contracts Disputes Act of 1978
- (n) FAR 32.604(b)(4)(ii), Demand for Payment
- (o) FAR 32.604(a), Demand for Payment
- (p) FAR, 15.4, Contract Pricing
- (q) FAR, 30.602, Materiality
- (r) FAR 32.604(a)(2)(i) – (iii), Reference
- (s) FAR 32.604(c)(1), Demand for Payment
- (t) FAR 32.604(c)(2), Demand for Payment
- (u) FAR 32.604(d), Demand for Payment
- (v) FAR 32.604(b), Demand for Payment
- (w) Financial Management Regulation (FMR) Volume 10, Chapter 18, Section 180403, Content for Demand Letters
- (x) FAR 32.604(b)(2)(ii), Reference
- (y) FAR 32.604(b)(iv)(A)-(C), Reference
- (z) FMR, Volume 10, Chapter 18, Section 1809, Contractor Debt Collection,
- (aa) FMR Volume 4, Chapter 3, Receivables
- (ab) FAR 52.232-17(e), Interest
- (ac) FAR 52.232-17(a) and (e), Interest
- (ad) FAR 32.604(b)(6), Demand for Payment
- (ae) FMR, Volume 10, Chapter 18, Section 180905, Contractor Debt Collection
- (af) FMR, Volume 10, Chapter 18, Section 1806, Referral of Delinquent Debts
- (ag) FAR 32.604(b)(8), Demand for Payment
- (ah) PGI 232.610, Demand for Payment of Contract Debt
- (ai) FMR Volume 10, Chapter 18, Section 180402
- (aj) FMR Volume 10, Chapter 18, Section 180504
- (ak) FAR 33.211, Contracting officer's decision
- (al) FAR 32.605, Final decisions
- (am) FAR 33.211(d), Contracting Officer's Decision
- (an) FAR 33.211(a)(4), Contracting Officer's Decision
- (ao) DCMA-INST 905," Contract Claims and Disputes," November 2007
- (ap) FAR 33.206(b), Initiation of a Claim
- (aq) FAR 33.211(b), Contracting Officer's Decision

- (ar) FMR Volume 10, Chapter 18, Section 1810, Deferments and Disputes Under the Contract Disputes Act
- (as) FMR Volume 10, Chapter 18, Contract Debt Collection
- (at) FAR 32.607-2, Deferment of Collection
- (au) FAR 32.607-2(g), Installment Payments and Deferment of Collection
- (av) FAR 32.607-2(a)(1), Deferment of Collection
- (aw) FAR 32.607-2(h), Deferment of Collection
- (ax) FAR 32.607-2(a)(3), Deferment of Collection
- (ay) FAR 32.607(b)(1), Installment Payments and Deferment of Collection
- (az) FAR 32.607(b)(2), Installment Payments and Deferment of Collection
- (ba) PGI 232.610(3), Demand for Payment of Contract Debt
- (bb) FMR Volume 10, Chapter 18, Section 180603.A, General
- (bc) FAR 32.607-1, Installment Payments
- (bd) FAR 33.210, Contracting Officers Authority
- (be) FMR Volume 10, Chapter 18, Section 180404.A.1., Filing a Formal Complaint
- (bf) FMR Volume 10, Chapter 18, Section 180404.A.2., Filing a Formal Complaint
- (bg) FMR Volume 10, Chapter 18, Section 180402.C.3, Demand Letters by a Contracting Officer or Other Designated Official
- (bh) FMR Volume 10, Chapter 18, Section 1811

CHAPTER 1

POLICY

1.1. POLICY. It is DCMA policy to ensure that:

1.1.1. Contract debts owed by contractors to the Government are identified and recovered in a timely manner and properly accounted for in the department/agency's books and records.

1.1.2. A demand for payment is issued as soon as it is determined that an actual debt is due the Government and the amount.

1.1.3. A final decision is issued if the Administrative Contracting Officer (ACO) and the contractor are unable to reach agreement on the existence and amount of a debt in a timely manner.

1.1.4. Contractor requests for installment payments or deferment of collection are processed in a timely manner.

CHAPTER 2

RESPONSIBILITIES

2.1. ADMINISTRATIVE CONTRACTING OFFICER (ACO).

2.1.1 The ACO has primary responsibility for identifying and demanding payment of contract debts except those resulting from errors made by the payment office. The contracting officer shall not collect contract debts or otherwise agree to liquidate contract debts (e.g., offset the amount of the debt against existing unpaid bills due the contractor, or allow contractors to retain contract debts to cover amounts that may become payable in future periods). [FAR 32.602(a), Responsibilities (Reference (d))]

2.1.2. The ACO identifies contract debts so the Government can recover amounts paid to contractors in excess of those provided for under the terms of a contract.

2.1.3. The ACO notifies customers' payment offices of all identified contract debts so the payment offices can collect the amounts owed to the Government.

2.1.4. The ACO provides the customers' accounting offices, via the payment offices, the information they require to properly account for contract debts and comply with applicable fiscal laws and regulations.

2.1.5. The ACO must report contract debts in a timely manner to maximize availability of the funds to the program for which the funds were initially provided, reduce difficulty in collecting the debt, and avoid actual monetary loss to the Government.

2.2. PAYMENT OFFICE. The Payment Office has primary responsibility for:
[FAR 32.602(b), Responsibilities (Reference (e))]

2.2.1. Collecting contract debts identified by contracting officers.

2.2.2. Identifying and collecting duplicate and erroneous payments.

2.2.3. Authorizing the liquidation of contract debts in accordance with agency procedures.

CHAPTER 3

PROCEDURES

3.1. MAKE DEBT DETERMINATION.

3.1.1. Contract debts are amounts that have been paid to a contractor to which the contractor is not currently entitled, or are otherwise due from the contractor, under the terms and conditions of the contract. [FAR 32.601(a) (Reference (f))] If the ACO has any indication that a contractor owes money to the Government under a contract, the ACO shall promptly determine whether an actual debt is due and the amount. Any unnecessary delay may contribute to: [FAR 32.603(a), Debt Determination (Reference (g))]

3.1.1.1. Loss of timely availability of the funds to the program for which the funds were initially provided.

3.1.1.2. Increased difficulty in collecting the debt.

3.1.1.3. Actual monetary loss to the Government.

3.1.2. Contract debts include, but are not limited to those listed at FAR 32.601(b), (Reference (h)).

3.2. ISSUE DEMAND FOR PAYMENT.

3.2.1. The ACO shall not collect contract debts or otherwise agree to liquidate contract debts (e.g., offset the amount of the debt against existing unpaid bills due the contractor, or allow contractors to retain contract debts to cover amounts that may become payable in the future). [FAR 32.602(a) (Reference (d))]

3.2.2. The ACO shall not compromise or waive a debt. The department/agency contract financing offices have sole compromise authority. [DFARS 232.616 (Reference (i))] The DoD contract financing offices are identified at PGI 232.070 (Reference (j)).

3.2.3. The ACO shall also determine the amount of any interest owed on the debt as of the date of the debt determination and any applicable penalty. The ACO shall compute compound interest on CAS and Defective Pricing (DP) debts in accordance with the applicable contract clauses using the underpayment rate established by the Secretary of the Treasury under section 6621(a)(2) of title 26 U.S.C. and FAR 32.604(b)(4)(i), (References (k) and (l)).

3.2.4. For all other contract debts, the ACO shall use the interest rate established by the Secretary of the Treasury, as provided in section 7109 of title 41 U.S.C. of the Contract Disputes Act of 1978 (Reference (m)). Such interest rate is applicable to the period in which the amount becomes due, and then at the rate applicable for each 6-month period as established by the Secretary until the amount is paid. [FAR 32.604(b)(4)(ii) (Reference (n))]

3.2.5. The ACO shall issue a demand for payment as soon as the ACO has determined an actual debt is due the Government and the amount of the debt. [FAR 32.604(a) (Reference (o))] Demand for payment shall be issued consistent with requirements of the applicable FAR or DFARS provisions associated with the specific type of debt involved (e.g., FAR, 15.4 (Reference (p)) for defective pricing and FAR 30.602 (Reference (q)) for noncompliance with CAS. Except as provided in paragraph 3.2.7 below, the ACO shall issue a demand for payment even if the debt is or will be the subject of a bilateral modification, the contractor is otherwise obligated to pay the money under the existing contract terms or the contractor has agreed to repay the debt. [FAR 32.604(a)(2)(i)-(iii) (Reference (r))]

3.2.6. The ACO shall not issue a demand for payment if the ACO only becomes aware of the debt when the contractor:

3.2.6.1. Provides a lump sum payment or submits a credit invoice. [FAR 32.604(c)(1) (Reference (s))] A credit invoice is a contractor's request to liquidate the debt against existing unpaid bills due the contractor.

3.2.6.2. Notifies the ACO that the payment office overpaid on an invoice payment. [FAR 32.604(c)(2) (Reference (t))] The ACO shall instruct the contractor to immediately remit the overpaid amounts to the payment office identified at paragraph 3.2.8.7.2. below, along with a description of the overpayment, including the affected contract number and delivery order number, if applicable, invoice/shipment number, contract line item/accounting classification reference number, and a contractor point of contact. When the contractor provides the notification, the ACO shall notify the payment office of the overpayment.

3.2.7. If a demand for payment was not issued as provided under paragraph 3.2.5 above, the ACO shall issue a demand for payment no sooner than 30 days after the contracting officer becomes aware of the debt unless: [FAR 32.604(d) (Reference (u))]

- The contractor has liquidated the debt;
- The contractor has requested an installment payment agreement; or
- The payment office has issued a demand for payment.

3.2.8. The ACO's demand for payment shall include all information as required by FAR 32.604(b) (Reference (v)) and FMR Volume 10, Chapter 18, Section 180403 (Reference (w)), including, but not limited to:

3.2.8.1. The amount and the reason for the indebtedness, the authority for establishing the debt, and the rights, if any, that the contractor/vendor may have to seek review of the indebtedness.

3.2.8.2. The date by which full payment must be made in order to avoid late charges and enforced collection. That date will not be more than 30 days from the date of the demand letter; unless a specific due date is established by statute, contract provision, or other notice of indebtedness.

3.2.8.3. The address where payments should be sent (and notice that the check, or wire transfer when applicable, shall be made payable to Disbursing Officer, Location of Disbursing Office).

3.2.8.4. Notification that any amounts not paid within 30 days from the date of the demand letter shall bear interest from the date of the demand letter, or from the date specified in the contract, if applicable, and the rate that shall be used for calculating interest. Include the applicable standards upon which any interest, penalties, or administrative charges are based.

3.2.8.5. A distribution of the principal amount of the debt by Lines of Accounting (LOA) subject to the following:

3.2.8.5.1. If the debt affects multiple LOAs, the ACO shall, to the maximum extent practicable, identify all affected LOAs. If it is not practicable to identify all affected LOAs, the ACO may select representative LOAs. [FAR 32.604(b)(2)(ii) (Reference (x))]

3.2.8.5.2. In selecting representative LOA(s), the ACO shall consider the affected departments or agencies, years of appropriations, and the predominant types of appropriations; i.e., procurement, operation and maintenance.

3.2.8.5.3. The ACO shall not distribute to any LOA(s) an amount of the principal in excess of the total obligation for the LOA because the affected department/agency has to fund amounts in excess of the total obligation using current year unexpired funds.

3.2.8.5.4. The ACO shall include the LOA in the demand for payment even if the associated funds are expired or cancelled so the accounting office can make the required accounting entries.

3.2.8.6. If the debt affects multiple contracts and the LOAs are not readily available, the ACO shall issue a demand for payment without the distribution of the principal amount to the affected lines of accounting, include a statement in the demand for payment advising when the distribution will be provided, and provide the distribution by the date identified in the demand for payment. [FAR 32.604(b)(iv)(A)-(C) (Reference (y))]

3.2.8.7. The Government will charge interest, penalties, and administrative charges on all late payments whether the debt is paid in lump sum or by installments. [FMR, Volume 10, Chapter 18, Contractor Debt Collection, Section 1809 (Reference (z))] The payment office credits any accrued interest and penalties to the appropriate miscellaneous receipt account of the Treasury in accordance with FMR Volume 4, Chapter 3 (Reference (aa)).

3.2.8.8. The due dates for repayment shall be due at the earliest of: (1) the date fixed under the contract; or (2) the date of the first written demand for payment, including any demand for payment resulting from a default termination. [FAR 52.232-17(e) (Reference (ab))]

3.2.8.9. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in section 7109 of title 41 U.S.C. of the Contract Disputes Act of 1978 (Reference (m)), which is applicable to the period in which the amount becomes due at the

earliest of the following dates: (1) the date fixed under the contract; or (2) the date of the first written demand for payment, including any demand for payment resulting from a default termination. Such interest shall be then at the rate applicable for each 6-month period as established by the Secretary until the amount is paid. [FAR 52.232-17(a) and (e) (Reference (ac))]

3.2.8.10. A statement advising the contractor:

3.2.8.10.1. To immediately contact the ACO if the contractor believes the debt is invalid or the amount is incorrect.

3.2.8.10.2. To make the check payable to the Defense Finance and Accounting Service, DFAS-CO and to remit the check, along with a copy of the demand for payment, directly to:

- For Mechanization of Contract Administration Services (MOCAS) paid contracts, remit payment to DFAS Columbus Disbursing Division:

DFAS-Columbus Center
ATTN: DFAS-JDCBB
P.O. Box 182204
Columbus, OH 43218-2204

- For Non-MOCAS contracts, remit payment to the payment office identified in the contract.

3.2.8.11. Notification that the payment office may initiate procedures, in accordance with the applicable statutory and regulatory requirements to offset the debt against any payments otherwise due the contractor. [FAR 32.604(b)(6) (Reference (ad))]

3.2.8.12. Notification that the debt may be subject to administrative charges if the debt is referred for collection in accordance with agency policy. [FMR, Volume 10, Chapter 18, Section 180905 (Reference (ae))] The DoD debt referral policies are provided in FMR, Volume 10, Chapter 18, Section 1806 (Reference (af)).

3.2.8.13. Notification that the contractor may submit a request for installment payments or deferment of collection if immediate payment is not practicable or if the amount is disputed. [FAR 32.604(b)(8) (Reference (ag))]

3.2.9. The ACO shall furnish the contractor and the payment office with a copy of the demand for payment by certified mail, return receipt requested, or by other method that provides evidence of receipt. [PGI 232.610 and FMR Volume 10, Chapter 18, Section 180402 (References (ah) and (ai))] The ACO shall not advise the payment office to withhold payments otherwise due to the contractor before the payment due date specified in the demand for payment without the prior approval of the cognizant CFO.

3.2.9.1. For MOCAS paid contracts, send the copy of the demand for payment to the following. DFAS Columbus Accounts Receivables forwards a copy of the demand for payment to the cognizant accounting office(s).

DFAS Columbus Accounts Receivables
ATTN: DFAS-JAIAAA/CO
P.O. Box 182317
Columbus, OH 43218-2317

3.2.9.2. For non-MOCAS paid contracts, send the copy of the demand to the payment office cited in the contract and request the payment office to forward a copy of the demand to the cognizant accounting office(s).

3.2.9.3. The cognizant accounting office(s) make(s) the required accounting entries.

3.2.10. If a contractor erroneously remits payment for a debt to the ACO, the ACO shall immediately forward the check to the payment office identified in paragraph 3.2.8.7.2 above, and request a confirmation of receipt. [FMR Volume 10, Chapter 18, Section 180504 (Reference (aj))] If the repayment resulted from the ACO's demand for payment, the ACO shall forward a copy of the ACO's demand for payment with the check to help ensure that the payment is credited to the correct appropriation(s).

3.3. ISSUE FINAL DECISION.

3.3.1. The ACO shall issue a final decision as required by FAR 33.211 (Reference (ak)) if:

3.3.1.1. The ACO and the contractor are unable to reach an agreement on the existence of amount of a debt in a timely manner; or

3.3.1.2. The contractor fails to liquidate a debt previously demanded by the ACO within the timeline specified in the ACO's demand for payment unless the amounts were not repaid because they are not yet due, per the terms of an installment payment agreement; or

3.3.1.3. The contractor requests a deferment of collection on an amount previously demanded by the ACO. [FAR 32.605 (Reference (al))]

3.3.2. The ACO shall issue the final decision within a reasonable time, taking into account: the size and complexity of the claim; the adequacy of the contractor's supporting data; and any other relevant factors. [FAR 33.211(d) (Reference (am))] The ACO's final decision shall include the information required by FAR 33.211(a)(4) (Reference (an)), including the contractor's statutory timeline for appealing the ACO's final decision. If the ACO previously issued a demand for payment on the debt, the demand included in the ACO's final decision shall identify the same due date as the original demand. The ACO shall coordinate with assigned legal counsel and have a draft final decision reviewed in accordance with DCMA-INST 905, "Contract Claims and Disputes" (Reference (ao)) before issuing the final decision. The ACO shall ensure that the final decision is issued within 6 years of the accrual of claim date. [FAR 33.206(b) (Reference (ap))] The ACO should consult with assigned legal counsel to determine

the date of the accrual of the claim. The Government is time-barred from issuing an enforceable claim after 6 years from the accrual of claim date. The 6-year Contract Disputes Act Statute of Limitations does not apply to contracts awarded on or before October 1, 1995 or to a Government claim based on a contractor claim involving fraud.

3.3.3. The ACO shall furnish the contractor a copy of the final decision by certified mail, return receipt requested, or by other method that provides evidence of receipt. [FAR 33.211(b) (Reference (aq))]

3.3.4. The ACO shall also forward a copy of the final decision as follows:

3.3.4.1. Submit a copy of the final decision to the payment office identified in paragraphs 3.2.9.1 or 3.2.9.2 above. For the Special Programs Directorate, distribution is limited to Special Program security restrictions.

3.3.4.2. Submit a copy of the final decision and the evidence of the contractor's receipt of the final decision to DCMA, Contract Disputes Resolution Center. See also DCMA-INST 905 (Reference (ao)).

3.4. PROCESS REQUEST FOR DEFERMENT OF COLLECTIONS AND/OR INSTALLMENT PAYMENTS. The ACO shall not approve or deny a contractor request for a deferment of collections or installment payment agreement.

3.4.1. Deferment of Collection. The senior Financial Managers (FM) of the department/agency CFO have sole authority for approving and disapproving a contractor's request for a deferment of collection. [FMR, Volume 10, Chapter 18, Section 1810 (Reference (ar))] The contractor may request deferment of collection whether or not it appeals the debt determination.

3.4.1.1. If the ACO receives a request for a deferment of collection, the ACO shall promptly notify the DCMA HQ Contract Debt POC. For the Special Programs Directorate, notification to the DCMA HQ Contract Debt POC will occur and be limited to Special Program security restrictions. When submitting a copy of the contractor's deferment request to the payment office (identified in paragraph 3.2.9.1. or 3.2.9.2 above), the ACO shall notify the payment office that the deferment request is under consideration. For DoD debts, the payment office transfers the debt to the DFAS Columbus Debt Management Office upon receipt of the contractor's request for a deferment of collections in accordance with departmental policy. [FMR Volume 10, Chapter 18 (Reference (as))] All documents shall be forwarded electronically, to the DCMA HQ Contract Debt POC. A copy shall be sent through appropriate Contract Management Office channels to the cognizant Directorate Contracts Director, through the appropriate Regional Contract Specialist. The ACO shall review the information in FAR 32.607-2 (Reference (at)) for the documentation requirements. Documents forwarded to the DCMA HQ Contract Debt POC shall, at a minimum, contain the following:

3.4.1.1.1. A copy of the contractor's request for a deferment of collection.

3.4.1.1.2. A written ACO recommendation on the request and the basis for the recommendation including the advisability of deferment to avoid possible over collections.

3.4.1.1.3. The ACO shall coordinate with assigned legal counsel to provide written assessment of litigation risk.

3.4.1.1.4. A statement as to whether the contractor has an appeal pending or action filed under the Disputes Clause of the contract and the docket number if an appeal has been filed.

3.4.1.1.5. Financial review of the company, not older than 12 months.

3.4.1.1.6. Tax identification number.

3.4.1.1.7. Commercial and Government Entity (CAGE) code.

3.4.1.1.8. The affected contract numbers, delivery orders, and respective LOA(s).

3.4.1.1.9. A copy of the final decision and demand for payment. The name, title, phone number, mailing address, and e-mail address for the contractor's POC.

3.4.1.1.10. The name, phone number, and e-mail address for the cognizant Procuring Contracting Officer (PCO) and a statement indicating the PCO's recommendation on the deferment of collection.

3.4.1.2. If the ACO recommends deferment of the collection, the ACO's assigned legal counsel will prepare the Deferment of Payment Agreement in accordance with FAR 32.607-2(g) (Reference (au)).

3.4.1.2.1. If the contractor appeals the debt determination, the information required must include an explanation of the contractor's financial condition. [FAR 32.607-2(a)(1) Reference (av))] If a contractor appeal of the debt determination is pending, the deferment agreement must also include a requirement for the contractor to: (1) diligently prosecute the appeal, and (2) pay the debt in full when the appeal is decided, or when the parties reach agreement on the debt amount. [FAR 32.607-2(h) (Reference (aw))]

3.4.1.2.2. If the contractor does not appeal the debt determination, it must submit information about its financial condition, contract backlog, projected cash flow, the feasibility of immediate payment of the debt, and the probable effects on its operations of immediate payment in full. [FAR 32.607-2(a)(3) (Reference (ax))] If the contractor has not appealed, the payment office may authorize deferment or installment payments if the contractor is unable to pay the debt in full or its operations under national defense contracts would be impaired. The arrangements must include appropriate covenants and securities and be limited to the shortest practicable maturity. [FAR 32.607(b)(1) (Reference (ay))] In addition, the deferment/installment agreement must contain a specific schedule or plan for repayment. It should permit the Government to make periodic financial reviews of the contractor and to require payments earlier than required by the agreement if the Government considers the contractor's ability to pay improved. It should also provide for required stated or measurable payments on

the occurrence of specific events or contingencies that improve the contractor's ability to pay. [FAR 32.607(b)(2) (Reference (az))]

3.4.1.3. The DCMA HQ Contract Debt POC shall forward the deferment of collection package and the Deferment of Payment Agreement to the Service FM for their approval and required signature. If the debt relates to multiple departments or agencies, the DCMA HQ Contract Debt POC forwards the decision package to the department or agency owed the preponderance of the debt and notifies all other affected departments/agencies. Once the Service FM approves and signs the Deferment of Payment Agreement, the Service FM will forward the Agreement to the DCMA HQ Contract Debt POC to be forwarded to the Director of DPAP for a decision on granting the deferment. [PGI 232.610(3) (Reference (ba))] Once the Director, DPAP grants his/her decision on the deferment, the Agreement will be forwarded to the DCMA HQ Contract Debt POC, who will then forward it to the ACO in order to obtain the contractor's required signature. The DCMA HQ Contract Debt POC provides copies of any executed deferment agreements to the cognizant ACO and payment office. For DoD debts, the DCMA HQ Contract Debt POC forwards the executed agreements to DFAS Columbus Debt Management Office, DFAS-JAIAC/CO. [FMR Volume 10, Chapter 18, Section 180603(A) (Reference (bb))] The DCMA HQ Contract Debt POC may require assistance from personnel within the Special Programs Directorate to achieve the above steps because of program security restrictions.

3.4.2. Installment Payments. If a contractor requests an installment payment agreement, the ACO shall notify the contractor to send a written request for an installment payment agreement to the payment office identified in paragraph 3.2.9.1 or 3.2.9.2 above. For DoD contracts, the DFAS Columbus Accounts Receivable office forwards the request to the DFAS Columbus Debt Management Office. The DFAS Columbus Debt Management Office has the authority to approve contractor requests for installment payment agreements; however, it cannot unilaterally deny a contractor's request for an installment payment agreement without the approval of the creditor DoD Component's senior FM or designee. [FAR 32.607-1, Installment payments, (Reference (bc)) and FMR Volume 10, Chapter 18, Section 180504 (Reference (aj))]

3.5. DEFERMENT AND DISPUTES UNDER THE CONTRACT DISPUTES ACT.

3.5.1. Under the Contract Disputes Act of 1978 (Reference (m)), a contractor may appeal a decision of indebtedness to the Armed Services Board of Contract Appeals (ASBCA) or to the United States Court of Federal Claims. The contractor may request in writing, a deferment of debt payment and/or installment payment agreement until the appeal is decided.

3.5.2. ACOs are authorized, within any specific limitations of their warrants, to resolve claims, arising under or relating to a contract subject to the Contract Disputes Act, including through the use of the Alternative Dispute Resolution (ADR). [FAR 33.210 (Reference (bd))]

3.5.3. DoD is barred from filing a formal complaint to pursue collection action after the expiration of the 6 years from the debt repayment due date, or within 1-year after a final decision has been rendered in an administrative proceeding. [FMR Volume 10, Chapter 18, Section 180404.A.1 (Reference (be))]

3.5.4. In the event that a debtor makes a partial payment of or a written acknowledgment of the debt after the time limitation for filing a formal complaint has lapsed, the time limitation for collection action shall accrue again at the time of each such payment or written acknowledgment of debt. [FMR Volume 10, Chapter 18, Section 180404.A.2 (Reference (bf))]

3.6. FOLLOW-UP WITH PAYMENT OFFICE. The ACO shall periodically follow-up with the payment office to determine whether the debt has been collected and credited to the correct appropriation(s). [FMR Volume 10, Chapter 18, Section 180402.C.3 (Reference (bg))]

3.7. BANKRUPTCY. If the ACO receives a notice of bankruptcy, the ACO shall immediately comply with the requirements outlined in FMR Volume 10, Chapter 18, Section 1811 (Reference (bh)).

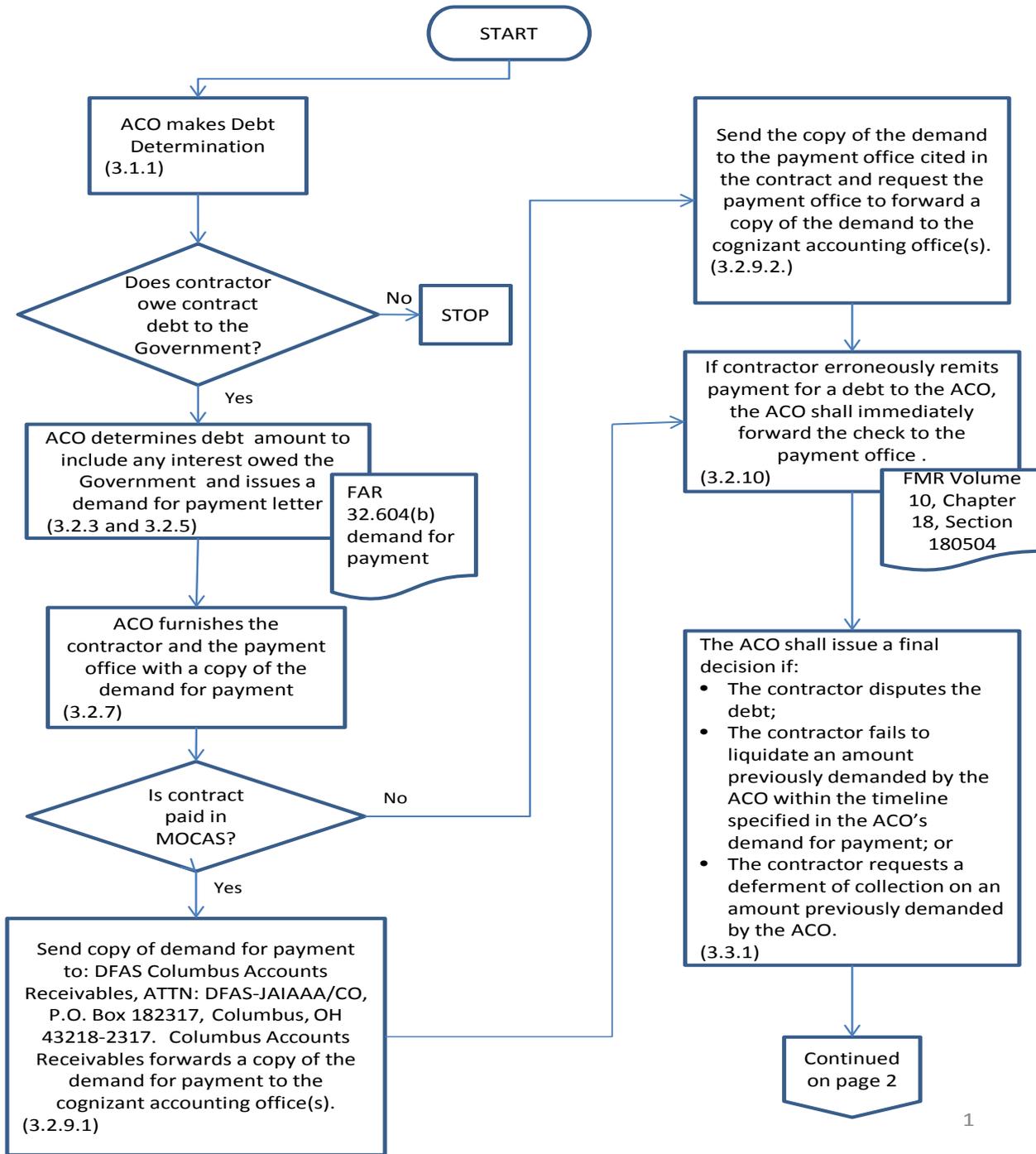
3.7.1. When either the procurement contracting office or the contract administrative office receives information that bankruptcy proceedings have been initiated, the receiving office shall immediately notify DFAS Office of General Counsel by e-mail at cco-ogc@dfas.mil or mail:

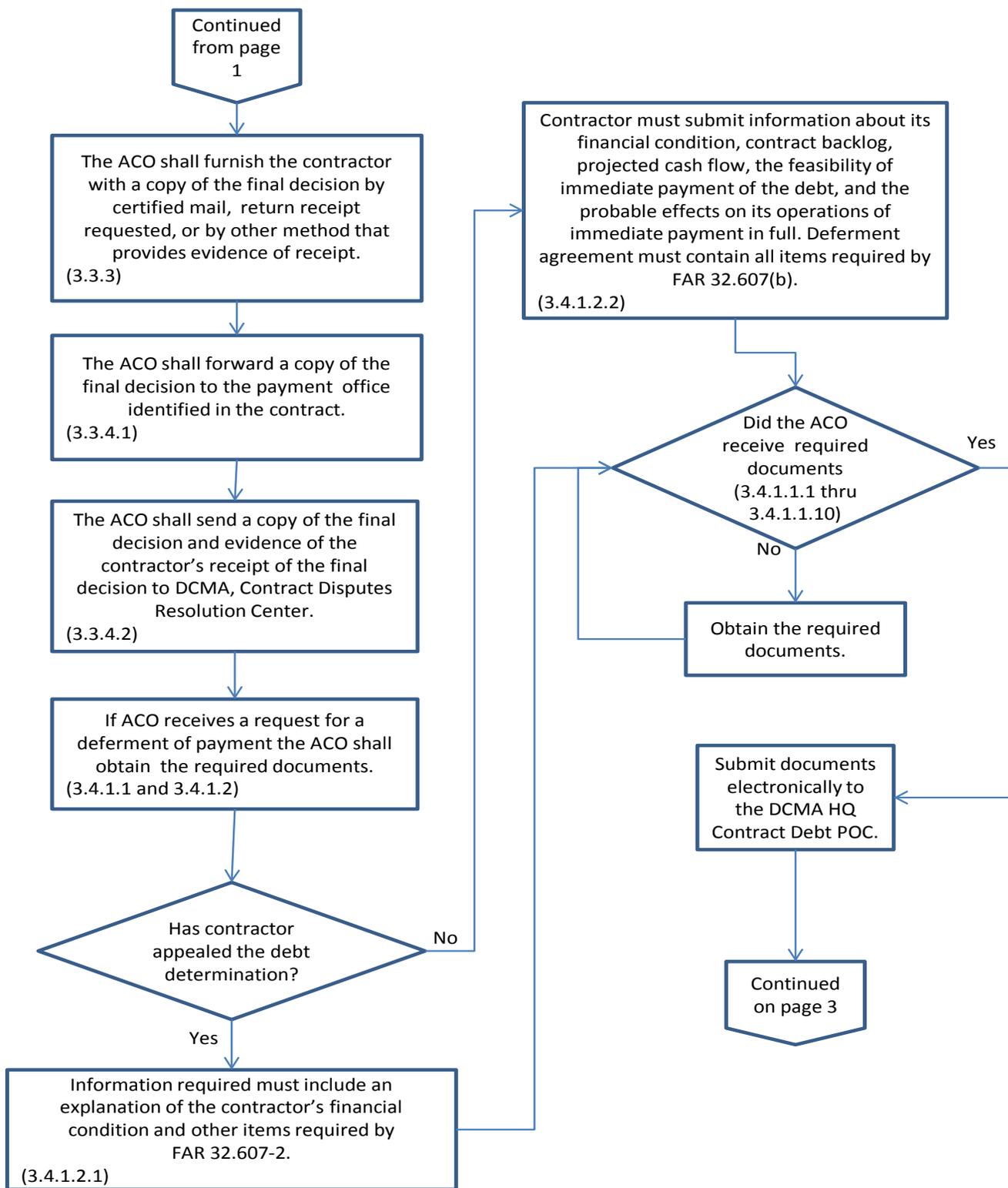
DFAS Office of General Counsel
Defense Finance and Accounting
8899 East 56th Street
Indianapolis, IN 46249

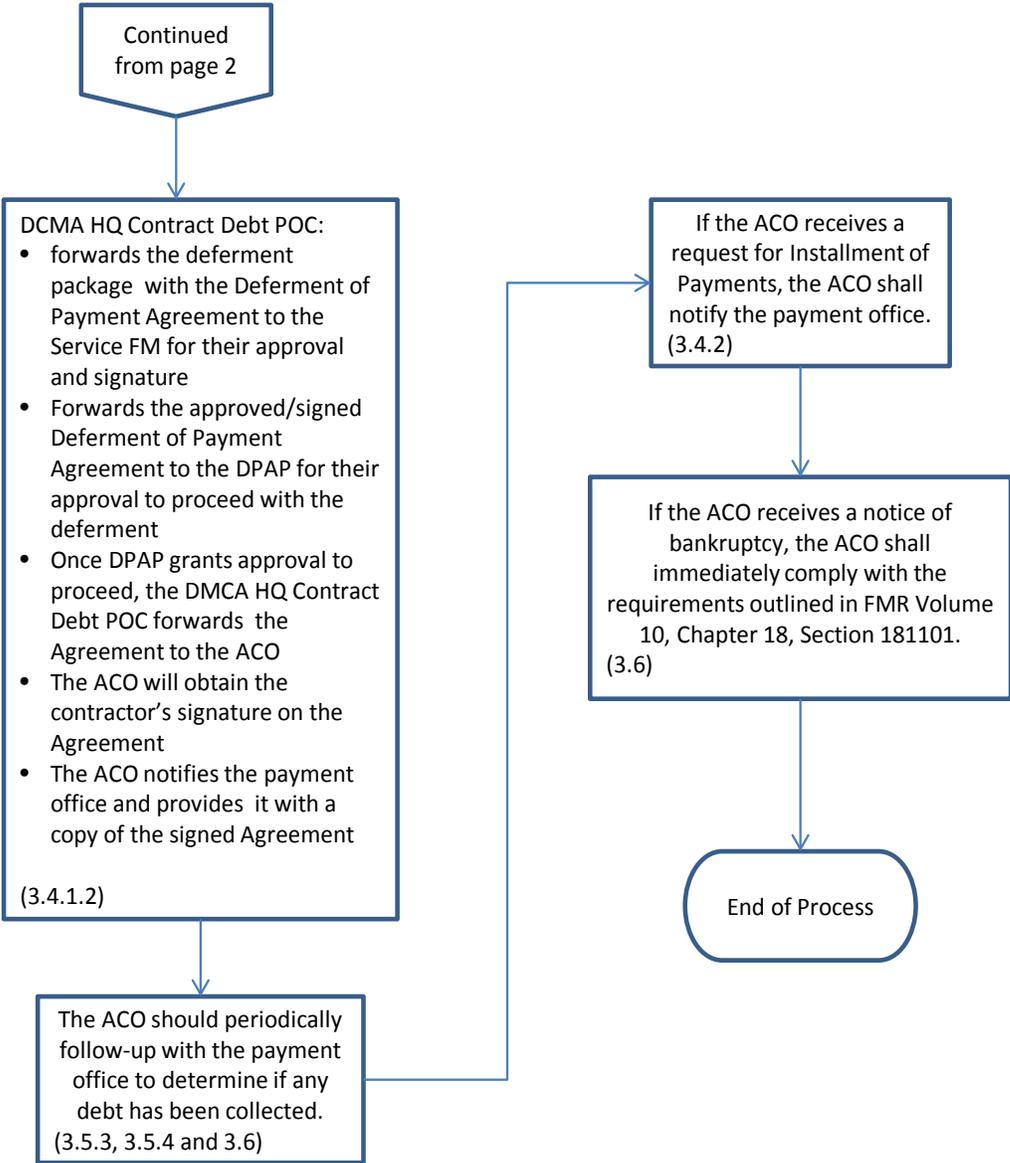
3.7.2. At a minimum, the notification shall include:

- The name of the contractor
- The court in which the bankruptcy petition has been filed
- The date of the filing of the bankruptcy petition
- The bankruptcy court docket number (if available)

**APPENDIX A
 FLOWCHART**







GLOSSARY

ACRONYMS

ASBCA	Armed Services Board of Contract Appeals
ACCS	Automated CAS Collection System
ACO	Administrative Contracting Officer
CAGE	Commercial and Government Entity
CAS	Cost Accounting Standards
CFO	Contract Financing Offices
DCAA	Defense Contract Audit Agency (DCAA)
DCMA-INST	DCMA Instruction
DFARS	Defense Federal Acquisition Regulation Supplement
DFAS	Defense Finance and Accounting Services
DoDD	DoD Directive
DP	Defective Pricing
DPAP	Defense Procurement of Acquisition Policy
FAR	Federal Acquisition Regulation
FM	financial manager
FMR	Financial Management Regulation
HQ	headquarters
LOA	lines of accounting
MOCAS	Mechanization of Contract Administration Services
PCO	Procuring Contracting Officer
PGI	Procedures, Guidance and Information
PLAS	Performance Labor Account System
POC	point of contact
U.S.C.	United States Code