



DCMA MANUAL 2501-10

Contract Debts

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Approved by:	David H. Lewis, VADM, USN, Director

Purpose: This issuance, in accordance with the authority in DoD Directive 5105.64, "Defense Contract Management Agency (DCMA)," Federal Acquisition Regulation Part 32.6, "Contract Debts," and Defense Federal Acquisition Regulation 232.6, "Contract Debts":

- Establishes information of the procedures for contract debts and deferment of contract debts
- Documents the roles and responsibilities necessary to perform contract debt management

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SECTION 1: GENERAL ISSUANCE INFORMATION

1.1. APPLICABILITY. This issuance applies to DCMA Contracting Centers, Operational Units (comprised of Regional Commands and Directorates) that administer contracts. It applies to Military Departments, Defense Agencies, and DoD Field Activities that choose to delegate contract oversight responsibilities to DCMA. This issuance is supplemental to the Federal Acquisition Regulation (FAR) Part 32.6, Defense Federal Acquisition Regulation Supplement (DFARS) Part 232.6, and DFARS Procedures, Guidance and Information (PGI) 232.6.

1.2. POLICY. It is DCMA policy to identify and collect any debts owed by contractors to the Government and properly establish a record of collection. Execute this manual in a safe, efficient, effective, and ethical manner.

SECTION 2: RESPONSIBILITIES

2.1. OPERATIONAL UNIT COMMANDER/DIRECTOR. The Commander/Director of the Operational Unit will:

- a. Ensure the Agency's position on debt deferment packages is clearly stated, well supported, and comprehensive prior to release.
- b. Approve release of debt deferment recommendation to the Agency/Service Financial Manager (FM).

2.2. CONTRACTS DIRECTOR/TEAM SUPERVISOR. The Contracts Director/Team Supervisor will:

- a. Conduct reviews of prepared debt deferment packages for quality and completeness.
- b. Support Administrative Contracting Officer (ACO) determinations and ensure position is supported and well stated.

2.3. ACO. All references to ACO in this manual apply to the ACO, the Corporate Administrative Contracting Officer (CACO), and the Divisional Administrative Contracting Officer (DACO). The ACO will:

- a. Identify and demand payment of contract debts so the Government can recover amounts paid to contractors in excess of or are otherwise due under the terms and conditions of a contract while coordinating with the responsible disbursing officer for determining contract debt amount and contract debt collection (reference FAR 32.602 and DFARS 232.602).
- b. Notify customers' payment offices disbursing officers of all identified contract debts so the payment offices can collect the amounts owed to the Government.
- c. Provide 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.
- d. Execute demand for payment in a timely manner to maximize availability of the funds to the program for which the funds were initially provided, to reduce difficulty in collecting the debt, and to avoid actual monetary loss to the Government.
- e. Prepare debt deferment packages, make a recommendation to approve or deny the contractor's request for deferment, and draft the debt deferment agreement (see template from the resource page) if recommending approval of the deferment request.

2.4. ASSIGNED LEGAL COUNSEL. The assigned legal counsel will:

- a. Provide legal support to the ACO including legal advice as the ACO develops their positions on matters that could result in a contract claim and dispute.
- b. Assist the ACO by reviewing the demand for payment letters, contract debt packages, and deferment of payment agreements for legal sufficiency when required.

2.5. HEADQUARTERS (HQ) PERFORMANCE ADVOCATE. The Performance Advocate at DCMA HQ will receive semiannual reports from the Action Officer (AO), review the reports for accuracy, and staff the report to the Executive Director, Contracts, and Contract Performance Management Division Director on the status of debt deferment packages processed within the period to Agency/Service FMs.

2.6. AO. Each Region, Directorate, and Center will have an AO who will:

- a. Review debt deferment packages for quality and completeness.
- b. Process debt deferment request received from ACOs, maintain debt deferment documents, and track status of requests for debt deferments in a Debt Deferment Tracker list.
- c. Semiannually report to the Executive Director, Contracts, and Contracts Performance Management Division Director, through the HQ Performance Advocate, on the status of debt deferment packages processed within the period to Agency/Service FMs.

2.7. EXECUTIVE DIRECTOR, SPECIAL PROGRAMS (DCMAS). The Executive Director, DCMAS will comply with Agency policy to the extent commensurate with the security requirements of the administered classified contracts; however, when the policy requires sharing documents and information with other offices, DCMAS will not send classified information to parties not authorized to receive the information. Where DCMAS is required to deviate from this manual, the intent of this Agency manual must be followed. Any exceptions or deviations from this Agency manual will be documented in a DCMAS supplemental manual maintained by the DCMAS Directorate.

SECTION 3: CONTRACT DEBTS PROCEDURE

3.1. OVERARCHING PROCEDURE. This section covers procedures for making a debt determination and issuing a demand for payment. There are two ways to make a demand for payment: (1) issue a letter demanding payment pursuant to FAR 32.604, and (2) issue a Contracting Officer's Final Decision (COFD) pursuant to FAR 32.605, Contracting Officer's Final Decision. See paragraphs 3.3 and 3.4 for guidance on when to issue either type of demand for payment. These procedures supplement FAR 32.6, DFARS 232.6, and DFARS PGI 232.6. The difference is that a COFD demand for payment is a claim under the Contract Disputes Act, contains regulatory appeal rights language, and requires legal review while the FAR 32.604 demand for payment does not. Under the Contract Disputes Act, every Government demand for payment arising out of a contract must be the subject of a COFD. As such, a COFD demand for payment is a claim under the Contract Disputes Act, contains regulatory appeal rights language, and requires legal review. A demand for payment arising out of FAR 32.604 is not a claim. The only legal effect of such a demand is to start interest running under the Interest clause (FAR 52.232-17, Interest).

3.2. MAKE DEBT DETERMINATION. 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)). If the ACO has any indication that a contractor owes money to the Government under a contract, the ACO must promptly determine whether an actual debt is due and the amount (FAR 32.603(a)).

a. Contract debts include, but are not limited to, the debts identified in FAR 32.601. In general, demands for payment should not be issued for any money owed to the Government resulting from errors made by the payment office (DFARS 232.602(b)). These demands must be made, as a matter of practice, by the payment office, not the ACO, because they are not Contract Disputes Act claims requiring a COFD.

b. When making a debt determination and in preparation for issuing a demand for payment, a Demand Letter Worksheet (see resource page) must be completed. The worksheet must be signed by an individual other than the ACO who will sign the resulting demand letter, such as the Contract Administrator or ACO's supervisor.

3.3. ISSUE A DEMAND FOR PAYMENT. See resource page for a demand for payment template.

a. An ACO may issue a demand for payment when:

(1) The contractor and the Government agree on the actual debt that is due to the Government;

(2) There is sufficient time for the ACO to issue a COFD before the expiration of the statute of limitations; and

(3) The contractor does not voluntarily pay the debt.

(4) FAR 32.604(a)(2) lists other situations when it is appropriate to issue a demand for payment letter.

b. When the contractor and the Government do not agree on the actual debt that is due to the Government, the demand for payment must be issued as a COFD (see paragraph 3.4). Even when the contractor and the Government agree on the debt amount, the ACO may choose to issue the demand for payment as a COFD.

c. The ACO's demand for payment must include:

(1) All the information required by FAR 32.604(b);

(2) Appropriate information regarding contractor debts from DoD 7000.14-R, "Department of Defense Financial Management Regulation (DoD FMR)," Volume 16, Chapter 2, paragraphs 020501 and 020505.

(3) The due process notification requirements listed in Bureau of the Fiscal Service, Appendix 8 of Managing Federal Receivables, which is located on the resource page (DoD 7000.14-R, Volume 16, Chapter 2, paragraph 020501).

(4) A statement advising the contractor to make the check payable to the Defense Finance and Accounting Service, DFAS-CO, and the address for remittance of payment:

(a) Online payment may be made to <https://www.pay.gov>. The demand for payment letter includes instructions for online payment to enter Mechanization of Contract Administration Services (MOCAS) "MOCAS-ACCS" in the search box; then click 'Continue to the Form' to make payment using the MOCAS-ACCS Form.

(b) For MOCAS paid contracts, remit payment to DFAS Columbus Disbursing Division.

Regular Mail (HQ0337, HQ0338, and HQ0339):
Defense Finance and Accounting Service - Columbus Center
DFAS-JAIACA/CO
PO Box 182317
Columbus, OH 43218

Express and FedEx (HQ0337, HQ0338, and HQ0339):
Defense Finance and Accounting Service - Columbus Center
DFAS-JAIACA/CO
3990 E. Broad Street
Building 21
Columbus, OH 43213-1152

(c) For non-MOCAS contracts, remit payment to the payment office identified in the contract.

(5) This information is consolidated in the demand for payment of debt letter template on the resource page.

d. The ACO must furnish a copy of the demand for payment to:

(1) The contractor by certified mail, return receipt requested, or by other method that provides evidence of receipt (FAR 33.211(b)).

(2) DFAS via email dfas.dscj.jaq.mbx.aps-debts@mail.mil along with a completed DFAS Contract Debt System (CDS) Submission Checklist (on the resource page) signed by the ACO.

(3) For DCMAS, distribution is limited to DCMAS security restrictions.

3.4. ISSUE A COFD DEMAND FOR PAYMENT. A demand for payment letter may be issued prior to issuing a COFD demand for debt payment; however, issuance of a demand for payment is not required in order to issue a COFD. The ACO must issue a COFD when the conditions at FAR 32.605(a) and FAR 33.211 or the following conditions apply:

a. To state the ACO's final decision when the contractor and the Government disagree on the existence or actual amount of debt due to the Government;

b. To preserve the Government's rights prior to expiration of the statute of limitations;

c. The debt arises from penalties for expressly unallowable costs included in a certified final indirect cost rate or cost proposal; or

d. If the contractor does not pay the debt amount within the time specified in the demand for payment, unless the amounts were not repaid because the contractor has requested an installment payment agreement or the contractor requests a deferment of collections.

e. The COFD letter must be tailored to include all the debt-specific statutory and regulatory requirements of FAR 32.604(b) and DoD 7000.14-R, Volume 16, Chapter 2, paragraphs 020501 and 020505. This information is consolidated in the COFD demand for payment letter on the resource page. The ACO must incorporate the same information required for a COFD as included in the initial demand for payment as stated in paragraph 3.3 of this manual.

3.5. PROCESS REQUEST FOR DEFERMENT ACTION.

a. The senior FM or designee of the appropriate department/agency contract financing office has sole authority for approving and disapproving a contractor's request for a deferment of collection (DoD 7000.14-R, Volume 16, Chapter 5, paragraph 050603).

b. If the contractor requests a debt deferment and there is no appeal pending or action filed under the Disputes clause (FAR 52.233-1) of the contract, the ACO must submit the following information about the contractor with the request:

- (1) Financial condition.
- (2) Contract backlog.
- (3) Projected cash receipts and requirements.
- (4) The feasibility of immediate payment of the debt.
- (5) The probable effect on operations of immediate payment in full.

c. If the contractor has appealed the debt under the procedures of 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 (FAR 32.607-2(a)(1)).

d. When the contractor submits a written request for deferment of payment, the ACO must promptly assemble the documents required by FAR 32.607-2(c)(2) and on the Contract Debt Deferment Request Checklist (on the resource page), and prepare a written recommendation on the contractor's request, including an explanation of the basis of the recommendation. The ACO must provide a well-reasoned rationale for recommending that the request be granted or denied. The ACO must describe the nature of the dispute and the basis for the ACO's position. As necessary, the ACO should consult with the policy analyst on unusual or extremely high dollar value deferment requests. Debt deferment package documentation must include the following:

(1) Deferment of payment agreement:

(a) ACO prepares using template on resource page which includes required information at FAR 32.607-2 and ACO's assigned legal counsel reviews. When requesting review, the ACO provides to the assigned legal counsel the requisite supporting information (e.g., copy of contractor's request for deferment of collection, copy of the COFD, and name of the service branch that, at the beginning of calendar year, holds contracts representing the largest percentage of sales by the contractor to the Government).

(b) Include 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 (Armed Services Board of Contract Appeals (ASBCA) number or United States Court of Federal Claims (COFC) number) if the appeal has been filed.

(2) ACO's recommendation on the deferment:

(a) Address memorandum to the appropriate Region/Directorate/Center Commander/Director.

(b) Provide basis for the recommended action including the FAR reference.

(c) Include a statement if a demand for payment of debt and/or a COFD demand for payment of debt was issued and an explanation if the latter was not issued.

(d) Ensure ACO position is fully articulated and supported by sufficient facts and analysis.

(e) Ensure accuracy of dates and facts.

(f) Address advisability of deferment to avoid possible overcollections (FAR 32.607-2(d)).

(g) For small business contractors and financially weak contractors, address balancing the need for Government security against loss and undue hardship on the contractor (FAR 32.607-2(e)).

(h) Include contract number(s) and lines of accounting (LOA).

(i) Include tax identification number(s) (TIN).

(3) Financial surveillance:

(a) Current financial capability review of the company. Request financial capability review from the Financial Capability Group (FCG), DCMA-AQKF (email address is located on the resource page).

(b) If the financial capability review includes a DCMA Form 1620, "Guaranty Agreement," (see resource page) that is signed by a third party guarantor, it must be included in the debt deferment package.

(4) Contractor's written request for debt deferment:

(a) A copy of the contractor's written request for deferment of collection.

(b) Contractor's proposed deferment of payment agreement (if provided).

(5) COFD demand for payment.

(6) Subordination Agreement (if applicable).

(7) Novation and Change of Name Agreements (if applicable).

(8) Contract Debt Deferment Request Checklist.

(9) Memorandum to the Agency/Service FM stating the ACO's recommendation, with a brief rationale, and requesting their decision on the deferment (see resource page for example).

e. The ACO will forward the debt deferment package to the Contracts Director/Team Supervisor, as appropriate, to conduct a review of the documents for quality and completeness in accordance with the Contract Debt Deferment Request Checklist. The quality review must ensure the ACO's position is supported, well-reasoned, and articulated.

f. The Contracts Director/Team Supervisor forwards the package to the AO at the Region/Directorate/Center.

(1) Upon receipt of an adequate package, the AO will log the package in the Debt Deferment Tracker providing all the information shown in the template on the resource page for data management purposes and maintain all documents required by the Contract Debt Deferment Request Checklist in DCMA360.

(2) The AO reviews the deferment request package for adequacy and completeness in accordance with the Contract Debt Deferment Request Checklist. If the AO determines the package requires revisions, the AO will return the package to the ACO for appropriate action and copy the Contracts Director/Team Supervisor for awareness. The ACO resubmits the request after revisions have been made and requested actions taken. Upon receipt of an adequate package as determined by the AO, the AO forwards to the package to the Region/Directorate/Center Commander/Director and updates the Debt Deferment Tracker.

g. The Commander/Director reviews the package and approves release of the recommendation to the Agency/Service FM.

h. Upon approval of the Commander/Director, the AO forwards the package to the Agency/Service FM and updates the Debt Deferment Tracker.

i. After rendering a decision on the ACO recommendation, the Agency/Service FM will return the Deferment of Payment Agreement to the AO who will log it in and forward it to the ACO.

j. The ACO will close the coordination with the contractor within 30 calendar days after receiving the Agency/Service FM's decision.

(1) If the FM approves the request for deferment, the ACO will obtain the contractor's signature on the deferment of payment agreement.

(2) If the FM disapproves the request for deferment, the ACO will issue a written notice of disapproval to the contractor.

(3) The ACO will provide to the AO a copy of the signed agreement or the disapproval notification to the contractor.

k. The ACO provides the Service/Agency FM's decision (approval or disapproval) and copies of any executed deferment agreements to the payment office. For DoD debts, the ACO

forwards the executed agreements to DFAS Columbus Debt Management Office, DFAS-JAIAC/CO (DoD 7000.14-R, Volume 16, Chapter 5, paragraph 050202).

l. If the contractor appeals after the request for deferment of collection of debt has been submitted to the AO, the ACO must update the following documents to include the current appeal information and submit updated document to the AO:

- (1) Deferment of payment agreement.
- (2) ACO recommendation for deferment of payment.

m. The ACO will provide updates of any changes to the debt deferral request such as settlement agreement reached, case dismissed, etc., to the AO.

n. The AO will update status on the Debt Deferment Tracker throughout the process.

o. Semiannually, not later than 30 calendar days after the period ending September 30 and March 31, the AO will send a cumulative debt deferment report including all open cases and any closed cases during the 6-month period, with an information memorandum to the Executive Director, Contracts, and Contract Performance Management Division Director, through the Performance Advocate at the HQ Contract Debts In-box (email address located on resource page), with the following information as shown on the Debt Deferment Tracker template on the resource page:

(1) Debt deferment requests received including the total quantity, contractor, ACO, Contract Management Office (CMO), Service/Agency, date received, debt amount, and ASBCA or COFC number.

(2) Date debt deferment processed to the Service/Agency FM.

(3) Date debt deferment decision executed by the Service/Agency FM.

(4) Debt deferment decision from the Service/Agency FM.

(5) Number of days to process the debt deferment package from the date of deferment request until the memorandum is sent to the Agency/Service FM.

p. The Performance Advocate will forward the memorandum to the Executive Director, Contracts, and Contract Performance Management Division Director.

3.6. INSTALLMENT PAYMENTS. If a contractor requests an installment payment agreement, the ACO must notify the contractor to send a written request for an installment payment agreement to the payment office identified in the contract for processing (FAR 32.607-1).

3.7. DEFERMENT AND DISPUTES UNDER THE CONTRACT DISPUTES ACT. In accordance with Sections 7101 through 7109 of Title 41, United States Code (U.S.C.), also known as the “Contract Disputes Act of 1978,” a contractor may appeal a decision of indebtedness to the ASBCA or COFC. The contractor may request in writing, a deferment of debt payment and/or installment payment agreement until the appeal is decided (DoD 7000.14-R, Volume 16, Chapter 5 paragraph 050601). Appeal of a COFD neither automatically supports debts deferment, nor changes the procedures stated herein except as specifically stated in paragraph 3.5.c.

3.8. FOLLOW-UP ACTIONS ON DEBT COLLECTION. The ACO must periodically follow-up with the payment office to determine whether the debt has been collected and credited to the correct appropriation(s).

a. If the ACO receives the contractor’s payment, the ACO must immediately forward the payment to the disbursing office, with proper documentation, to allow posting into the accounting system. The ACO should request a confirmation of receipt of the payment from the disbursing office (DoD 7000.14-R, Volume 16, Chapter 1, paragraph 010202).

b. If the ACO and contractor seek to engage in settlement discussions relating to the COFD to promote an open exchange of information during the settlement discussion, the ACO should initiate an Agreement to Conduct Confidential Settlement Discussion document as shown on the resource page. The ACO must initiate this Agreement prior to settlement discussions with a contractor.

c. If the contractor does not pay the debt or pursue one of the options outlined in the COFD demand for payment letter, follow the procedures in DCMA-MAN 2501-09, “Contracts Disputes and Claims.”

3.9. BANKRUPTCY. If the ACO receives a notice of bankruptcy, the ACO must immediately comply with the requirements outlined in DoD 7000.14-R, Volume 16, Chapter 5, paragraph 050801.

a. When either the procuring contracting officer (PCO) or ACO office receives information that bankruptcy proceedings have been initiated, the receiving office must immediately notify DFAS Office of General Counsel by email at cco-ogc@dfas.mil or mail to:

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

b. At a minimum, the notification must include:

- (1) The name of the contractor.
- (2) The court in which the bankruptcy petition was filed.

- (3) The date of the filing of the bankruptcy petition.
- (4) The bankruptcy court docket number (if available).

GLOSSARY

G.1. DEFINITIONS.

Assigned Legal Counsel. Those counsel who are directly assigned by the Office of General Counsel to serve as the primary legal advisor to a specific DCMA ACO.

Debt. An amount of funds or property that an appropriate official of the Federal Government has determined to be due the U.S. Government from a person, organization, or entity other than another federal agency, which the Government is entitled to receive immediately (Section 3701 of Title 31, U.S.C.).

Operational Unit. DCMA Eastern, Central, and Western Regional Commands; the International Directorate, and Special Program Directorate.

G.2. ACRONYMS.

ASBCA	Armed Services Board of Contract Appeals
ACCS	Automated CAS Collection System
ACO	Administrative Contracting Officer
AO	Action Officer
CACO	Corporate Administrative Contracting Officer
CDRC	Contract Disputes Resolution Center
CFO	contract financing office
CMO	Contract Management Office
COFC	Court of Federal Claims
COFD	Contracting Officer's Final Decision
DACO	Divisional Administrative Contracting Officer
DCMAS	DCMA Special Programs
DFARS	Defense Federal Acquisition Regulation Supplement
DFAS	Defense Finance and Accounting Service
FAR	Federal Acquisition Regulation
FCG	Financial Capability Group
FM	financial manager
FMR	Financial Management Regulation
HQ	headquarters
MOCAS	Mechanization of Contract Administration Services
PCO	Procuring Contracting Officer
PGI	Procedures, Guidance and Information
U.S.C.	United States Code

REFERENCES

- Bureau of the Fiscal Service (Fiscal Service), “Managing Federal Receivables,” Appendix 8, March 2015
- DCMA Manual 2501-09, “Contract Disputes and Claims,” March 26, 2018
- Defense Federal Acquisition Regulation Supplement (DFARS) 232.6, “Contract Debts”
- DoD Directive 5105.64, “Defense Contract Management Agency (DCMA),” January 10, 2013
- DoD 7000.14-R, Volume 16, Chapter 1, “Department of Defense Financial Management Regulation (DoD FMR),” January 2016
- DoD 7000.14-R, Volume 16, Chapter 2, “Department of Defense Financial Management Regulation (DoD FMR),” January 2016
- DoD 7000.14-R, Volume 16, Chapter 5, “Department of Defense Financial Management Regulation (DoD FMR),” January 2016
- Federal Acquisition Regulation 32.6, “Contract Debts”
- Federal Acquisition Regulation 33.2, “Disputes and Appeals”
- Federal Acquisition Regulation 52.232-17, “Interest”
- Federal Acquisition Regulation 52.233-1, “Disputes”
- United States Code, Title 31
- United States Code, Title 41, Sections 7101-7109 (also known as “Contracts Dispute Act of 1978”)