

# Contract Financing Guideline - 6.3.G (10/18/04)

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## Last Update: (10/18/04) RShibata:kma - 6.3.G.0

This guideline was extensively revised to address administrative changes throughout the document.

### Definitions

**Advance payments** - Advances of money less than full payment prior to performing work or incurring cost for the purpose of complete performance under a contract or contracts.

**Partial payments or milestone payments** - Payments made under a contract, upon the submission of proper invoices or vouchers, for supplies or services delivered, where such

supplies or services are only a part of the total contract requirement.

**Progress Payments** – There are two types of progress payments:

- payments based on costs are made on the basis of costs incurred by the Contractor as work progresses under the contract; and
  - payments based on a percentage or stage of completion, work phases, etc. Payments should be commensurate with work accomplished, which meets the quality standards established under the contract.
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## **Contract Financing Requirements - 6.3.G.1**

### **Order of Preference - 6.3.G.1.a**

The following order of preference for financing should be followed:

- private financing on reasonable terms,
- partial/milestone payments,
- progress payments based on:
  - incurred costs, or
  - percentage of completion (construction),
- advance payments, and
- prepayments.

**Note:** While there may be valid exceptions in specific cases or classes of cases, the Contractor is expected to provide financing for their efforts and should not expect Sandia to provide financing. Sandia should provide financing as noted above only under exception circumstances. If Sandia allows for financing, the Sandia Contracting Representative (SCR) should obtain consideration from the Contractor based on the time value of money. In any case, allowance for financing must be justified in the Procurement Action Summary (PAS).

### **Financial Approval - 6.3.G.1.b**

Guideline 3.5 - Financial Evaluations of Contractors, requires financial evaluation by Treasury and Travel Services when:

- paying advance payments in excess of \$100K,
  - paying progress payments (Sandia Auditing Department approval required except for construction contracts), or
  - paying partial/milestone payments when the value/acceptability of the partial receipt is dependent upon receipt of all items or services called for in the contract.
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## **Partial/Milestone Payments - 6.3.G.2**

Partial/milestone payments may be allowed under a an order/contract, upon the submission of proper invoices or vouchers, for supplies delivered or services rendered and accepted, where such supplies or services are only a part of the total contract requirement. This should be authorized in the order/contract payment terms. Partial/milestone payments must be commensurate with the value of goods and services received. Partial/milestone payments are not considered to be a form of contract financing.

Some Contractors may request use of a document to note completion and acceptance of a milestone for purposes of revenue recognition and payment authorization. Typically, this document would be signed by the SCR or the Sandia Delegated Representative (SDR). While use of such document is acceptable, the SCR should carefully review the language in any acceptance document to avoid the abrogation of rights that Sandia may have with regards to inspection and rejection. The SCR should consider obtaining Sandia Legal review prior to the execution of such document.

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## **Progress Payments - 6.3.G.3**

The use of progress payments is determined by the SCR. Progress payments are used on other than cost-type contracts, which involve long lead times or preparation period (normally four (4) months or more for small business concerns; six (6) months or more for others), or when a contract may require Contractor's predelivery expenditures that will have a material impact on the Contractor's working funds. Except for construction, Auditing should be consulted prior to entering an agreement for progress payments based on cost incurred to determine whether or not a Contractor's accounting system is adequate.

### **Applicable Standard Clauses - 6.3.G.3.a**

The following clauses are used in contracts authorizing progress payments:

- SC 225-PP - Progress Payments
- SC 229-PC - Progress Payments-Construction

**Note:** No standard clause is necessary for progress payments (based on costs) in cost-type contracts.

The clauses specify the amount of progress payments as a percentage of the estimated work and/or cost of material. The clauses also specify that title to property acquired by the Contractor for performance of the contract and chargeable to the contract shall vest in the government.

### **Solicitation - 6.3.G.3.b**

Proposals conditioned on progress payments when the solicitation did not specify progress payments may be rejected as nonresponsive. If a majority of the offerors request progress payments, or a significant cost advantage can be realized by the inclusion of progress payments, the SCR may consider revising the solicitation to provide for progress payments. If a proposal including progress payments is considered for award, the opportunity to request progress payments must be offered to all recipients of the solicitation who have a high probability of success. After award, progress payments normally will not be authorized. If authorized, adequate consideration should be obtained.

### **Fixed-Price Construction Contracts - 6.3.G.3.c**

If progress payments are offered for construction efforts, a price breakdown corresponding to the progress schedule may be requested by the SCR (e.g., for high-value construction). The SCR may use SC 230-PB – Price Breakdown for requesting a price breakdown.

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## **Advance Payments - 6.3.G.4**

Advance payments, with specified interest, may be used to pay direct labor, material and overhead on fixed-price contracts or allowable costs on Cost-Reimbursement (CR) contracts.

This method of financing should be used in rare cases. It is not Sandia's role to provide working capital for Contractors, and administration of advance payments is time consuming and costly for both parties. The SCR should exhaust all other alternatives (payment on partial deliveries, progress payments or change of contract Terms and Conditions (Ts&Cs)) prior to using this method.

### **Cost-No-Fee Contracts with Educational or Research Institutions - 6.3.G.4.a**

Interest charges may be waived for Research and Development (R&D) work under Cost-No-Fee

(CNF) contracts with educational or research institutions. The SCR should tailor SC 202-KAP – Advance Payments to read Clause < > Advanced Payments - (Special) and the Agreement for Special Bank Account, deleting inapplicable statements or paragraphs; subsequently obtaining Legal approval of the revised clause.

## **Special Bank Account - 6.3.G.4.b**

Advance payments must be deposited in a special bank account with any balance subject to a Sandia lien. Checks drawn by the Contractor against this account are to be countersigned by the SCR or an SDR designated in writing by the SCR. The Agreement for Special Bank Account is to be executed and signed by representatives of all three parties: Sandia, Contractor, and bank. The bank agreement outlines the procedure for determining the appropriate rate of interest. Interest charges are to be paid by the Contractor to Sandia on the daily-unliquidated balance of advance payments. Refer to SC 202-KAP for direction in determination of the daily-unliquidated balance and for computing the interest charge. Foreign purchases are exempt from the Special Bank Account requirements. The SCR should contact Sandia Accounts Payable for assistance in setting up the account. The SCR should consider incorporation of billing instructions to the Contractor for the advance payment.

## **PAS Documentation - 6.3.G.4.c**

The PAS shall document that:

- Contractor has stated that private financing is unavailable and it will not be able to perform the contract without advance payments.
- Contractor has the financial capacity to perform the contract if it is given advance payments.
- Allowing advance payments for this Contractor will be in the best interests of Sandia and the government.
- The amount of advance payment made to the Contractor is commensurate with the work to be performed, the timing of payments to the Contractor due to invoices, and considers the amount of self-financing provided by the Contractor.
- To what extent the SCR attempted to get consideration.
- The SCR should consider if additional documentation, such as copies of letters of rejection from financial institutions may be appropriate for inclusion into the contract file.

## **Approvals for Advance Payments - 6.3.G.4.d**

Maximum amounts of advance payments may not exceed 90 percent of the total contract price or estimated cost as amended, excluding fixed fee, if any.

Advance payments over \$100K require prior approval from appropriate Procurement Department

Manager.

Advance payments for foreign purchases, at any dollar level, require approval of Procurement Department Manager or their designee.

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## **Prepayments - 6.3.G.5**

Prepayment is the least desirable form of contract financing and, like advance payments, should only be used in extremely rare circumstances after all other alternatives have been exhausted. Prepayments, not exceeding the total purchase amount, are made directly to the Contractor prior to delivery and acceptance of any goods and/or services. When considering the use of prepayments, the SCR should assess the risk to Sandia versus the need for procuring the item(s)/service(s) in this manner. No clause is required in the order/contract when prepaying the procurement.

### **Approvals for Prepayments - 6.3.G.5.a**

Orders/contracts that include prepayments of any amount require Procurement Department Manager approval. Prepayments exceeding \$1 million require the approval of the Procurement Deputy Director.

### **Exceptions for Approvals for Prepayment - 6.3.G.5.b**

Some purchases that require prepayment for goods and services are not considered to be a form of contract financing. In such cases, prepayment, not exceeding the procurement amount, may be made directly to the Contractor without the establishment of a Special Bank Account, the inclusion of a clause and without any approvals. These exceptions include:

- payment of authorized insurance premiums,
- extension or connection of public utilities,
- subscriptions to newspapers, magazines, periodicals and other publications,
- the enforcement of the customs or narcotic laws,
- rent or lease payments,
- orders from state and local government agencies and institutions,
- software license rentals, software maintenance agreements and update subscriptions, and
- hardware maintenance for extended warranties or service agreements where it is clearly in Sandia's or the government's best interest to do so.

In any case, the Contractor must communicate to the SCR a request for a prepayment and justify the reasons why a prepayment is necessary.

## **Responsibilities of the SCR - 6.3.G.5.c**

The SCR is responsible for determining the:

- validity of such a request,
- reasonableness of the amount of prepayment requested, and
- risk-benefit relationship in granting a prepayment.

The SCR must also determine the fiscal viability of the Contractor and their past experience in the performance of contracts with Sandia and the government. As a best business practice, the SCR should seek financial approval as described in Guideline 3.5 – Financial Evaluations of Contractors, prior to agreeing to a request for a prepayment.

The SCR must document the following in the PAS:

- validity of the prepayment request;
- rationale for granting a prepayment;
- viability of the Contractor;
- risk to Sandia of granting a prepayment, to include a discussion of the potential risk of the Contractor failing to complete performance on the contract;
- reasonableness of the amount of the prepayment;
- discussion of the process used to determine the information noted above; and
- recommendation regarding granting a prepayment and the reasons for the recommendation.

Mere availability of internal budget is not an adequate reason to use a prepayment.

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## **Prepayments to Integrated Contractors and Federal Agencies - 6.3.G.6**

When an Integrated Contractor (IC) requires payment prior to performing work or incurring

costs, follow the specific procedures below.

Determine if a prepayment is required. If no, then process as a normal Integrated Contractor Order (ICO). If yes, follow the procedures in the table below:

**If the IC requires a prepayment and...**

**Then the SCR will...**

you have a blanket letter authorizing prepayment,

cite the document date and authorization in the order/revision and include a copy of the document in the contract file.

**Example citation for order:** Prepayment authorized per Army Armament, Munitions and Chemical Command letter dated April 18, 1986.

you do not have a blanket authorization,

request the IC to send a formal request for prepayment to you (via fax, mail, email, etc.). Cite the document date and authorization in order/revision and include a copy of documentation in the contract file.

**Caution:** Do not process the order without the documentation.

refuses to send a written request,

document the phone conversation (date, name of person requesting prepayment, circumstances, etc.). Cite conversation in the order/revision and include copy of the documentation in the contract file.

the requirement is so urgent that it cannot be held for written documentation,

document the phone conversation (date, name of person requesting prepayment, circumstances, etc.). Cite conversation in the order/revision, include a copy of documentation in the contract file, and request a follow-up written confirming request from the IC. Include this in contract file when received.

All ICO prepayments must be approved by the Procurement Department Manager.

The SCR shall distribute the order in the normal manner, except sends Contractor copy with window envelope and routing slip to Accounts Payable. Accounts Payable will draw a check for the authorized amount to be mailed to Contractor with a copy of the order.

Prepayments to Federal Agencies (FAs) do not require special approvals.

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## Other Types of Contract Financing -

## 6.3.G.7

### Guaranteed Loans

Guaranteed loans, usually called "V-loans," are essentially the same as other loans made by financing institutions without guarantee, except that under a standard form of guarantee agreement the guaranteeing agency is obligated on demand of the lender to purchase a stated percentage of the loan and to share losses in the amount of the guaranteed percentage. Funds are disbursed and collected by the lending institution, and its personnel administer the loan. Government funds are not involved except for purchases of the guaranteed portion of loans or settlement of losses. Each Federal Reserve Bank is designated and authorized to act, on behalf of each guaranteeing agency, as fiscal agent of the United States in the making of contracts of guarantee and in otherwise carrying out the purposes of the Defense Production Act of 1950, as amended, in respect of private financing institutions. Pursuant to Regulation V of the Board of Governors of the Federal Reserve System, any private financing institution may submit to the Federal Reserve Bank of its district an application for guarantee of a loan or credit.

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## Applicable Clauses - 6.3.G.8

- SC 101-KF5 - Federal Agency Order Preamble
  - SC 202-KAP - Advance Payments
  - SC 225-PP - Progress Payments
  - SC 229-PC - Progress Payments - Construction
  - SC 230-PB - Price Breakdown
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## References - 6.3.G.9

- Guideline 5.9 - ICO/FAO
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Send feedback on ideas and information on this page to the Process Expert, Randy Shibata.



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