

CONTRACT FINANCIAL MANAGEMENT

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CHAPTER 1

GENERAL OVERVIEW

0101. **GENERAL**

010101. This volume covers policy and standard procedures associated with contract financial management. Developed in six distinct chapters, this volume provides National Aeronautics and Space Administration (NASA) financial management personnel with the provisions necessary to ensure that contracts with outside vendors are managed in the most financially sound manner possible.

010102. In general, this volume focuses on functions associated with contract payments, claims, collections, and reconciliation functions. The volume is divided into six chapters as follows:

1. General Overview
2. Contract Payment
3. Claims
4. Miscellaneous Payments
5. Federal, State, Local, and Foreign Taxes
6. Contractor Debt Collection

CHAPTER 2**CONTRACT PAYMENT**0201 **OVERVIEW**

This chapter sets forth policy and procedures which govern examination, certification and payment of vouchers, invoices, contract financing requests, claims and other payment requests.

0202 **AUTHORITY AND REFERENCES**

020201. The statutory authorities governing the administration of all public accounts are contained in 31 USC 3301, et. seq.

020202. Relevant references to published regulations are made throughout the chapter where applicable. Refer to specific section for citations. Citations are made primarily from the following sources.

- A. Federal Acquisition Regulations (FAR)
- B. NASA FAR Supplement (NFS)
- C. United States Code (USC)
- D. Comptroller General Decisions (Comp. Gen.)
- E. Code of Federal Regulations (CFR)

0203 **ROLES AND RESPONSIBILITIES**020301. **NASA CENTER CFO**

A. NASA Center CFOs are responsible for ensuring that payments are processed timely and accurately. With responsibilities for determining entitlement and authorizing and executing payments and collections management shall:

1. Create, document, and maintain an organizational structure that appropriately segregates assigned duties, emphasizes adherence to policies and procedures, and employs sound internal accounting and system access controls.

2. Keep disbursement (entitlement) and accounting records accurate and in balance from contract execution through closeout, and monitor the causes of late payments and interest penalties incurred.

3. Validate cash management and payment performance quality and effectiveness on an annual basis.

4. Employ controls that limit access to data that are electronically transmitted, including appropriate separation of duties. Such controls shall provide reasonable assurance that deliberate or inadvertent manipulation, modification, or loss of data during transmission is detected.

0204 DEFINITIONS

020401. Contract. Contract means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 USC 6301, *et seq.* For discussion of various types of contracts, see FAR Part 16.

020402. Electronic Funds Transfer. Electronic Funds Transfer (EFT) means any transfer of funds, other than a transaction originated by cash, check, or similar paper instrument that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes Automated Clearing House transfers, Fedwire transfers, and transfers made at automatic teller machines and point-of-sale terminals. For purposes of compliance with 31 USC 3332 and implementing regulations at 31 CFR 208, "Management of Federal Agency Disbursements", the term "electronic funds transfer" includes a Governmentwide commercial purchase card transaction.

020403. Invoice. Invoice means a contractor's bill or written request for payment under the contract for supplies delivered or services performed (see also "proper invoice" 020503 C below).

020404. Voucher. The term "voucher" generally encompasses vendor invoices or other approved Government forms prepared by or for the creditor requesting payment for services, supplies, equipment, transportation, or any other transaction, which obligates NASA and ultimately results in expenditure.

020404. Receiving Report. Receiving report means written evidence that indicates Government acceptance of supplies delivered or services performed (see Subpart 46.6). Receiving reports must meet the requirements of 32.905(c).

0205 DOCUMENTATION REQUIREMENTS FOR CONTRACTS AND OTHER PAYMENTS

020501. Contracts

A. A contract or purchase order serves as documentation of legal obligation that is needed to make payments.

B. Promptly upon completion of the award of contracts or the issuance of purchase orders, contracting officers will prepare and forward one copy to the appropriate Center financial management office the originals or signed copies of all procurement documents, (contracts, letter contracts, purchase orders, grants) as specified in Federal Acquisition Regulation (FAR) 4.201 and NASA FAR Supplement (NFS) 18-4.202.

C. Review of Procurement Documents. Contracts should be reviewed when received in the Center financial management office to assure compliance with requirements to substantiate the contract as a valid obligation with provisions sufficient for the payment process to occur. This review reduces the necessity for a detailed examination of the contract when invoices are presented for payment. If a problem is detected, the Center financial management office will notify the contracting office personnel of items in the contract that need to be corrected. Errors in contractual documents must be corrected by a formal modification that shall be issued by the contracting officer in a timely manner. Center financial management office will not make any changes to contracts.

D. Contract Payment Records. Center financial management offices will maintain individual contract payment records in such detail that the financial status of each contract can be readily determined and reported to the contracting officer to assist in determination of whether payment of a given invoice should be approved. Individual payment records for contracts (purchase orders or other procurement documents as applicable) should, as a minimum, provide the following information:

1. Contract number
2. Date of contract
3. Anticipated completion date

4. Total cost per contract
5. Cost billed to date (include current invoice)
6. Percent of contract billed
7. Total fee per contract
8. Total fee billed to date
9. Billing period covered
10. Total contractual reimbursement less fee
11. Total fee paid to date
12. Exceptions taken on NASA Form 456, Notice of Contract Costs Suspended and/or Disapproved
13. Withholding
14. Number of last invoice paid.

E. Central Contractor Registration (CCR). Under 31 USC 3332, “Required Direct Deposit” as implemented by 31 CFR 208 “Management of Federal Agency Disbursements” and FAR 32.11, federal payments after January 1, 1999, shall be made by EFT unless the waiver provisions at FAR 32.1103 apply. Under FAR 4.1102, unless specifically permitted to be excluded, a contractor shall be registered in the CCR database prior to contract award (lack of registration in the CCR database makes an offeror ineligible for award per FAR 52.204-7). Through the FAR solicitation/contract clause 52.204-7, the contractor acknowledges that prospective awardees must be registered in the CCR database prior to, during performance, and through final payment of any contract (except awards to foreign vendors for work to be performed outside the United States). Contracts are considered grandfathered that were issued prior to July 26, 1996, without CCR database registration and EFT clauses. In that situation, EFT enrollment is voluntary and payment cannot be withheld.

1. The contractor is responsible for providing CCR database registration and EFT information.

2. The Center Office of the Chief Financial Officer shall notify the contractor when EFT information is not provided under the mandatory contract clauses. The notice shall indicate exercise of the government's mandate to pay via EFT. Further, the notice shall indicate that the government will return vouchers and invoices and withhold payment until correct EFT information is entered into the CCR database (FAR 52.232-33) or until received by the designated office (FAR 52.232-34).

3. The NASA Center Office of the Chief Financial Officer shall take the following actions when a contract that is not exempt from CCR (see FAR 32.1103) does not include the clauses providing for CCR database registration and payment by EFT.

a. Ascertain from the contracting officer an explanation for this apparent omission. If it is an omission return the contract to the contracting office to rectify the lack of compliance with CCR and EFT requirements. Request that the contract be modified to include the appropriate CCR database registration and EFT clauses. A copy of the request shall be sent to the contractor.

b. Notify the senior acquisition official and senior financial manager if a particular contracting office repeatedly fails to comply with the mandatory EFT and CCR contracting requirements. Request that appropriate clauses be inserted in all existing and future contracts.

c. Notify the contractor of applicable CCR database registration and EFT requirements and request voluntary compliance. Send a copy of the notice/request to the applicable contracting office.

d. Pay the contractor and notify the applicable contracting office if the contractor is unwilling to comply with CCR database registration and EFT requirements, or threatens or initiates litigation. Request the contracting office to insert the appropriate clauses in existing and future contracts.

020502. Receipts. Maintain receipt documentation (such as receiving reports) to document evidence of receipt of goods.

020503. Invoices.

A. Purchase order or contract terms and conditions specify the payment due date(s), acceptance period following delivery to inspect and/or test goods or evaluate services provided (see FAR 32.905(b)(1)), entitlement to milestone or other partial payments, and entitlement to interest penalties when the payment is late. Vendor and contractor delivery and partial delivery payment requests are submitted by invoice, when required by the contract. Invoice payments include progress payments under construction contracts (i.e., payments made on the basis of stage or percentage of completion). Under certain conditions, a delivery ticket or receiving report (e.g., DD

Form 250) may serve as an invoice. Invoices are written or electronically submitted documents that must include the information specified in 5 CFR 1315.9(b) and FAR Subparts 32.9 and 32.11. Invoices shall be submitted to the designated billing office specified in the order or contract.

B. There is no prescribed format for the invoice but the invoice must contain certain information as required by FAR 52.232-25(a) (4). The forms used in commercial transactions are acceptable. An original contractor invoice specifically is required as a condition of the contract. If an invoice is lost and the contractor submits another one for payment, the second invoice should be marked in bold letters that this is a duplicate invoice. This bold marking should help ensure that a payment will not be made twice on the same invoice. Automated (computer generated, etc.) prepared invoices are also acceptable. The contractor must furnish the appropriate number of invoice copies required by the contract (normally four). The invoice copies must be legible and remain legible under normal use until the schedule time for destruction.

C. Documents used for support and payment of invoices are 1) procurement documents, such as a contract or purchase order, 2) an invoice (either a vendor's invoice or approved voucher form prepared by or for the creditor) representing the amount claimed, 3) evidence of receipt and acceptance of goods or services ordered, and 4) the summary scheduling document that identifies the amount to be paid.

D. Proper Invoice. The conventional trade invoice with supporting documents, such as the purchase order, requisition, receiving report, inspection report and other pertinent addenda. An invoice must include specific information for it to be considered a proper invoice for payment. An invoice that does not include all information specified in the contract shall be returned, with a statement of reasons as to why it is not a proper invoice. The following correct information constitutes a proper invoice and shall be included for payment:

1. Name and address of the contractor or payee.
2. Invoice date and invoice number or other qualifying number. (Contractors should date invoices as close as possible to the date of mailing or transmission.)
3. Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).
4. Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services.
5. Shipping and payment terms (*e.g.*, shipment number and date of shipment, discount for prompt payment terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

6. Name and address of contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

7. Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.

8. Taxpayer Identification Number (TIN). The contractor must include its TIN on the invoice only if required by agency procedures. (See 4.9 TIN requirements.)

9. If not provided in the contract documents banking information necessary for NASA to make electronic funds transfer payment to the payee's financial institution or agent, unless procedures provide otherwise, or except in situations where EFT requirement is waived under 31 CFR 208.4

10. other substantiating documentation or information as required by the contract.

E. Lost or Destroyed Invoices. When the vendor states that an invoice has been submitted and payment has not been received, a duplicate copy of the original invoice must be obtained from the vendor. The invoice and invoice schedule will be processed through regular channels. Documentation must be maintained with the invoice that provides a full explanation or statement of all facts surrounding the loss or destruction of the original invoice; and a statement that steps have been taken to prevent duplicate payments. The documents must also be conspicuously marked duplicate original to prevent duplicate payment.

F. NASA Vendor Agreements. Invoices are not required when services of a recurring nature are performed under NASA-vendor agreements providing for payments in a definite amount and at a fixed periodic interval. In agreements, which permit payments of this type, appropriate internal controls will be instituted to ensure that the amounts paid are correct, and that appropriate steps have been taken to prevent duplicate payments. Supporting documentation must be readily available for use by NASA, GAO, and audit representatives for DCAA or other agencies, which the responsibility for NASA contract audit has been delegated.

G. Acceptance of Original Invoice or Copies. While original invoices are preferred, payments may be made based upon any media which produces tangible recordings of information in lieu of "written" or "original" paper document equivalents should be used to expedite the payment process rather than delaying the process by requiring "original" paper documents. NASA Center's should ensure adequate Internal controls are in place to ensure the integrity of the data and to prevent payment duplication.

H. Non-receipt of Invoices. The Center financial management office should request invoices and supporting documents from contractors where there is no question of the government's liability and there is no dispute of facts. This is not held as inviting a claim as it is in the interest of prompt payment of an open account (30 Comp Gen 266 (1951)). Faxed invoices are received at the discretion of the Center financial management office. Invoices sent to the office designated in the contract by FAX are acceptable provided they meet the copy and content of this section and the legibility requirements in the FAR Part 32. Do not accept transmission if invoices must contain a certificate and original signature of the payee or must be supported by original documentation such as claims for prepaid freight charges.

020504. In some cases Ordering forms for Supplies or Services such as Optional Form 347, prescribed by GSA may serve as both the order and the invoice.

020505. Public Voucher for Purchases and Services Other Than Personal - SF 1034. This form is used as a document to support disbursements for purchases and services other than personal.

020506. Public Voucher for Refunds - SF 1047 and SF 1049. These forms are used authorize withdrawals from NASA deposit accounts for payments in accordance with the purpose for which the deposit was made and to process refunds due remitters.

020507. Voucher and Schedule of Withdrawals and Credits - SF 1081. This form is used by one Federal agency as a claim against another.

020508. Public Voucher for Transportation Charges - SF 1113. This form is submitted by carriers for passenger and freight transportation furnished NASA on an U.S. Government Transportation Request or Government Bill of Lading.

0206 INVOICE PROCESSING

020601. No payment is made without evidence of a liability and a determination of entitlement. The nature and extent of procedures vary for financing and invoice payments. Entitlement to financing payments shall be determined by contract terms and conditions, including any required approvals by contracting officers, contract administrators, or contract auditors. Entitlement to invoice payments shall include, as applicable, additional determinations such as proof of receipt and acceptance, receipt of a proper invoice, and verification of all computations. The Fast Pay procedure allows payment prior to verification that supplies have been received and accepted, under the limited conditions listed in FAR 13.402. Since payment is made based on the contractor's certification, Center financial management offices shall ensure the performance of post payment audits. The post payment audits must be completed within 30 days after payment. The audits shall confirm acceptance and receipt and include

matching with payment documents. Funds validation shall be performed immediately before the time of payment.

020602. Examination. The examination made prior to payment will ensure that:

A. The expenditure or collection is authorized by law or regulation and is in accordance with the terms of the applicable agreement;

B. The procurement document was issued before the delivery of the articles or the furnishing of services, confirms a verbal authority for the delivery or rendering of such articles or services, or constitutes a retroactive approval of the transaction. In the latter case, the authority for such retroactive authorization will be furnished;

C. The procurement document was issued by an authorized employee acting under a valid delegation of authority. The signature of the designee must be on record in the financial management office of the Center either in the form of Center memorandums or official NASA publications. Verbal orders must be promptly confirmed in writing. Written confirmations will indicate the date of the verbal order;

D. The required administrative approvals (administrative certification on a receiving report or invoice as applicable) are executed by an employee designated as a proper administrative approving official who is aware of the facts needed to determine the quantity and quality of the articles or services delivered or rendered and accepted;

E. The quantities, prices and amounts are correct and in agreement with the contract or agreement;

F. The proper documents are enclosed to verify the payment amount;

G. The appropriation or fund citations are valid.

H. Invoices received involving an alleged mistake in bid will be held until the matter has been satisfactorily resolved. Evidence of an administrative determination will be obtained from the contracting officer prior to completing the processing of the invoice for payment;

I. All applicable deductions were made and credited to the proper account in the correct amount. Only cost effective discounts are taken. Overstatements in the amount claimed and any known indebtedness of the payee to the United States will be adjusted before the amount payable is determined.

J. A Taxpayer Identification Number (TIN), which refers to the nine digit Employer Identifying Number or Social Security Number, is provided for each

vendor indicated on the payment invoice unless it has already been obtained and is readily available; and

K. The vendor's banking information is provided unless it has already been obtained and is readily available or the EFT requirement is waived under 31 CFR 208.4.

020603. Examination – Additional Functions. The following additional functions are to be performed by the Center CFO in the review of each contract financing request submitted by contractors for provisional payment:

A. Determine that cumulative costs claimed do not exceed the amount of obligations established and reserved to cover the estimated costs of the contract and modifications

B. Verify that funds have been or are being withheld in amounts sufficient to cover reserves for drawings, patents, or other similar items as specified in the contract;

C. Compare the cumulative fee claimed with contractual limitations on interim fee payments;

D. Determine that the invoice has been provisionally approved for payment by an agency representative that has been delegated such responsibility; and

E. Ensure that copies of paid requests are distributed to the following as applicable: Contracting Officer and Contractor.

020604. Invoicing Discrepancies.

A. Variances. NASA employees shall not alter the payee's name, address, quantity or unit price of supplies and services stated on the invoices submitted. However, there may be variances discovered between the amount claimed by the payee and the proper amount determined by the responsible NASA employee to be payable during the examination of payment documents. If these variances are under claims of a small amount and the documents show that the payee intends to make a claim for the full amount due, an upward adjustment not to exceed \$100 may be made in making the payment. Evidence that the payee intends to claim the full amount shall be filed with the payment documents and may be documented telephone call, receipt of a facsimile request for full payment, or other similar support. Proper internal controls shall be in place to provide assurance that fraud or abuse does not occur. These administrative adjustments may be made without a contract modification of the claim by the payee when it is clear on the face of the payment documents that the adjustment is appropriate.

B. Shipment Shortages/Overages. When a shipment is short of the quantity ordered, the Center CFO shall pay, in compliance with the Prompt Pay Act, the amount of the invoice that supports quantity received. If the receiving report or invoice indicates that the shipment is final, but there are undelivered items remaining, the Center CFO shall contact the contracting officer and advise of the final shipment and request disposition of the remaining items. The contract should be left open until there is a reconciliation of contract price and items delivered or advised by the contracting officer to close the contract. If the receiving report indicates that shipment has been made of quantities in excess of the contractual amounts, determine if the contract contains FAR clause 52.212-10. If so, process as follows:

1. Excess quantities up to \$250 may be accepted and retained by the government without payment to the contractor.

2. Quantities in excess of \$250 will, at the option of the government, either be returned at the contractor's expense or retained and paid for at the contract unit price. The contracting officer should be contacted and a contract modification must be issued to reflect the adjusted quantity when excess quantities are retained.

020605. Administrative Approval. Administrative approvals are written statements by civil service employees attesting to the facts of an individual transaction from personal knowledge. Administrative approval may be accomplished electronically and should include: A) the date of actual receipt of the goods and services at the Center central receiving point or at the location specified in the ordering document unless additional acceptance requirements exist; and B) the date of acceptance and signature of the NASA official duly authorized to accept the goods and services on behalf of the Government.

A. A receiving report may serve as an administrative approval and, in addition to the items identified above, must include the:

1. Contract or other procurement document authorization number;

2. Product or service description;

3. Quantities received, if applicable; and

4. Signature, printed name, title, phone number and mailing address of the receiving official.

B. Defense Contract Audit Agency (DCAA). The DCAA is commonly delegated authority to provisionally approve vouchers on NASA's cost-type contracts. Contractors approved by the DCAA to have adequate billing system internal

controls, however, are authorized to submit interim vouchers (contract financing requests and fee vouchers) directly to NASA Center financial management office. Such authorization does not extend to the first and final voucher of a contract. In cases in which the contract requires the contractor to send invoices to DCAA, the DCAA office or representative specified in the contract would be considered the employee designated to first receive invoices.

C. Administrative Contracting Officer (ACO). The following invoices and vouchers require ACO approval before payment:

1. Completion vouchers under cost-plus fixed fee or other cost-reimbursement contracts,
2. Vouchers and invoices for termination costs under supplemental agreements unless the termination modification specifies the costs to be paid,
3. Vouchers and invoices under time and materials contracts,
4. Invoices for progress payments under fixed-price type contracts,
5. Vouchers and invoices for which the contract requires approval by the ACO before payment,
6. Invoices for the release of “withhold” amounts previously instituted by the ACO, and
7. Any amount requested in which a Center financial management officer requires an ACO signature.

020606. Payment Limitations. The following contract clauses, when applicable, may impose limitations on entitlement to financing or invoice payments.

A. Limitation on Undefined Contracting Actions. In accordance with FAR 16.603-4, letter contracts shall include FAR contract clause 52.216-24. Therefore, the maximum amount of the government’s obligation is the amount specified in the clause.

B. Limitation of Cost or Funds. The basic requirements for contract funding are described in FAR 32.700. No officer or employee of the government may create or authorize an obligation in excess of the funds available or in advance of appropriations. The contracting officer expressly shall condition contracts on the availability of funds. Fully funded, facilities, and incrementally funded cost-type contracts may include FAR contract clauses 52.232.20, 21, or 22. Therefore, the

government's obligation to the contractor (and the contractor's obligation to perform) is generally limited to the funds allotted to the contract.

C. Limitation on Withholding of Payments. In accordance with FAR 32.111(c), noncommercial supply, research and development, service, time and materials or labor hour contracts that include two or more terms that authorized temporary withholding of amounts otherwise payable shall include FAR contract clause 52.232-9. There under, the total amount that may be withheld at any one time shall not exceed the amount that may be withheld under any one clause or contract schedule term. This limitation does not apply to withholding under any clause related to employee wages, the recovery of overpayments, withholdings not provided for in the contract, or to any withholding for which the contracting officer determines the limitation would not be appropriate.

D. Limitation of Government's Obligation. In accordance with FAR 32.705-2, incrementally funded fixed-price contracts (one or more incrementally funded contract line items) shall include FAR contract clause 52.232-20. Therefore, the government's obligation to the contractor (and the contractor's obligation to perform) generally is limited to the funds allotted. The contract clause requires the contractor to notify the contracting officer 90 days prior to the date when the work will reach 85 percent of the amount then allotted.

020607. Assignments. Contractors are permitted to assign moneys due from the Government under a contract for payments aggregating \$1,000 or more if the contract does not prohibit such assignment.

A. The assignee may be a bank, trust company, Federal-lending agency, or other recognized financing institution. Unless otherwise permitted by the contract, the assignment (1) must cover all amounts payable and not already paid, (2) shall not be made to more than one party, and (3) shall not be subject to further assignment, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in financing the contract.

B. Required Documents. In the event of an assignment of claims, the assignee will file written notice of the assignment together with a true copy of the instrument of assignment with:

1. The contracting officer,
2. The sureties upon the bonds, if any, in connection with such contract, and
3. The Center Chief Financial Officer designated in the contract to make payment.

C. Each party will acknowledge receipt by returning to the assignee three copies of the notice of assignment. The assignee will be instructed to forward two copies of the acknowledged notices from each of the parties to the contractor. The contractor will enclose a copy of the notice with the first invoice submitted for payment.

D. Contractor's Recognition of Assignment. When there is a valid assignment of money payable under a contract, it is not necessary to obtain a specific claim from the assignee. The invoice, in support of a payment to the assignee, should clearly indicate that the contractor recognizes the assignment, validity, and the right of the assignee to receive payment. The form or means of indicating such recognition is not material.

E. Assignment Payment. Payments made to an assignee shall include, as a minimum, the name of the contractor and the contract number. The payee must be indicated as, for example, First National Bank, as Assignee of Jones, Miller and Company, 3rd and Erie Streets, Huntsville, Alabama.

1. When requesting vendor financial institution information for Treasury electronic payment systems, Centers will review all contracts to determine if payments have been assigned. If the contract has been effectively assigned, Centers should request financial institution information pertaining to the assignee, not the contractor/vendor.

2. Payment of moneys due under a contract that has been assigned may not be made to the contractor unless the contract is supported by a properly executed release of assignment instrument.

F. Notice of Release of Assignment. When moneys remain payable under the contract and the assignment is released to the contractor, the contractor should file, with the same parties with whom the assignee was required to file, written notice of such release together with a true copy of the instrument of release assignment (22 Comp. Gen. 520). The instrument of release of assignment will be filed with the contract file maintained in the Center Financial Management Office.

G. Contracts Under Which Payment cannot be Assigned. Amounts due or to become due under indefinite quantity contracts cannot be assigned, because such contracts do not specifically obligate the Government to order services or supplies for which payment will aggregate \$1,000 or more. Therefore, contracting officers, Center, Chief Financial Officer and others will not recognize assignments of moneys due or to become due under indefinite-quantity or "source of supply" contracts

CHAPTER 3**CLAIMS FROM CONTRACTORS AND OTHERS**0301 OVERVIEW

030101. This chapter sets forth the policy and procedures relating to claims (including claims involving loss or damage arising from transportation services) against the United States, as represented by NASA, which must be adjudicated by the responsible Government agency before payment is made or denied; waiver of claims of the United States for erroneous payment of pay and allowances, travel and transportation, relocation expenses and allowances, which must be adjudicated by the Director of the Office of Management and Budget; and assignment of claims of monies due, or to become due, under government contracts.

0302 AUTHORITY AND REFERENCES

030201. Relevant references to published regulations are made throughout this chapter where applicable. Refer to the specific section for citations. Citations are made primarily from the following sources.

- A. United States Code (USC) (e.g., 5 USC 5584)
- B. Federal Acquisition Regulations (FAR) (e.g., FAR Part 32.8)
- C. Comptroller General Procedures (Comp. Gen.) (e.g., 5 Comp. Gen. 749)

0303 ROLES AND RESPONSIBILITIES

030301. Headquarters. Headquarters (HQ) responsibility regarding the handling of claims is limited to the following areas.

A. The HQ Chief Financial Officer acts as the liaison between the responsible government agency and the Center, Chief Financial Office, when claims can not be disposed of administratively.

B. The CFO handles the development of claim vouchers, which are issued to the Centers for payment.

030302. Centers. Center Chief Financial Officer and staff have primary responsibilities in the handling of claims.

A. Centers are responsible for handling and filing the initial claims that are received from the responsible government agency. The Center, Chief Financial Officer, handles the disposing of claims administratively.

B. Center CFO takes action for those claims that require adjudication by responsible government agency. Submission requirements, discussed under 0305 Policies and Procedures, must be followed.

C. Center CFO makes payment to assignees of claims after documentation has been received, reviewed, and approved.

D. Center CFO is responsible for settling commercial accounts for which they have responsibility.

E. Center CFO refers doubtful claims.

030303. Center Chief Counsel. Center Chief Counsel has a minor role in the claims handling process. There are times where it is necessary for Chief Counsel to get involved, particularly when it has been determined that a false claim has been submitted. Additionally, the Center CFO coordinates claims that require adjudication through the Center Chief Counsel.

0304 DEFINITIONS

030401. Claims. Claim means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. However, a written demand or written assertion by the contractor seeking the payment of money exceeding \$100,000 is not a claim under the Contract Disputes Act of 1978 until certified as required by the Act. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim, by written notice to the contracting officer as provided in 33.206(a), if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

030402. Responsible Government Agency. The Responsible Government Agency is the Federal Office that is required by statute or regulation to pay a specific type of claim.

030403. Assignment. Assignment is defined as a transfer of assignment of any part of a claim against the United States Government or of an interest in the claim or the authorization to receive payment for any part of the claim. An assignment maybe made only after a claim is allowed, the amount of the claim is decided, and a warrant for payment of the claim has been issued.

030404. Surety. Surety is an individual or corporation legally liable for the debt, default, or failure of a principal to satisfy a contractual obligation. The types of sureties referred to are as follows: 1) An individual surety is one person, as distinguished from a business entity, who is liable for the entire penal amount of the bond, 2) A corporate surety is licensed under various insurance laws and, under its charter, has legal power to act as surety for others, and 3) A cosurety is one of two or more sureties that are jointly liable for the penal sum of the bond. A limit of liability for each surety may be stated.

0305 POLICIES AND PROCEDURES

030501. NASA's policy is to promptly process claims received and pay if appropriate. Denial of claims are based on laws, statutes, decisions of the Comptroller General or the Executive Branch agency out of whose activity the claim arose, and other legal written documentation. Denial of waiver of claims is based on laws, statutes, decisions of the Comptroller General (CG), Code of Federal Regulations, and promulgations of central regulatory agencies, or other legal written documentation.

030502. In cases where an overpayment concerns a debt which clearly does not fall within the provisions of 5 USC 5584 "Claims for Overpayment of Pay and Allowances, and of Travel, Transportation and Relocation Expenses and Allowances" as amended, the NASA Headquarters, Chief Financial Officer and Center, Chief Financial Officer, or the Personnel Director shall advise the applicant that waiver may not be considered because the debt does not fall within the provisions of the law.

030503. This policy does not apply to payments to other than NASA employees, or an advance made to an employee under the provisions of Subchapters I and II, Chapter 57 of Title 5, United States Code. Sums advanced to an employee and not used for allowable expenses are recoverable from the employee or his/her estate by: (1) setoff against accrued pay, retirement credit, or other amounts due the employee; (2) deduction from an amount due from the United States; and (3) other method provided by law.

0306 CIVIL CLAIMS AGAINST NASA.

030601. Filing requirements for claimants. NASA will not consider claims unless presented in writing with the signature and address of the claimant or with the signature of the claimant's authorized agent or attorney and is filed through the responsible Government agency. The responsible Government agency varies depending on the claim. A claim filed by an agent or attorney must be supported by a duly executed power of attorney or other documentary evidence of the agent's or attorney's right to act for the claimant. The claimant with the Center where the activities arose will file initial

claims. If the claim cannot be administratively disposed of it will be transmitted through the NASA Headquarters, Chief Financial Officer to the responsible Government agency. Claimants must be cognizant of the statutory limitations for the filing of claims as provided in paragraph 030302. The claimant should send requests for review or reconsideration of claims disallowed by the responsible Government agency directly to the responsible Government agency.

030602. Statutory time limitation for filing claims. Every claim against NASA (except a claim by a State, Territory, Possession, or the District of Columbia) that requires a determination by NASA must be submitted within 6 years after the date such claim first was submitted, unless otherwise provided for by law (28 USC 2501). The responsible Government agency will determine whether the claim has been made within the time prescribed by law. If the claim is not received by the responsible Government agency within the statutory time period, it will be returned to the claimant and no further action will be deemed necessary. NASA Headquarters, Chief Financial Office will be notified of the action taken by the responsible Government agency. All matters relating to claims will be handled promptly. Claimants must also file court actions against NASA within 6 years after the date their claim first was submitted (31 USC 3702 (b)).

030603. Non-receipt of check claims. Pursuant to 31 USC 3702, a claim for non-receipt of a check which the records of the responsible Government agency or the Department of the Treasury show as being paid must be presented to the responsible Government agency or the Treasury within 1 year after the date of issuance of the check. The claimant may present a claim directly to the Treasury or to the responsible Government agency if the statutory period of limitation is about to expire. Since the Treasury has the paid check records and processes the related claims, the preferred procedure is to make the submission to the Treasury. A check claim that is received by a Center, which might be adversely affected by the 1-year limitation, should be immediately transmitted to the Treasury.

0307 SUBMISSION REQUIREMENTS

030701. NASA Centers Chief Financial Officer shall take the following actions in connection with claims against NASA which require adjudication by the responsible Government agency:

A. Obtain pertinent data and supporting documents. The original claim signed by the claimant, the original of the administrative report and the original or one copy of any supporting documents is required for submission to the responsible Government agency to support the claim and settlement action.

B. Coordinate the claim with the Center's Chief Counsel to assure propriety of submission.

C. Prepare a transmittal letter and send it to NASA Headquarters, Chief Financial Officer. The letter will then be submitted to the responsible Government agency. The submission letter will contain the following information:

1. The claimant's name or business name and the social security number or Employee's Identification Number (EIN).
2. A statement of the facts, which gave rise to the claim.
3. A statement of the doubt or other reason for forwarding the claim.
4. A recommendation for the proper disposition of the claim.
5. Citations to pertinent supporting documents, such as the original claim, contracts and vouchers.
6. A statement that the claim has not been paid and will not be paid except pursuant to a certification in the name of the responsible agency for approval.
7. A complete appropriation symbol citation.

D. Notify the claimant of the submission to the responsible Government agency.

E. Submit supplemental reports to the responsible Government agency as conditions may warrant.

030702. Assistance to claimants. Pursuant to 18 USC 205, a Government employee may neither assist nor act, on behalf of a claimant in prosecuting any claim against the United States other than in the proper discharge of official duties; and may not receive any gratuity, or any share of or interest in any such claim, in consideration of assistance in the prosecution of such claim.

030703. False claims. When there are suspicions of fraud or irregularities regarding a claim either prior to payment or subsequent to payment, the Chief Counsel of the Center should be informed to determine appropriate action. Also, upon discovery of fraud or irregularities, the NASA Headquarters, Chief Financial Officer and the NASA Office of Inspector General must be immediately notified by telephone and submission of a written notice.

030704. Processing of claims by the responsible Government agency. Claims submitted to the responsible Government agency are settled on the basis of the facts established by the Center and the written and documentary evidence submitted by

the claimant. Settlements are determined by establishing the legal liability of NASA in the situation, supported by the written record only. The responsible Government agency will determine if a claim is allowed, partially disallowed or wholly disallowed (28 USC 2401).

030705. Processing allowed claims for payment. In cases when the full or partial amount is allowed and there is no set-off for debt due, NASA Headquarters, Chief Financial Officer will forward the voucher to the applicable Center. The Center will effect payment, utilizing the procedures in Chapter 2, Contract Payment, of this Volume. In cases when the full amount allowed or part of the amount allowed is withheld for application to a debt due NASA or another agency, NASA Headquarters, Chief financial Officer will determine procedures that should be used to effect the charges and credits due.

030706. Processing wholly disallowed claims. When a claim is disallowed in full, the responsible Government agency will prepare and issue a memorandum to NASA Headquarters, Chief Financial Officer. NASA Headquarters will forward all correspondence to the applicable Center (28 USC 2401).

030707. Claims for Erroneous Payments. Policy and guidance for claims of NASA or the United States against a person arising out of an erroneous payment of pay or allowances, travel, transportation or relocation expenses and allowances can be found in Volume 6, Chapter 3 of the FMR. Authority is contained in 5 USC 5584.

0308 ASSIGNMENT OF CLAIMS UNDER GOVERNMENT CONTRACTS

030801. Authority for Assignments. The authorities contained in 41 U.S.C 15 and 31 USC 3727 authorize assignments to banks, trust companies, or any financing institution (including federal ending agencies) of monies due, or to become due, under Government contracts totaling \$1,000 or more.

A. Assignment of Claims Act. Under the Assignment of Claims Act, a contractor may assign moneys due or to become due under a contract if all the following conditions are met:

1. The contract specifies payments aggregating \$1,000 or more.
2. The assignment is made to a bank, trust company, or other financing institution, including any Federal lending agency.
3. The contract does not prohibit the assignment.

4. Unless otherwise expressly permitted in the contract, the assignment:

a. Covers all unpaid amounts payable under the contract;

b. Is made only to one party, except that any assignment may be made to one party as agent or trustee for two or more parties participating in the financing of the contract; and

c. Is not subject to further assignment.

5. The assignee sends a written notice of assignment together with a true copy of the assignment instrument to the:

a. Contracting officer or the agency head;

b. surety on any bond applicable to the contract; and

c. disbursing officer designated in the contract to make payment.

030802. Policy and Procedures. Federal Acquisition Regulation (FAR) Part 32.8, prescribes policies and procedures for the assignment of claims under the Assignment of claims Act of 1940.

0309 TRANSFER OF ASSIGNMENT

030901. Title 41 USC 15 prohibits transfer of Government contracts from the contractor to a third party. The Government may, when in its interest, recognize a third party as the successor in interest to a Government contract when the third party's interest in the contract arises out of the transfer of, (1) All the contractor's assets; or (2) The entire portion of the assets involved in performing the contract.

Examples include, but are not limited to:

A. Sale of these assets with a provision for assuming liabilities.

B. Transfer of these assets incident to a merger or corporate consolidation.

C. Incorporation of a proprietorship or partnership, or formation of a partnership.

030902. Policy and Procedures. Federal Acquisition Regulation Part 42.12 prescribes policy and procedures for the transfer of assignments.

030903. Transfers not Considered Assignments.

A. Rental payments may be made to the agent of a lessor, if supported by evidence the agent is acting for the lessor. The rent also may be assigned even though the title to the property is not transferred (11 Comp Gen 278 (1932)) and (5 Comp Gen 749 (1926)).

B. Bankruptcy or receiverships by operation of law. Payment properly due may be made to the receiver (3 Comp Gen 623 (1924)) or trustee if approved by general counsel.

C. Assumption of contract surety.

1. When the contractor defaults and the surety assumes the contract, certain payments may be made to the surety (15 Comp Gen 409 (1935)) and (12 Comp Gen 507 (1933)). If there are any aspects regarding conflicting claims, tax indebtedness, etc., the matter is handled as a claim to the General Accounting Office.

2. Settle with the contractor and surety as:

a. A surety, which completes work under a contract on which they have assumed, is subrogated to the rights of the contractor against the Government for the unpaid balance due from the United States on that contract. It is also subrogated to the rights of the Government against the contractor for the excess cost of completing the work of furnishing the materials and supplies. Therefore, the surety is entitled to be paid by the Government the cost of completing the work, but no profit.

b. The contractor is entitled to be paid for work they performed if any funds are available on the contract for such payment after reimbursing the surety.

c. The total payments by the Government must not exceed the contract price

d. Payment into court of the balance should not be made. The amount remaining is paid to the assignee of a receiver where the court orders the receiver to accept the assignee's offer to complete the work in consideration of receiving all the payment and retaining percentages due.

030904. Documents Required To Be Filed in Connection With Assignments.

A. The Center financial management office designated in the contract shall pay assignees only after receipt of these assignment documents:

1. Three copies of the notice of assignment acknowledged by the contracting officer.
2. Original and one copy of the signed notice and a true copy of the instrument of assignment from the assignee.
3. Two copies of the notice acknowledged from the surety or sureties, if any. These copies are received from the surety or sureties via the assignee.

B. The Center financial management office:

1. Signs and returns a copy of the notice to the assignee.
2. Files the true copy of the instrument of assignment, the original notice, and a copy of the notice acknowledged by the contracting officer, with the disbursing office copy of the contract. Files a copy of the notice acknowledged by the surety or sureties, if any.
3. Signs, dates and returns the receipt, if applicable, to the assignee.

030905. Documents Required To Be Filed If Assignment is Cancelled

A. If the assignee releases the contractor from the assignment of claims under the existing contract, the Center financial management office makes remaining payments to the contractor only after receipt of these release documents:

1. A true copy of the instrument of release of assignment; and
2. The original and two copies of the release notice.

B. The Center financial management office:

1. Signs and returns a copy of the release notice to the contractor.
2. Files the true copy of the instrument of release of assignment and the original release notice with the disbursing office copy of the contract. Acknowledgment by the contracting officer and surety is not required. For additional guidance see FAR 32.805(e).

3. Signs, dates, and returns the receipt, if applicable, to the assignee.

030906. Letter Contract Assignments. When assignments of claims under letter contracts are made, notices (with copies of assignments) are given to contracting officers and disbursing offices. If a letter contract is assigned, that assignment is not voided by a subsequent definitization of the contract. Contracting officers and Center financial management offices accept, receipt for, and honor the second assignment of the proceeds of a definitive contract superseding a letter contract. The two instruments of assignments are thereafter treated as if they were only one instrument, and payments continue to the assignee.

030907. Open-End, Call-Type, or Indefinite Delivery-Type Contracts

A. Assignment of claims under open-end or call-type contracts or indefinite delivery type contracts are authorized provided orders placed prior to assignment obligate the Government to pay \$1,000 or more or provided the basic contract imposes a minimum obligation of \$1,000 or more.

B. When the Center financial management office questions whether an assignment of claims applies to an individual call or order under indefinite, delivery-type contracts, payments under the call or order are withheld pending determination of the status and validity of the assignment by the contracting officer.

030908. Purchase Orders

A. A notice of assignment on a purchase order of \$1,000 or more will not be acknowledged unless it has been established that such order is a legally binding contract.

B. Payment of the purchase order is withheld pending determination of the status of the assignment by the contracting officer.

C. If the contracting officer rejects the assignment, the Center financial management office returns the acknowledged notice and copy of the assignment to the assignee and advises that the assignment cannot be recognized for the reasons stated by the contracting officer.

D. If the contracting officer has determined that the assignment is valid, the Center financial management office acknowledges the notice of assignment and takes the required action as detailed in FAR 32.8.

030909. Blanket Purchase Agreements. A notice of assignment will not be acknowledged on a blanket purchase agreements. The center financial management office returns the notice and copy of the assignment to the assignee and advises that

assignments may be acknowledged on individual orders in excess of \$1,000. It should be noted that these agreements require a notice of assignment for each delivery order/supplemental procurement identification number. If there is any doubt on any of these types of contracts, they should be referred to your legal office for determination.

030910. Financing Companies A business concern which, incidental to its principal business of acting as selling agent, advances money to pay for raw materials, labor, etc., is not a "Financing Institution" to which money due, or to become due, under a Government contract may be assigned (54 Comp Gen 80 (1984)). A company regularly engaged in the financing business is not disqualified from accepting assignments as a "financing institution" solely because it consists of an individual or partnership (20 Comp Gen 415 (1941) as distinguished by 54 Comp Gen 80 (1984)). When a contractor factors or sells accounts receivable at a discount, they are non-allowable assignments. In such cases and others of similar nature, legal counsel should be consulted in order to protect the Government's interest.

030911. Special Considerations

A. Two assignments of the same contract may not exist since the second assignment without release from the first assignment would be null and void. After the first assignment is released and the original parties are notified, a second assignment may be made (22 Comp Gen 520 (1942)).

B. The performance of work under the contract may not be assigned (41 USC 15).

C. If the dollar amount of the contract is increased, it is not necessary to execute an additional assignment (23 Comp Gen 943 (1944)).

D. Date of assignment shall not be before date of contract.

0310 DOUBTFUL CLAIMS

031001. General Information

A. The Center financial management office settles commercial accounts for which they have payment responsibilities. The local office of counsel or staff judge advocate furnishes legal guidance on claims involving questions of law. Local counsel should coordinate their efforts with NASA Headquarters, General Counsel.

B. Claims by the Government may not be compromised by an agent of the Government except as authorized by law. Demand for the full amount is required. The action for indebted contractors in Volume 6, Chapter 3 of the FMR is required if payment in full is not received on time.

C. Doubtful claims exclude claims applicable to the Prompt Payment Act. The Comptroller General has held that the Prompt Payment Act interest must be paid from the funds available for the administration of the program for which interest was incurred.

031002. Responsibility of Contracting Officer and Center Financial Managers.

A. The Contract Disputes Act of 1978 provides a fair, balanced, and comprehensive statutory system of legal and administrative remedies in resolving Government contract claims. The Act's provisions help to induce resolution of more contract disputes by negotiation prior to litigation; to equalize the bargaining power of the parties when a dispute exists; to provide alternate forums suitable to handle the different types of disputes; and to ensure fair and equitable treatment to contractors and Federal agencies.

B. A doubtful claim exists when the Center financial management office is unable to decide positively that the claim is or is not payable. The Center financial management office refers such claims to the contracting officer with an explanation of the doubtful aspects. Primary responsibility may shift between one or more types of contracting officers during the process of developing a claim. With assistance from the Center financial management office, the contracting officer establishes additional facts and develops the claim to its final stage, including recommendations.

1. All claims by the Government against a contractor relating to a contract shall be the subject of a decision by the contracting officer. The contracting officer shall issue the decision in writing and shall mail or otherwise furnish a copy of the decision to the contractor. The decision shall state the reasons for the decision reached and shall inform the contractor of the right to appeal. The contracting officer's decision on the claim is final and conclusive unless an appeal or suit is instituted by the contractor.

2. All related paperwork of the claim is then sent to the legal office for the Center financial management office. Claims that are filed directly with the Government Accountability Office (GAO) by contractors are returned to the Centers financial management office for development and recommendation and disbursing. Every claim against the United States that is forwarded to the Claims Division, GAO, as well as all correspondence relating to the claim, must contain the employer's identification number.

031003. Claims Requirements. The Center financial management office prepares the administrative report and attaches the claim before routing it through the channels described in paragraph 031002 B. Open the report with the statement, "This is a report of a doubtful claim." The second and succeeding paragraphs should contain

complete statements of the facts and the doubtful questions involved. The Center financial management office reviews the claim file to ensure it is complete before forwarding it for review and evaluation.

031004. Documents Required. Information in this paragraph is furnished for guidance and is not mandatory. The documents and information listed should contain sufficient facts so that the GAO will not return the claim for more documents.

A. The following data are common to all claims. Additional documents are furnished in specific cases as indicated:

1. Original signed claim.
2. Copy of contract, purchase order, (or both if applicable), lease, or other contracting document.
3. Copies of all related correspondence between the claimant and NASA.
4. A signed statement by the disbursing office that:
 - a. Payment has not been made and will not be made except by certification in the name of the Comptroller General, or
 - b. Partial settlement in amount has been made and no further payment will be made except by certification in the name of the Comptroller General, or
 - c. Funds have been reserved (citing the appropriation from which the payment will be made, if approved by GAO) or that funds have not been reserved, as applicable.
5. Cite all vouchers covering payments or collections, as applicable, made under the contracting document.
6. A signed report by the contracting officer as to what the records of that office show concerning the claim and the administrative recommendation. The report should include the intent of the contracting document.
7. Certified true copies or Photostat copies of the invoices or other billing documents.
8. Copies of the receiving reports, other receiving documents, or if not available, a signed statement that the supplies and services were received.

9. SF 1034, Public Voucher for Purchases and Services Other Than Personal, (or other applicable voucher), in an original and six copies. The original is certified.

10. Copy of claimant's bid, if applicable.

11. Any other data considered appropriate.

B. Mistake in Bid. With a copy of the claimant's bid, include an abstract of all other bids.

C. Discount. Include the document containing the claimant's discount offer. If claimant contends that discount was taken after discount period, include a certified true copy of the invoice. The invoice should show the date received in the office designated by the contracting document.

031005. Amounts Due Deceased or Mentally Incompetent Creditors

A. Deceased Public Creditors. Claims for amounts alleged to be due the estates of deceased individual public creditors that cannot be settled locally, by reason of doubt, are submitted to the GAO for settlement. An element of doubt exists when there is a question as to the amount and the validity of the claim or a question as to whom payment may be made under the laws of the domicile of the decedent.

1. The claimant presents the claim against the United States for amounts due in the case of a deceased creditor. The claim is supported by the applicable documents listed in paragraph 031004. The contracting officer's statement will show there is (or there is not) an outstanding debt to the Government. Obtain a statement of legal review and recommendation from the local office of counsel or staff judge advocate.

2. Claims involving current non-negotiated U. S. Government checks in the possession of the claimant, which are drawn to the order of a deceased public creditor, should be returned to the Center financial management office that issued the checks. Checks that are undeliverable because of the death of the creditor will be stamped "Not Negotiable" on the face of the check. Attach a copy of SF 1098, Schedule of Cancelled or Undelivered Checks, to the claim.

B. Incompetent Public Creditors.

1. GAO Action. Claims for amounts due incompetent public creditors of the United States are submitted to the GAO for settlement. No form is prescribed for this class of claim; however, such claim must be in writing over the signature and address of the guardian, committee, or other person claiming on behalf of the incompetent and must set forth the connection of the incompetent with NASA. Those authorized to claim for an incompetent are:

a. Guardian or committee of the estate of an incompetent. A short certificate of the court showing the appointment and qualification of the claimant as guardian or committee is attached to the claim.

b. Persons other than a guardian or committee who supports the claim with a statement to show: 1) That no guardian or committee has been or will be appointed; 2) The claimant's relationship to the incompetent, if any; 3) The name and address of the person having care and custody of the incompetent; and 4) That any amount paid to the claimant will be applied to the use and benefit of the incompetent.

2. Administrative Action. After the first payment has been certified by the GAO to a guardian or committee, recurring payments may be made in the same form and capacity by the disbursing office as long as the appointment as guardian or committee remains in effect and the matter is otherwise free from doubt. Later claims for recurring payments need not be accompanied by a court certificate; however, they must be supported by a statement that the appointment is still in full force and effect.

0311 DISPUTES

031101. Contracts Disputes Act of 1978.

A. The Contract Disputes Act of 1978 establishes procedures and requirements for asserting and resolving claims subject to the Act. In addition, the Act provides for:

1. The payment of interest on contractor claims;
2. Certification of contractor claims; and
3. A civil penalty for contractor claims that are fraudulent or based on a misrepresentation of fact.

031102. Policy and Procedures. Federal Acquisition Regulation Part 33.2 prescribes policies and procedures for contract disputes that may result in a claim against NASA.

031103. Payments to Reimburse Treasury for Payments in Settlement of Contractor Claims

A. Upon certification by the GAO, the amounts of contractor claims settled pursuant to the Contract Disputes Act of 1978 may be paid to the contractor by the Treasury Department from the permanent judgment fund. Amounts paid to contractors are reimbursable to the U.S. Treasury from the appropriation available for the purpose of the contract or by obtaining additional funds for such purpose. The Treasury Department will bill the contract Center financial management office. If funds are not available in the proper account to cover invoices received from the Treasury Department, request additional funds through appropriate channels. Amounts reimbursed to the Treasury Department must be charged to current funds. Expired funds cannot be used (63 Comp Gen 308 1984).

CHAPTER 4**MISCELLANEOUS PAYMENTS**0401 OVERVIEW

This chapter addresses NASA policy related to miscellaneous payments. The miscellaneous payments included in this chapter are applications such as metered services, printing and binding, and newspaper advertisement, as well as Government purchase card, payment of claims, transportation payments, and payments under real property.

0402 AUTHORITY AND REFERENCES

040201. Relevant references to published regulations (i.e., Federal Acquisition Regulations (FAR)) are made throughout this chapter where applicable. Refer to the specific section for citations.

- A. United States Code (USC) (e.g., 31 USC 3324)
- B. NASA Federal Acquisition Regulations (FAR) (e.g., NASA FAR Subpart 1832.4)
- C. Comptroller General Procedures (Comp. Gen.) (e.g., 25 Comp. Gen. 834)
- D. NASA Policy Directives (NPD) (e.g., NPD 1490.1)
- E. Treasury Financial Manual (TFM) (e.g., TFM 4-4535)
- F. Public Law (PL) (PL 105-264 Section 3)

0403 ROLES AND RESPONSIBILITIES

040301. Refer to the specific type of payment for information about Center and/or Headquarters roles and responsibilities.

0404 POLICIES AND PROCEDURES

040401. Payment Vouchers Special Applications. Addressed here are types of invoices used for disbursements that must contain additional information in order to be complete and in proper form. Special requirements are necessary for specific types of

disbursements because of the nature of the disbursements and the provisions of specific laws and regulations.

A. Normally, the payment received must not exceed the value of services or articles already received (31 USC 3324). However, advance and progress payments are authorized by 10 USC 2307. Policies and procedures regarding advance and progress payments are contained in FAR 32.4 and 32.5 and NASA FAR Subpart 1832.4 and 1832.5. These types of payments are considered contract financing under 5 CFR 1315, therefore they are not subject to Prompt Payment regulations and interest penalties are not required.

B. Other Advance Payments. Invoices for the following types of services and articles may be paid in advance.

1. Periodicals. Subscriptions to newspapers, magazines, periodicals and other publications (31 USC 3324).

2. Post Office Box Rental. Advance payment of post office box rental is authorized on an annual basis (25 Comp. Gen. 834). Advance payments for post office box rentals may not exceed one fiscal year.

3. Training of Employees Under The Government Employees Training Act (5 USC 4101 et. seq.). Advance payment for tuition for the training of employees is authorized under 5 USC 4109. On invoices for advance payments under this Act, the authority will be cited in the administrative certification.

4. Attendance at Meetings. Payment of registration fees for attendance at meetings is authorized under 5 USC 4110. When registration fees include the cost of meals for employees in travel status, the provisions of Volume 12, Travel Regulation apply.

C. Metered Services. The invoice must state the serial number of each meter through which billed service was furnished and the last and previous reading of each meter. Authorized change in rates will be applicable to services rendered from the effective date of change stated in the legally established published rate schedule. Where a meter fails to properly register the service during any billed period, the amount due the contractor will be determined in accordance with contract conditions. In the absence of a contract clause specifically covering meter failure, the amount of utilities consumed during that period may be estimated by taking the average daily consumption shown by meter readings during a period when conditions for consumption were substantially the same. Payment on that basis is authorized as an implied provision of the contract, in accordance with 4 Comp. Gen. 617 (A-7129).

D. Printing and Binding. Policies and responsibilities for the production and procurement of NASA printing, duplicating, blank bookwork, and

binding are contained in NPD 1490.1. Title 44 USC 501 provides applicable authority. Generally, all procurement for printing must be through the Government Printing Office. For specific exceptions, such as contract field printing, refer to NPD 1490.1. Invoices covering contracts for commercial procurement of printing must be supported by a waiver from the Joint Committee on Printing (JCP) or by the following supplemental certificate over the signature of the employee authorized to procure the contract: "I hereby certify as responsible officer that the contract field printing covered by this invoice was procured in accordance with the applicable Government Printing and Binding Regulations of the Joint Committee on Printing."

E. Reimbursement to Designated Notaries Public. Employees designated to serve in the capacity of a notary public in connection with official duties may be reimbursed the actual expenses incurred in obtaining the required bonds, seals and other necessary expenses required to obtain the commission. The Notaries Public Expense Act of 1955 (5 USC 5945) will be cited on the invoice as the authority for payment. The invoice for reimbursement of fees paid will contain a statement by the designated official that he or she serves in the capacity of a notary public in connection with official duties.

F. Payments for Newspaper Advertising. In accordance with 44 USC 3702 and 5 USC 302, the Administrator of NASA or an official delegated the authority must authorize the publication of advertisements, notices or proposals. A copy of the written authority must be presented with the invoice for advertising or publication before payment. The SF 1449, Solicitation/ Contract/Order for Commercial Items, should be used to place orders for newspaper advertising unless the order is made using electronic commerce or the Government-wide commercial purchase card. A properly delegated official must sign the advertising order (SF 1449). A copy of the advertisement furnished by the publisher must accompany invoices for newspaper advertising. Upon receipt of an invoice supported by proof of advertising, the contracting officer shall attach a copy of the written authority and submit the invoice for payment according to contractual terms (FAR 5.503(c)&(d)).

G. Government-wide Commercial Purchase Card.

1. The Purchase Card program provides non-procurement personnel with the authority to make purchases within an authorized dollar limit for approved supplies that ordinarily do not require concurrence of other NASA organizations (NASA FAR supplement 1813.301 Government-wide commercial purchase card (PN 97-13 July 28, 1998)).

2. Center's must provide guidance on the Purchase Card Program User Manual that includes how to obtain a Purchase Card, cardholder responsibilities, and how to make purchases. In addition On-Line Quick Reference (OLQR) is available at <http://olqr-cf.ifmp.nasa.gov> with guidance including; purchase card information, receiving information and report generation.

3. All individual government-wide commercial purchase card invoices under \$2,500 may be paid at anytime, but not later than 30 days after receipt of a proper invoice (5 CFR 1315.12). Matching documents is not required before payment. The payment due date for invoices in the amount of \$2,500 or more shall be determined in accordance with 5 CFR 1315.8. As provided in Treasury Financial Manual (TFM) 4-4535, payment shall be made to the contractor providing purchase card services in a timely manner even if all cardholder statements have not been received, i.e., prior verification that the goods or services have been received. The contractor will be promptly notified of any discrepancies through the process described in the contract. Disputed line items do not render the entire invoice an improper invoice for compliance with this requirement.

H. Payment of Claims.

1. Payment of claims made by an employee against NASA for damage to, or loss of personal property incident to service with NASA will be paid by the Center concerned when such claim has been approved by the Chief Counsel. All approved claims will be submitted to the Center financial management office on NASA Form (NF) 1220, Voucher for Payment of Employee's Personal Property Claim, for scheduling in accordance with prescribed procedures.

2. When a claim is received from a rental car company, the designated traveler will initiate NF 1512, "Claim for Collision or Upset Damage to Rented Motor Vehicle." If the car was rented from a rental car company covered under the U.S. Car Rental Agreement, dated February 26, 1996, managed by Headquarters, Military Traffic Management Command, and the renter was on official travel, the renter will complete Section II of NF 1512 and contact their NASA legal counsel for resolution of the claim. If the traveler did not rent from a rental car company covered under the Agreement, the traveler will: 1) send page one, Section I of NF 1512 to the rental company for their completion, 2) complete Section II of NF 1512 after the traveler receives the completed Section I of NF 1512 from the rental car company, then, 3) send the completed NF 1512 to DCFO (F) for approval and certification (see Section II of NF 1512).

040402. Transportation Payments.

A. In accordance with Public Law 105-264, Section 3, which amended 31 USC 3726, a prepayment audit is required before transportation invoices are paid. Each Center financial management office is responsible for the examination of invoices for passenger and freight transportation services to determine the validity and legality of Transportation Service Provider (TSP) invoices (Federal Management Regulation (FMR) Sec. 102-118) (<http://pub.fss.gsa.gov/transtrav/transAudits.cfm>.)

B. When invoices have completed the prepayment audit program and are deemed proper for payment, they are sent to the Center payment office to be scheduled for payment. At the end of each month, each Center must submit all paid transportation documents to GSA for post-payment audit. The U. S. Government Freight Transportation Handbook and the U. S. Passenger Transportation Handbook contain instructions for billing procedures and preparation of SF 1113, and instructions for payment and submission of transportation invoices for audit. These documents are available on the web at: <http://pub.fss.gsa.gov/transtrav/transAudits.cfm>.

C. Prepayment Audit Program. Each NASA Center must either establish a prepayment audit program or use the services of a prepayment audit contractor under GSA multiple award schedule covering audit and financial management services. If a Center changes its prepayment audit program, the plan for the revised prepayment audit program must be sent to the NASA Headquarters Chief Financial Officer (CFO) for approval. After approval by the NASA Headquarters, CFO, the program is submitted to GSA's Audit Division for final approval (see Federal Management Regulation, Sections. 102-118.345).

D. NASA Unique Elements of the Prepayment Audit Program. Federal Management Regulation, Sections 102-118.330 lists all the elements for an acceptable program; however, NASA's implementation includes the following:

1. The minimum dollar threshold for transportation invoices is \$750.

2. The numbering system used by Centers incorporates: 1) the first initial for the agency (N), 2) a two digit symbol for the Center designation (AR, DF, etc.), 3) a two digit numerical code for the fiscal year designation (00, 01, etc.), and 4) the last five digits for the sequential numbering of the invoices (00,001 through 99,999) to prevent duplication.

E. Contractor Prepaid Transportation Charges. Shipments of supplies may be made by common carriers on commercial bills of lading when authorized by the contracting officer (FAR 47.303-17). The TSP pays the transportation charges and is thereby entitled to reimbursement by NASA. The TSP's invoice for reimbursement should be supported with a copy of the carrier's receipted freight invoice or other evidence of receipt except when:

1. The prepaid transportation charge is \$100 or less and;

2. The transportation charge is \$250 or less per transaction (i.e., purchase invoice, or aggregate billing or payment for multiple purchases), if the contractor cannot reasonably provide a receipted freight invoice and NASA has determined that the charges are reasonable. Determination of reasonableness may be based on: 1) past experience (authenticated transportation charges for similar shipments), 2) rate checks, 3) copies of previous freight invoices submitted by the contractor, or 4) other information submitted by the contractor to substantiate the amount claimed.

F. Transportation Invoices from the Department of Defense.

1. Authorization of Shipments. Transportation services to be procured through or from the DOD may be authorized by the issuance of a Transportation Control Movement Document (TCMD), DD Form 1384-1, or Special Assignment Airlift Mission (SAAM). Center transportation officers or others authorizing shipment by the Department of Defense, either by commercial carriers or by DOD components, are responsible for obtaining the appropriate fund certification from the Center financial management office prior to authorizing shipment. The Center transportation office is also responsible for assuring that obligating documents (priced copies of shipping documents) are furnished promptly to the Center financial management office upon commencement of the shipment.

2. Identification of Center to Be Billed. Commercial and military carriers are instructed to send invoices directly to Centers, except in the case of consolidated (NASA and DOD) shipments. For consolidated shipments, transportation charges will be paid in full by the DOD component and subsequently reimbursed by the appropriate Center upon receipt of a properly documented Voucher for Transfer between Appropriations and/or Funds, SF 1080. NASA Defense Purchase Requests involving separate transportation charges will also indicate the name and address of the Center and the appropriation chargeable for the cost of the transportation. In addition, the Transportation Account Code (TAC) of the applicable Center will be shown when transportation is to be performed by military carriers. When transportation is to be performed by military carriers pursuant to a Transportation Control Movement Document or Special Assignment Airlift Mission, the issuing Center will cite the appropriate Transportation Account Code on the request to facilitate proper identification of the Center.

3. Transportation Accounts Codes. The following Transportation Account Codes (TAC) are for use on transportation movement documents involving shipments for NASA by military carriers:

Center	NASA Transportation Account Code
Headquarters NASA	HDFFA
Ames Research Center	HDFFB
Glenn Research Center	HDFFC
Langley Research Center	HDFFD
Dryden Flight Research Facility	HDFFE
Goddard Space Flight Center	HDFFN
Wallops Flight Facility	HDFGG
Jet Propulsion Laboratory (contractor)	HDFHH
Marshall Space Flight Center	HDFMM
Stennis Space Center	HDFJJ
Johnson Space Center	HDFKK
Kennedy Space Center	HDFLL

040403. Payments under Real Property Leases. Leases are subject to the statutory and regulatory provisions applicable to government contracts, as well as the specific statutory provisions pertinent to leases.

A. Coverage. A lease is a contract by which the use of land or buildings is conveyed for a specified time at a specified rate of compensation. Leases describe the premises, the specific period involved, purpose for which used, the amount of rent, method of payment, special services included (such as heat, light, water, and janitorial services) and any restoration provisions. If the lessor fails to provide the services in this case called for in the lease, the lessee (the government in this case) may pay the cost and deduct the amount from the lease rental payments.

B. Recording Requirements. Policy and procedures for recording plant, property and equipment leased by NASA and subject to capitalization is in Volume 6, Chapter 4 of the FMR. If expenses are prepaid, lease and rent payments shall be recorded in the general ledger as prepayments. Policy and procedures for prepayments are in Volume 6, Chapter 6 of the FMR.

C. Rent.

1. Fractional Parts of a Month. Payment for part of a month for leased premises is made on the actual number of days involved. In computing the time between two dates, the general rule is to exclude the first and include the last date, except when the lease is for a specified term and begins on the date of occupancy (10 Comp Gen 540 (1931)).

2. Monthly Installment Payments of Annual Rent. A lease generally begins on the first of a month. For leases that begin on a date other than the

first, the monthly rent installments become due and payable on the date of each month numerically corresponding to the date the term began, less one day. The amount of each installment should be one-twelfth of the annual rate, regardless of the number of days in any calendar month (24 Comp Gen 838 (1945)).

3. **Recurring Rental Charges.** Payment for these charges shall be made without requiring individual invoices from the vendor. At the end of each rental period, the using activity will confirm the use or availability of the property during the rental period. Identify lease and period covered on the payment voucher and process per provisions of the lease.

4. **Reporting Rental Payments Made to Civilian Landlords.** At the end of each calendar year, report yearly rental payments of \$600 or more to the Internal Revenue Service. Report the total payment on TD Form 1099-MISC, Statement for Recipients of Miscellaneous Income. Do not report payments to real estate agents.

D. Party Entitled to Rental Payment.

1. When a Federal Agency occupies land under a lease, the rental payment cannot be avoided because of any defect in the title of the lessor at the time the lease was made (9 Comp Gen 593 (1921)).

2. When a Federal Agency occupies land owned by several tenants in common under an agreement with one of them and without objection by the others, such tenant in common is entitled to receive the rent (9 Comp Gen 593 (1921)).

3. When property leased to the United States is sold on one day and the deed of conveyance is executed on another day, the grantee is entitled to receive the rental from the property only from and after the date of execution of the deed (15 Comp Gen 195 (1935)).

4. Liability for rent due does not become payable day-by-day. It becomes due in total on the dates set forth in the lease. The payment may not be currently prorated for several owners who may have owned the premises for a portion of the rental period. When leased property is sold, a copy of the deed of sale should be furnished for association with the lease contract (4 Comp Gen 193 (1924)). If proper notification is provided to the lessee, payment is made to the titleholder on the day payment is due.

E. Payment for Leased Land. Payment for leased land may not be made in advance (23 Comp Gen 653 (1944) and 25 Comp Gen 834 (1946)). Leases in foreign countries are paid as local customs dictate.

F. Payment for Cost of Improvement of Rented Premises. The laying of conduits and wires in leased premises occupied by Federal Agencies is an

improvement of the premises. Unless the lease provides for the making of such improvements by the United States, payment of the cost is not authorized (6 Comp Gen 943 (1923)).

G. Payment of Taxes on Property. Although taxes are not payable by the Federal Government as the owner of real property, such taxes are properly payable as part of the rent when specifically included in the terms of the lease (24 Comp Gen 705 (1945)).

H. Payment of Rent in Connection with Termination of Lease. Payment is based on the terms of the lease.

CHAPTER 5**FEDERAL, STATE, LOCAL AND FOREIGN TAXES**0501 OVERVIEW

050101. This chapter provides policy and procedures on the payment and reporting of Federal Excise Tax and State and Local Tax. It prescribes the police and procedures on the required forms and electronic submission to the Treasury for reporting tax remittance.

0502. AUTHORITY AND REFERENCES

050201. Relevant references to published regulations (i.e., Federal Acquisition Regulations (FAR)) are made throughout this chapter where applicable. Refer to the specific section for citations.

- A. United States Code (USC) (e.g., 31 USC 3529)
- B. Federal Acquisition Regulations (FAR) (e.g., FAR Part 31)
- C. Comptroller General Procedures (Comp. Gen.) (e.g., 37 Comp. Gen. 772 (1959))

0503 ROLES AND RESPONSIBILITIES050301. NASA Centers.

- A. Centers are responsible for using FEDTAX II to pay Federal withholding taxes.
- B. Centers provide IRS Form 1099-MISC, in addition to receipts, to payees that have received certain payments.

0504 POLICIES AND PROCEDURES050401. Federal Taxes.

A. Responsibility for Collection and Remittance. Unofficial telephone messages or services furnished through official communication facilities are subject to Federal Tax if the same message or service would be subject to such tax if

procured directly from the telephone company or through private facilities. When such unofficial services are furnished through official facilities, NASA, as the vendor, is responsible for determining the amount due and monitoring collection activities.

B. Remittance of Collection to the Internal Revenue Service (IRS).

All Federal excise taxes collected will be posted to suspense account 80X6875 pending disposition to the IRS. Centers will use FEDTAX II to pay Federal withholding taxes and to file Form 941, Employer's Quarterly Federal Tax Return. FEDTAX II may be accessed through the World Wide Web or through a Virtual Private Network (VPN) using a local dial-up telephone number. FEDTAX II creates a debit voucher for each Center by Agency Location Code/Employer Identification Number having reported Federal tax payments for a given day. A deposit ticket, summarizing the total payments made for a given day is created for the IRS. The debit voucher and deposit ticket information is reported to Treasury through CASH-Link, which result in an accounting entry into the central accounting system of the United States.

C. Source of Forms. FEDTAX II produces a Form 941 filing based on payments made throughout the quarter, for Center's final review and approval. Using a Personal Identification Number (PIN) code specifically issued by Internal Revenue, the agency will "sign" the return on-line with the PIN and transmit the Form 941 to the FEDTAX II system. FEDTAX II creates the electronic version of Form 941 using ANSI x12 EDI standards, and transmits it to the IRS. IRS will verify the Center's PIN and accept or decline the return.

050402. State and Local Taxes.

A. When the tax is levied on the seller, the Federal Government must pay the tax as part of the purchase price, unless the taxing authority provides otherwise (37 Comp Gen 772 (1959); 32 Comp Gen 423 (1953); and 24 Comp Gen 150 (1945)). Where the government has, by contract, agreed to reimburse the contractor for taxes paid to a state or municipality, such payments are proper (Comp Gen B-134654, Feb 11, 1958 and FAR part 31). Where there is a valid and binding contract covering the furnishing of supplies or services at fixed unit prices, and the contract contains no provision for the adjustment of such prices in the event of the imposition on the contractor of state taxes applicable thereto, there is no authority for the payment of any taxes over and above the unit price stipulated in the contract (Comp Gen B-128346, Aug 8, 1956). Unless specifically stated otherwise in the contract, it is presumed that state and local taxes are included in the contract price (21 Comp Gen 719 (1942)). State statutes indicate whether the tax is levied on the seller or the purchaser. Some states accept SF 1094, U.S. Tax Exemption Certificate; others require payment of the tax at time of purchase and provide a means for seeking refunds of the tax. The contracting officer will contact the local state taxing authority to verify if they accept tax exemption certificates. A blanket-type tax exemption certificate may be used to obtain the U.S. Government's exemption from state or local taxes in the case of continuing or numerous purchases from contractors.

Generally, NASA Centers shall assert the government's immunity or exemption from taxes whenever it is available.

B. Taxes of \$10 or less. When the total state or local tax on any one tax bill or purchase is \$10 or less, the tax should be paid unless the item can be obtained tax free without issuing SF 1094, U.S. Tax Exemption Form. When a tax exceeds \$10 for a state or local taxing authority, a tax exemption certificate, SF 1094 - Exemption Certificate prepared.

C. Standard Form (SF) 1094. SF 1094, U.S. Tax Exemption Form will be used where exemptions, adjustments or refunds of state or local sales taxes are allowable on commodities or services purchased for the exclusive use of NASA. A separate form will be issued for each kind of tax (state or local) for which exemption is claimed.

1. The SF 1094 must be fully completed by filling in the blocks provided for the agency name, quantity delivered, amount of tax, whether excluded or included, identification card number, and, where applicable, the license plate or official number of the vehicle for which fuel or oil is delivered. When multiple deliveries are made under a contract, a separate form may be issued for each invoice covering partial deliveries made or the form may be furnished upon completion of the contract. In some cases, such as the purchase of motor fuel and lubricating oil, if considered more practical, the DCFO (F) may issue the forms when the invoices are paid. Cross-reference will be made between invoices and the related exemption forms. The itemized statement of the tax in a supplier's invoice may be accepted as the correct amount of the tax in the absence of any facts to the contrary (15 Comp. Gen. 988 (A-69303)).

2. SF 1094 will not be used for: 1) purchases subject only to Federal taxes, 2) purchases on which the tax is \$10 or less, 3) purchases for the operation or maintenance of personally-owned motor vehicles for which mileage has been authorized, 4) purchases for subsistence, if per diem has been authorized, or 5) purchases by employees in official travel status, which were for official use, but were not paid for at time of purchase.

3. Invoices shall be submitted to the appropriate State and Local taxing authority for refund of taxes paid. The amount collected shall be deposited for credit to the appropriations from which the invoices were paid or to the miscellaneous receipt account 803220, Miscellaneous Recoveries and Refunds, Not Otherwise Classified, if the appropriation account cannot be readily identified.

050403. Payments in Lieu of Taxes.

A. Charges by state or local governments for services levied on Federal Government entities or their contractors, which are not imposed on residents or

non-federal, tax-exempt entities, where the cost of the service is borne by the general tax revenues, are in the nature of a tax to which the United States is immune. The placement of the Federal Government in a separate category from other tax-exempt entities for imposing a charge for services is unreasonable and discriminatory classification on the part of a state or local government and the payment of the charge is unauthorized (50 Comp Gen 343 (1970)).

B. A reasonable charge by a political subdivision based on the "quantum" of direct service furnished, and which is applied equally to all property tax-exempt entities, need not be considered a tax against the United States, even though the services are furnished to the tax payers without a direct charge, provided the political subdivision is not required by law to furnish the service involved without a direct charge to all located within its boundaries (50 Comp Gen 343 (1970)).

C. Payments are permitted in lieu of taxes to municipalities that have lost tax revenue by transfer of plants to governmental agencies, only when authorized by the Congress. Payments in lieu of taxes are not authorized if the property transferred was never on municipality tax rolls and municipal services had never been furnished (36 Comp Gen 592 (1957)).

050404. Foreign Taxes. U. S. Government purchases in a foreign country generally are not exempt from taxes and custom duties when imposed by the foreign country. The Status of Forces or government tax agreements may provide exceptions. See the FAR, part 29.402.

050405. Environmental Assessments. If a local government levies an environmental assessment and it represents a fee, payment is authorized. If, however, the assessment appears to be a tax and its legality is questionable (31 USC 3529), payment is not authorized. Payment under protest should not be made. Legal advice should be obtained from the Center office of counsel regarding payment of assessments by state and local governments.

050406. TD Form 1099-MISC, Statement for Recipients of Miscellaneous Income

A. General. At the end of each calendar year, disbursing offices are required to report to the IRS certain payments. These are payments made to noncorporate contractors for services and to corporations providing medical and health care services, totaling \$600 or more per contractor or royalties of \$10 or more in any calendar year (26 USC 6041 and FAR 52.204.3).

NASA Centers must provide these recipients with a TD Form 1099-MISC. This form must be provided to payees by January 31 following the year of payment. Instructions and specific requirements on the preparation of and submission of the TD Form 1099-MISC is available at <http://www.irs.gov/irs-pdf/i1099.pdf>

CHAPTER 6**CONTRACTOR DEBT COLLECTION**0601 **OVERVIEW**

This chapter addresses NASA policy related to the collection of debts owed to the government by contractors. Such debt shall be promptly and aggressively collected, with follow-up action(s) taken as necessary, to recover outstanding debts. This chapter issues policy and procedures for the collection and recovery of those debts that are owed by contractors, vendors, assignees, and business entities, and the transfer of eligible delinquent debts to the Department of Treasury for collection and cross-servicing.

0602 **AUTHORITY AND REFERENCES**

060201. Provisions of the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982, the Debt Collection Improvement Act of 1996, and the revised Federal Claims Collection Standards regulation of 2000.

060202. The Federal Claims Collection Standards (FCCS). The FCCS regulation, issued jointly by the Department of Treasury and the Department of Justice, is codified at Title 31, Code of Federal Regulations, Chapter 9, Parts 900 – 904 (31 C.F.R. 900 – 904). The provisions of 31 C.F.R. 901.3, “Collections by administrative offset,” are hereby adopted without change by reference. These provisions implement the statutory requirement for mandatory referrals of eligible debts to the Department of Treasury.

060203. Relevant references to published regulations (i.e., Federal Acquisition Regulations (FAR)) are made throughout this chapter where applicable. Refer to the specific section for citations.

- A. United States Code (USC) (e.g., 28 USC 2415)
- B. Federal Acquisition Regulations (FAR) (e.g., FAR Part 33.102(b))

0603 **ROLES AND RESPONSIBILITIES**060301. **NASA HEADQUARTERS**

A. **NASA HQ, OCFO Shall:** Establish and maintain Policies and procedures for the timely collection of contractor debt in accordance with applicable laws and Department of Treasury Guidance.

- B. **The Deputy Chief Acquisition Officer Shall:**

1. Establish and maintain contractual policies and procedures for the time identification of amounts owed by contractors, and issuance of demand letter for repayment.

2. Monitor Center level compliance with contractor debt collection policies and procedures.

060302. NASA CENTERS

A. Center Contracting Officers Shall:

1. Identify amounts owed by contractors.

2. Prepare and issue demand letters to contractors.

3. Provide a copy of the demand letter and any associated documentation to the OCFO

B. Center Office of the CFO Shall:

1. Record accounts receivable based on demand letters received from the contractual offices.

2. Maintain records of receivables and take appropriate follow-up action on delinquent receivables.

0604 DEFINITIONS

060401. Debt and Claim. The terms, “debt” and “claim,” as used in this chapter are synonymous and interchangeable. They refer to any amount of money, funds, or property that has been determined by an agency official to be due to the United States from any person, organization, or entity, except another federal agency.

060402. Delinquent Debt. Delinquent debt refers to a debt that has not been paid by the due date specified in the agency’s initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement).

060403. Debts Eligible for Transfer. Debts “eligible for transfer to the Department of Treasury” include debts that have been delinquent for a period up to 180 days for which the Department of the Treasury may take appropriate action to service, collect, or compromise the debt or to suspend or terminate collection action.

060404. Debts Not Eligible for Transfer. Debts that are “not eligible for transfer to the Department of the Treasury” include:

- A. Are in litigation or foreclosure
- B. Will be disposed of under an approved asset sale program
- C. Have been referred to a private collection contractor for a period of time acceptable to the Department of Treasury
- D. Are at a debt collection center for a period of time acceptable by the Department of Treasury
- E. Will be collected under internal offset procedures within 3 years after the debt first became delinquent
- F. Are exempt by the Department of Treasury based on a determination that the exemption is in the best interest of the United States.

0605 POLICIES AND PROCEDURES

060501. NASA’s policy is effectively and proactively to collect debts owed to the Agency. Uncollectible eligible debts up to 180 days delinquent shall be transferred to the Department of the Treasury as soon as a determination is made that despite the Agency’s due diligence to recover debts voluntarily, additional efforts will not result in the voluntary recovery of these debts. Referral of debts to the Department of Treasury shall be made in accordance with terms of agreement between NASA and the Department of Treasury.

060502. Debt Management Requirements. In order to protect the government’s interests, officials of NASA shall cooperate fully with each other to ensure that the following required actions are accomplished.

A. Identify and Correct Debt Causes. Procedures shall be established at all organizational levels, as necessary, to identify the causes of indebtedness, delinquencies, and defaults. Corrective actions shall be taken to eliminate those causes and reduce the number of debts subject to collection.

B. Debt Controls. Effective controls shall be established over debts for collection according to requirements specified in this requirement, consistent with other applicable statutes and regulations. Debts shall be aged so that timely and appropriate collection and follow-up action can be accomplished.

C. Debtor Information Exchange Program. NASA organizations shall participate in government debtor exchange programs.

D. Debt Collection Partnering. NASA organizations shall cooperate with each other, other federal agencies, and other private entities, as requested, to collect delinquent contractor or vendor debts.

E. Documenting Collection Activity. NASA organizations shall document their administrative debt collection activities, including the basis for debt compromise, suspension, or termination of collection action, and retain the documentation in individual debtor files.

F. Obtaining Debtor Mailing Address. Procedures shall be established at all organizational levels, as necessary, to identify the causes of indebtedness, delinquencies, and defaults. Corrective actions shall be taken to eliminate those causes and reduce the number of debts subject to collection. Participation in the Department of the Treasury Cross-Servicing or Treasury Offset Programs enables the Agency to obtain debtors' addresses from the Department of the Treasury, Financial Management Service, Production Systems and Operations Branch. Contact the Financial Management Service to obtain this information. Mailing addresses obtained in this manner shall be used to enforce the collection of debts and may be disclosed to other agencies and collection agencies for the purpose of collecting debts owed to NASA. A mailing address obtained from the Department of the Treasury may be disclosed to a commercial credit bureau only for obtaining a commercial credit report. However, this disclosure limitation no longer applies once a debtor's mailing address is independently confirmed.

G. Determining Debt Amount for Compromise, Suspension, and Termination. Debts shall not be subdivided to avoid monetary ceilings for debt compromise, suspension, or termination of collection actions. A debtor's liability arising from a particular transaction shall be considered a single debt in determining if a debt is \$100,000 or greater for purposes of compromise, suspension, or termination. Nothing in this chapter exempts accountable officials from pecuniary liability arising from erroneous payments and loss of funds.

H. Collection Priorities for Multiple Debts. Internal administrative offsets shall continue until a debt is paid prior to offsetting or liquidating subsequent debts. However, consideration shall be given to applicable statutes of limitations and collection priorities to ensure that maximum amounts of indebtedness are collected within the allowed recovery period.

I. Crediting Collections to Accounts. If collected in time to be credited to a current or expired fiscal year appropriation, debt principal amounts collected shall be refunded to the appropriation or account originally charged when funds were disbursed or to the appropriation or account originally designated to receive credit as a result of a sale of goods or services. Otherwise, debt principal proceeds due to lapsed

appropriations shall be credited to the Treasury Miscellaneous Receipt Account as designated by law. Interest, penalties, and administrative costs received in conjunction with delinquent debt collection also shall be credited to the appropriate Treasury Miscellaneous Receipt Account.

J. Recovery Auditing. The use of contingency fee auditing services contracts to identify and recover contractor overpayments is being implemented via a NASA wide contract.

060503. Collections.

A. NASA Centers are responsible for collecting the amount of an overpayment resulting from an erroneous payment, duplicate payment, or dual negotiation of an original and recertified U.S. Treasury check. However, when a contract modification (downward adjustment) is issued after the date of a disbursement that causes a contract to be in an overpayment status, the result of that modification is not an erroneous payment with respect to this chapter. The Center Office of the CFO shall contact the procuring contracting officer or the administrative contracting officer (the individual who issued the modification causing the overpayment) to ensure that a demand letter is sent to the contractor for recovery of funds.

B. The primary responsibility for determining the amount and ensuring collection of contract debt is with the contracting officer, for most types of contract debts. It is the Center CFO Office's responsibility to initiate action to make the collection from the contractor. Officers shall act judiciously to make recovers of debt upon receipt of a official request, including payment dates, amounts due to the contractor, and provision of a copy of the contract from the contracting officer or other authorized official. Any checks from contractors for the payment of debt should be immediately sent to the disbursing officer with a request for confirmation of receipt of payment.

060504. Debt Collection Initiated by Contracting Officers or Designees.

A. Unless otherwise prescribed, collection of contractor debts described below shall be initiated by the appropriate contracting officer, or designee, in accordance with the procedures in the Federal Acquisition Regulation (FAR), as supplemented by the requirement.

1. Damages or excess costs related to defaults in performance.
2. Breach of contract obligations for progress payments, advance payments, or payments for government furnished property or material.
3. Government expenses to correct defects.

4. Overpayments for errors in quantity, billing or deficiencies in quality.
5. Retroactive price reductions resulting from contract price redetermination or incentive type contracts.
6. Overpayments disclosed by quarterly statements required under price redetermination or incentive contracts.
7. Delinquency in contractor payments due under agreements or arrangements for deferral or postponement of collections.
8. Reimbursement of costs, as provided in the FAR, subparts 33.102(b) and 33.104(h)(1), paid by the government where a postaward protest is sustained as a result of an awardee's misstatement, misrepresentation, or miscertification as provided in the FAR subpart 33.104(h)(8).

B. The contracting officer, or designee, shall keep the applicable accounting office apprised of all collection and offset transactions, including all notices issued or received, that affect the Organization's accounting records. Communication of the foregoing activity shall be performed in the accounting month that the activity occurred. These actions will ensure that receivables are established, aged, collected and written-off in the accounting records and identified in reports.

060505. Demand for Payment. Written demand for repayment of debts shall be made promptly, and in terms that inform the debtor of the consequences of failing to cooperate with the Agency to resolve the indebtedness. Priority shall be given first to voluntary repayment prior to initiating involuntary measures for recovery of debts. Repayment measures include one or more of the following activities: internal debt recovery processes by the Agency (through installment agreements and internal administrative offsets), and/or transfer to the Department of the Treasury for cross-servicing. Transfer of debts to the Department of Justice for litigation also may be required.

A. Demand Letters. Upon determination that a debt exists from a contractor, vendor, assignee, or business entity, make an immediate written demand for payment within 5 working days after recognizing the debt. Recover debts under \$600 normally through established internal NASA payment offset procedures. The demand letter shall direct the contractor to make payment for the debt to the disbursing office, or in the case of terminations for default, to the accounting office. The contracting officer shall send a copy of each demand letter to the Office of the Center CFO and request acknowledgement of receipt. Contracting officers shall furnish documents to the disbursing office that identify the distribution of the principal amount of the debt by appropriation, preferably attached to the disbursing office copy of the demand letter.

B. Demand Letter under the Provisions of the Cecile Industries Decision. Previous legal decisions have upheld the government's right to offset contract debts. (The decision by the Court of Appeals for the Federal Circuit in *Cecile Industries, Inc. v. Cheney*, 995 F.2d 1052 (Fed.Cir. 1993), held that the Debt Collection Act of 1982 does not govern the government's common law right to offset contract debts. With respect to the Cecile decision, a demand letter for payment of contract debts that are determined to be recovered internally by the Agency through offsets should not make reference to 31 USC 3176.) The demand letter to contractors indebted to the government shall include the following:

1. A description of the debt, including the amount.
2. A statement stating that payment should be made in full within 30 days from the date of the demand letter.
3. The address to which payment should be sent (and notice that the check, or wire transfer when applicable, shall be made payable to the "U.S. Treasury")
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 any earlier date specified in the contract, if applicable, and the rate that shall be used for calculating interest.
5. Notification that the principal and interest shall be subject to collection by offset if the debt is not paid within 30 days from the date of the demand letter.
6. The name, address, and phone number of a contact person or office within the agency.
7. Any available documentation that substantiates the indebtedness should be included with the demand letter.

C. Number of Demand Letters. It is agency policy that only one demand letter is required. A second, or additional, demand letter(s) may be issued on a case-by-case basis when the debt is not recovered or active measures to resolve the indebtedness have not been initiated, after 30 days from the date of issuance of the initial demand letter.

D. Maximum Time Limitations for Collecting Debts. Title 28 United States Code, section 2415, "Time for Commencing Actions brought by the United States," and 31 U.S.C 3716, "Administrative Offset," promulgate time limitation requirements for collecting debts under this chapter. Based on the statute of limitation, agencies are barred from filing a formal complaint to pursue a collection action under this

chapter after the expiration of the later of the following dates: 6 years from the debt repayment due date, or within 1 year after a final decision has been rendered in an administrative proceeding. In the event that issuance of a later partial payment or written acknowledgment of debt occurs, the time limitation for collection action shall begin anew at the time of each such payment or written acknowledgment of debt. Administrative offsets of payments, however, may continue for up to 10 years. Accordingly, the collection of contractor debts should be pursued in accordance with the time limitations specified in 28 USC 2415 and 31 USC 3716.

060506. Internal Administrative Offsets. Recover debts internally within the Agency, to the extent practicable, by voluntary repayment of the debt by the debtor or by administrative offset(s) of other payments owed to the contractor. The contractor shall be required to liquidate debts either by payment in a lump sum on demand, or by credit against unpaid bills due the contractor, unless an installment agreement has been entered into or a deferment of collection has been approved (see FAR 32.606(d)). After 30 days have elapsed since the initial demand letter was mailed and no payment has been received, offset the amount of a contractor's indebtedness against other monies that are owed the contractor.

A. Offset as a Deduction on a Public Voucher. FAR subpart 32.611 allows for offsetting contractor payments to liquidate debts owed by the contractor if an explanation is given to the contractor. Offsets (that include appropriate administrative charges) shall be made against the same contract that gave rise to the debt, provided that payments are scheduled under that contract. Effect offsets against amounts due the contractor under other contracts only when offsets against the contract that gave rise to the debt cannot be accomplished. The public voucher must be approved and the accounting classification charged for the total amount being settled with no regard for the deduction being applied. Prominently annotate the face of the voucher showing the amount withheld and the accounting classification credited to ensure that only the adjusted net amount is paid to the contractor. A notation with the appropriate information also shall be made that adequately informs the payee of the reason(s) for the deduction.

1. Considerable discretion is needed to determine when an offset is appropriate. Some businesses prefer that their debts be liquidated as an offset. If a contractor indicates agreement in writing to the disbursing office, the disbursing office may effect an offset prior to the expiration of the due date indicated in the demand letter. Other contractors may prefer to make a remittance by check shortly after the due date. In either of these instances, an offset may result in collecting the debt twice, thereby requiring a refund of a collection. Another problem may arise when a remittance has not been forthcoming, but the disbursing office is unaware of whether the contractor will be submitting any invoices in the near future.

2. Processing an offset is more complex than processing the receipt of a remittance; therefore, in these cases, the disbursing office should encourage contractors to submit their payments by check or wire transfer. Interest charges shall be computed through the date of an offset, and the expenses associated with effecting an offset shall be included as an administrative cost as mentioned in section 1807, below. Offsets normally shall not be accomplished when there is an existing assignment of claims associated with the contractor. Disbursing office personnel shall seek guidance from their legal staff, as appropriate, in determining whether an offset may be taken when an assignment of claims exists.

B. Credit Memoranda

1. The demand letter shall indicate that a credit memorandum is not an acceptable means for liquidating indebtedness; however, as an exception, a credit memorandum may be accepted under special circumstances and only when there is a payable invoice to which the credit can be applied. For example, a credit memorandum may be acceptable when a contractor is the original discoverer of the error that led to the indebtedness and voluntarily submits a credit memorandum to the disbursing office without having received a demand letter. The contractor should furnish the disbursing office, upon request, an invoice number, date, and the amount of the debt to be offset against the invoice, according to the credit memorandum.

2. A contractor may indicate on an invoice, or on a progress payment request, that the amount of the credit memorandum shall be deducted from the amount due from the government. In all other instances, a determination must be made on the most efficient manner in which the debt can be recovered. In making this determination, give consideration both to the relative costs that would be incurred by the Agency under each option, and to the method that is expected to result in liquidation of the debt at the earliest date. The latter factor is dependent upon the expected volume and frequency of incoming invoices that are susceptible to administrative offset. Regardless of the method selected, the disbursing office shall acknowledge receipt of the credit memorandum and inform the contractor of its disposition. If direct remittance is required, the acknowledgement shall contain a statement, such as: "This is to acknowledge receipt of your credit memorandum 14245, dated December 14, 2xxx. We cannot accept this document as liquidation of your indebtedness, and must ask that you remit a check to the following address: _____." If an offset is accomplished, the disbursing office's letter shall contain a statement such as: "This is to acknowledge receipt of your credit memorandum 67890, dated June 12, 2xxx. We have offset the amount of your debt against your invoice A654Z, dated June 5, 2xxx." Receipt of a credit memorandum by the due date (where the due date is stated in the demand letter) does not preclude a charge of interest and administrative costs.

C. Payment Schedule.

1. Whenever possible, payment, including deferred payment, of debts owed the government by contractors shall be made in one lump sum amount.

2. When a debtor contractor is able to establish sufficient justification, a series of installment payments may be approved that will ensure liquidation of the debt within a reasonable period of time. In accordance with 31 C.F.R. 901.8, when feasible, installment payments should be sufficient in size and frequency to liquidate the government's claim within 3 years. Interest and administrative fees shall be computed and assessed for each payment of outstanding debt.

3. All remittances received, whether in lump sum or installments, shall be collected and deposited to the appropriate fund account upon receipt. The accounting site must be informed of all collections as the accounting site maintains the official accounts receivable records. If the amount received is not adequate to liquidate the entire amount of the indebtedness, the remittance shall be applied in the following order: 1) outstanding penalties, 2) administrative charges, 3) interest, 4) principal.

060507. Transfer of Delinquent Debts. The Debt Collection Improvement Act of 1996 requires agencies to transfer for collection a debt or a claim that has been delinquent 180 days or more to the Department of Treasury (or other approved debt collection center) for collection. There are different procedures that apply to uncollectible debts under \$600 and \$600 or greater.

A. Delinquent Debts Under \$600. Delinquent debts under \$600 shall be written off after exhausting all reasonable remedies, including internal administrative offsets, to recover the debt internally within the Agency. Although a debt is written off, collection of the debt through internal administrative offset still may be pursued until the debt is closed out. The transfer of a debt under \$600 to the Department of the Treasury, or to the Department of Justice (if accepted), shall be considered only when a determination is made that the recovery of the debt is in the best interest of the government.

B. Delinquent Debts \$600 or Greater. In order to enable subsequent debt collection efforts, including offsets, and permit the accumulation of adequate supporting data, the disbursing office may retain these debts up to a maximum of 180 days following the date of the initial demand letter.

1. Transfer of Debts to the Department of the Treasury. The accounting office shall refer eligible debts that are delinquent for up to 180 days to the Department of the Treasury, Financial Management Service (FMS), for debt collection and cross-servicing in accordance with the FMS-NASA agreement. Recovery and collection of debts transferred to the Department of the Treasury for cross-servicing are subject to the administrative offset provisions of 31 USC 3716.

2. Supporting Documentation. When a debt is transferred to the accounting office, the debt shall be supported by the following documents that are legible and tabbed as follows for processing:

a. Copies of vouchers paid under the contract, which relate to the specific debt. For example, claims resulting from erroneous overpayments to the contractor need to be supported only by those paid vouchers that will assist in fully understanding the case. Submission of all paid vouchers under the contract is encouraged when such documentation is necessary for a full understanding of the claim. All paid vouchers submitted in support of claims transferred shall clearly indicate the date that the disbursement was made.

b. Amounts of collections/offsets and dates collections were offset.

c. For duplicate payments and dual negotiated successor checks, copies of the negotiated checks obtained from the Department of Treasury.

d. All demand letters, other correspondence, and written documentation of telephone or personal contacts with the debtor and others which are pertinent to the debt.

e. Any other documents needed to support a recommendation for compromise, discontinuation, or termination.

f. Taxpayer identification number

g. Telephone number, address, and the name of the point of contact who is knowledgeable of the following entities: debtor, Contract Financing Officer making transfer, disbursing office making submission, and accounting activity.

h. In the case of a determination of debt(s) resulting from an audit or contract reconciliation, a copy of the audit or reconciliation report, with sufficient supporting documentation to explain the conclusions.

i. The accounting classification/appropriation to which the principal portion and administrative fees of the debtor's payments should be deposited.

3. Department of the Treasury Cross-Servicing. Until a debt is referred to a private collection agency, the Department of Treasury will actively pursue collection, including purchasing credit reports, skip-tracing, and negotiating compromise and repayment plans. Department of Treasury has established standard processes for accepting and collecting debts. These services are outlined below:

- a. Demand letter issued
- b. Attempts to contact the debtor by phone
- c. Credit bureau reporting
- d. Offset of federal payments through the Agency of the Treasury Offset Program
- e. Referral to a private collection agency through a governmentwide contract administered by the Department of the Treasury.
- f. Recommendation, and upon the Agency's concurrence, referral of debts to the Department of Justice

4. Funds Accountability. Once a debt is transferred to the accounting office, the accounting office will have full responsibility for collecting the debt. Funds accountability, however, does not transfer to the accounting division. If an office other than the accounting office receives a payment after transfer of the debt, the office receiving the payment shall notify the accounting office within 3 workdays, of the receipt and disposition of the payment. When there are overcharges to appropriations or funds, the activity responsible for maintaining the official accounting records shall continue to maintain control over the receivables.

5. Debt Write-Off. When all means to recover the debt have been exhausted, and upon notification of a determination by the Department of the Treasury and/or the Department of Justice that a debt that was transferred to one or both of the foregoing Departments is uncollectible, the accounting office shall notify the disbursing office that the debt should be written off and action should be taken to write it off.

6. Close-Out of Indebtedness. While collection action is suspended or terminated, a debt remains delinquent; further collection action may be pursued at a later date (within the allowable statutory time limit). When a debt is discharged, or "closed out," in full or in part, further collection action is prohibited. Before closing out a debt, the debt collection action must be terminated in accordance with the requirements of 31 USC 3711, which requires the Agency to sell a delinquent nontax debt upon termination of collection action if it is determined to be in the best interests of the government, and 26 U.S.C 6050P that requires that the Agency file

discharge report to the Internal Revenue Service upon discharging a debt. Components shall seek legal assistance through the local legal office to close out a debt.

060508. Interests, Penalties, and Administrative Charges

A. Interest Rate. In most cases, the debtor shall be assessed interest calculated using the Current Value of Funds (CVF) interest rate that is in effect on the date from which interest begins to accrue and remains fixed for the duration of the indebtedness. The CVF interest rate shall be provided to individual disbursing offices by the accounting office. The CVF interest rate shall not apply to debts where a statute, regulation, loan agreement or contract either prohibits such charges or explicitly fixes the charges that apply to debts involved.

B. Calculating Simple Interest. Unless otherwise established in the specific contract, repayment agreement, statute, or regulation, interest is not assessed until the due date for payment of indebtedness has passed. Interest accrues, however, from the date on which the first demand letter is mailed or hand delivered to the debtor to the date the debt is paid in full. Therefore, the minimum amount charged for interest shall be for a 30-day period. When the due date passes without receipt of the required payment from the contractor, interest shall be computed by multiplying the principal amount of the debt by the applicable CVF interest rate divided by 360 days times the number of days in the interest period. NOTE: The Department of the Treasury annually or quarterly publishes the CVF rates in the Federal Register and in Treasury Financial Manual bulletins. If there is an offset, or if the principal amount of the debt decreases for any other reason, the daily amount of interest needs to be recalculated, effective with the date of the change.

C. Waiver of Interest Charges.

1. Interest may be waived on a case basis, e.g., when the disbursing officer or other authorized official determines that collection of interest charges would be against equity and good conscience, or not in the best interest of the United States. Frequently, a debtor will make remittance of the principal amount due to the government a few days past the established due date. Another common debtor practice is to pay the last amount billed, but fail to make allowance for the additional interest that accrues between the billing date and the remittance date. In such cases, disbursing offices shall determine if additional billing is warranted.

2. Interest in amounts less than \$50 shall not be billed. For example, a contractor owes \$1,330 (of which \$1,080 is the principal amount and \$250 is the interest amount) when the demand letter is sent out. Subsequently, the contractor submits a payment for \$1330, but payment is not received until after the due date. Interest of \$25 more accrues by the time payment is received. The disbursing office would waive the additional \$25 interest without pursuing further collection action on it, credit \$250 to interest, and credit \$1,080 to principal. When additional interest of \$50 or more accrues, each case shall be reviewed on an individual basis to consider the facts surrounding the case in order to make a determination on the assessment of interest charges. For example, when a contractor has made a good faith effort to make full payment of monies due, collection of additional charges would be against equity and good conscience, and additional interest may be waived.

D. Penalty Charges. Creditor organizations (i.e., organizations to which a debt is owed) shall assess a penalty charge of 6 percent per annum on any debt principal that is delinquent beyond 90 days. Penalty charges shall accrue from the date the principal amount owed becomes delinquent. Amounts received from a contractor or business entity are to be deposited in the Treasury Receipt Account 1099, "Fines, Penalties, and Forfeitures, Not Otherwise Classified."

E. Administrative Costs. Administrative costs relate to only delinquent debts (i.e., debts not paid for 30 or more days from the date the demand letter was mailed). Administrative costs are assessed to cover expenses incurred in the recovery of the delinquent debts. The cost of sending an initial demand letter would not be included when calculating administrative costs because that expense is incurred whether or not the debt becomes delinquent. In contrast, costs associated with the calculation of interest and forwarding of the debt to the accounting office are necessitated only because the debt is not paid when due (i.e., within 30 days after the date from which the notice is mailed when interest accrues) and subsequently becomes delinquent. Therefore, costs associated with these actions are included in the calculation of administrative costs. Administrative charges must be based on actual costs, or on an average based on actual costs. The costs may not arbitrarily be established. Additional administrative charges may be assessed, if needed.

060509. Deferments and Disputes Under the Contract Disputes Act. Under the Contract Disputes Act of 1978, a contractor may appeal a decision of indebtedness to the ASBCA or through the United States court system. The contractor may request, in writing, for a deferment of debt payment until the appeal is decided (see FAR subpart 32.613). Although a contractor may use the term "deferment" when requesting postponement of a payment, a contractor's request for a deferment for collection of indebtedness on a contract associated with an appeal should be sent to the contract financing office by certified mail, within 3 work days from the date of receipt of that request (see FAR subpart 32.613). The accounting office cannot approve or deny such a request for a deferment. When a disbursing office or the accounting office receives a request for deferment of a debt from a contractor in association with an appeal, the office

receiving the request shall send the request within 3 work days to the appropriate contract financing office.

060510. Bankruptcy. Bankruptcy litigation is accomplished by the Department of Justice through the office of the cognizant U.S. Attorney. Prescribed actions shall be taken when the procurement contracting office or contract administrative office receives notice of bankruptcy from the contractor or from another source.

A. Bankruptcy cases generally are time sensitive. When a notice of bankruptcy is received, immediate action is required. Government monetary claims and other rights may be adversely and irrevocably affected if not timely asserted.

B. 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 the NASA Office of General Counsel.

C. This notification shall occur regardless of whether any contracts have fully been performed, closed, or terminated. At a minimum, the notification should contain the name of the contractor, the court in which the bankruptcy petition has been filed, the date of the filing of the bankruptcy petition, and the bankruptcy court docket number (if known).

D. Upon receipt of a notice from a contracting officer, the Office of General Counsel shall prepare a consolidated proof of claim on behalf of the Agency. The proof of claim shall be forwarded to the appropriate U.S. Attorney's office for filing, as well as to the contracting officer. A copy shall be sent to the DoJ's Central Intake Facility. The proof of claim shall identify the Office of General Counsel as the office designated to receive further notices and any funds received pursuant to the proceedings.

E. The filing of a bankruptcy petition has a major impact on business relationships with the contractor who has filed for bankruptcy protection. Many otherwise appropriate actions cannot be taken against a bankrupt contractor, and actions that may be legally taken against a contractor may have adverse consequences for the Agency. The activity's legal office should be informed before any action is taken with regard to a contractor who has filed for bankruptcy.

F. In accordance with the FAR subpart 52.242-13, "Bankruptcy," should the contractor enter into proceedings relating to bankruptcy, whether voluntary or involuntary, the contractor agrees to furnish, by certified mail, or electronic commerce method authorized by the contract, written notification of the bankruptcy to the contracting officer responsible for administering the contract. This notification shall be furnished within 5 days of the initiation of the proceedings relating to bankruptcy filing. This notification should including: date on which bankruptcy petition was filed, identity of court in which the bankruptcy petition was filed, listing of government contract

numbers and contracting officers for all government contracts with this contractor against which final payment has not been made, FAR clause 52.242-13 states that this obligation remains in effect until final payment under the contract(s) is made.