

## 32.112-1 Subcontractor assertions of nonpayment.

(a) In accordance with Section 806(a)(4) of Pub.L.102-190, as amended by Sections 2091 and 8105 of Pub.L.103-355 (10 U.S.C. 4601 note prec.), upon the assertion by a subcontractor or supplier of a Federal contractor that the subcontractor or supplier has not been paid in accordance with the payment terms of the subcontract, *purchase order*, or other agreement with the prime contractor, the *contracting officer* may determine-

(1) For a *construction* contract, whether the contractor has made-

(i) Progress payments to the subcontractor or supplier in compliance with Chapter 39 of Title 31, *United States Code* (Prompt Payment Act); or

(ii) Final payment to the subcontractor or supplier in compliance with the terms of the subcontract, *purchase order*, or other agreement with the prime contractor;

(2) For a contract other than *construction*, whether the contractor has made progress payments, final payments, or other payments to the subcontractor or supplier in compliance with the terms of the subcontract, *purchase order*, or other agreement with the prime contractor; or

(3) For any contract, whether the contractor's certification of payment of a subcontractor or supplier accompanying its payment request to the Government is accurate.

(b) If, in making the determination in paragraphs (a)(1) and (2) of this subsection, the *contracting officer* finds the prime contractor is not in compliance, the *contracting officer* may-

(1) Encourage the contractor to make timely payment to the subcontractor or supplier; or

(2) If authorized by the applicable payment clauses, reduce or suspend progress payments to the contractor.

(c) If the *contracting officer* determines that a certification referred to in paragraph (a)(3) of this subsection is inaccurate in any material respect, the *contracting officer* shall initiate administrative or other remedial action.

**Parent topic:** 32.112 Nonpayment of subcontractors under contracts other than for commercial products and commercial services.