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CIA-RDP92G00017R000600260001-3

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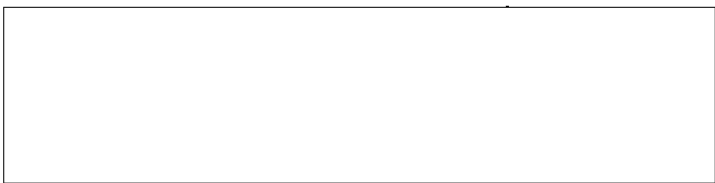


*- OK*

*"We don't respond to these requests at all"-*

*"We are exempt."*

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Subject

ROUTING AND TRANSMITTAL SLIP		Date	
		23 August 1989	
TO: (Name, office symbol, room number, building, Agency/Post)		Initials	Date
1. DIRECTOR OF LOGISTICS			
2.			
3.			
4.			
5.			
Action	File	Note and Return	
Approval	For Clearance	Per Conversation	
As Requested	For Correction	Prepare Reply	
Circulate	For Your Information	See Me	
Comment	Investigate	Signature	
Coordination	Justify		

REMARKS

#1. FOR ACTION

Please respond directly.

SUSPENSE: NO LATER THAN 30 SEPTEMBER 1989.

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

[Redacted]	Room No.—Bldg.
	Phone No.

5041-102

OPTIONAL FORM 41 (Rev. 7-76)  
Prescribed by GSA

ROUTING AND TRANSMITTAL SLIP		Date	
		23 August 1989	
TO: (Name, office symbol, room number, building, Agency/Post)		Initials	Date
1. DIRECTOR FINANCIAL MANAGEMENT			
2.			
3.			
4.			
5.			
Action	File	Note and Return	
Approval	For Clearance	Per Conversation	
As Requested	For Correction	Prepare Reply	
Circulate	For Your Information	See Me	
Comment	Investigate	Signature	
Coordination	Justify		

REMARKS

FYI

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[Redacted]	Room No.—Bldg.
	Phone No.

5041-102

OPTIONAL FORM 41 (Rev. 7-76)  
Prescribed by GSA

DD/A REGISTRY  
FILE: CMC-40-AR

**EXECUTIVE SECRETARIAT  
ROUTING SLIP**


TO:

		ACTION	INFO	DATE	INITIAL
1	DCI				
2	DDCI				
3	EXDIR				
4	D/ICS				
5	DDI				
6	DDA		X		
7	DDO				
8	DDS&T				
9	Chm/NIC				
10	GC				
11	IG				
12	Compt				
13	D/OCA				
14	D/PAO				
15	D/PERS				
16	D/Ex Staff				
17					
18					
19					
20					
21					
22					

SUSPENSE \_\_\_\_\_  
Date

Remarks

ER 89-1219/2

  
 Executive Secretary  
 21 Aug '89  
 Date

**3637** (10-81)

**DD/A REGISTRY**  
**FILE: CMC-40-AR**



Office of Acquisition Policy  
Washington, DC 20405



AUG 10 1989

ER 89-1219/2



CIVILIAN AGENCY ACQUISITION COUNCIL LETTER NO. 89-7

TO: Civilian Agencies Other than NASA

SUBJECT: List of Basic Agreements Pertaining to Research and Development (R&D)

In order to promote the goals stated in FAR 35.015(b), we will publish an updated list of basic agreements with educational institutions and nonprofit organizations pertaining to R&D.

As required by FAR 35.015(b)(3), please submit to the FAR Secretariat not later than September 30, 1989, a list of your basic agreements that fall into the above category.

Your agency's list should be sent to the following address:

General Services Administration  
Attn: FAR Secretariat (VRS)  
18th & F Streets, NW  
Room 4041  
Washington, DC 20405

A handwritten signature in dark ink, appearing to read "Harry S. Rosinski".

HARRY S. ROSINSKI  
Acting Chairman,  
Civilian Agency Acquisition Council

cc: Acting Director, DARC

DDA SUBJECT FILE COPY

**EXECUTIVE SECRETARIAT  
ROUTING SLIP**

TO:

	ACTION	INFO	DATE	INITIAL
1	DCI			
2	DDCI			
3	EXDIR			
4	D/ICS			
5	DDI			
6	DDA	X		
7	DDO			
8	DDS&T			
9	Chm/NIC			
10	GC			
11	IG			
12	Compt			
13	D/OCA			
14	D/PAO			
15	D/PERS			
16	D/Ex Staff			
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SUSPENSE \_\_\_\_\_

Date \_\_\_\_\_

Remarks

ER 89-1219

*XLO*  
Executive Secretary  
3 Apr '89  
Date

3637 (10-81)

Date  
4 APRIL 1989

**ROUTING AND TRANSMITTAL SLIP**

TO: (Name, office symbol, room number, building, Agency/Post)

1. DIRECTOR OF FINANCIAL MANAGEMENT

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

5. \_\_\_\_\_

Action	File	Note and Return
Approval	For Clearance	Per Conversation
As Requested	For Correction	Prepare Reply
Circulate	For Your Information	See Me
Comment	Investigate	Signature
Coordination	Justify	

**REMARKS**

FYI

**DDA REGISTRY**  
FILE:

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)

Room No.—Bldg.

Phone No.

EXA/DDA

**DDA REGISTRY**

FILE: CMC-40-AR



General Services Administration  
Office of Acquisition Policy  
Washington, DC 20405

ER 89-1219



MAR 23 1989

CIVILIAN AGENCY ACQUISITION COUNCIL LETTER NO. 89-3

TO: Civilian Agencies, Other Than NASA

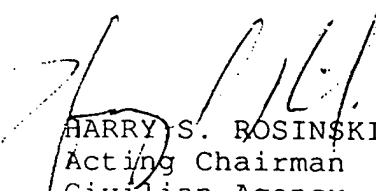
SUBJECT: Prompt Payment

Public Law 100-496, the Prompt Payment Act Amendments of 1988, established statutory implementation deadlines.

Implementation of the 1988 amendments in the Federal Acquisition Regulation (FAR) has been concurred in by the Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulatory Council (DARC).

Although the FAR issuing agencies have not yet given final approval to the rule, we are issuing the rule for information purposes to provide you with as much time as possible to comply with the statutory requirements. We recommend that it be distributed to your contracting activities for their information pending approval and publication of the final rule in the Federal Register and the distribution of the Federal Acquisition Circular.

The Act provides that these changes must apply to contracts awarded, contracts renewed, and contract options exercised after March 31, 1989. Major policy changes required by the Act include elimination of payment grace periods, creation of a standard 14 day payment period for progress payments on construction contracts and establishment of required flowdown provisions on construction contracts.

  
HARRY S. BOSINSKI  
Acting Chairman  
Civilian Agency  
Acquisition Council

Enclosure

[BILLING CODE 6820-JC]

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 19, 32, and 52

[Federal Acquisition Circular 84-45]

Federal Acquisition Regulation (FAR); Prompt Pay

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: Federal Acquisition Circular (FAC) 84-45 amends the Federal Acquisition Regulation (FAR) with respect to the following: Prompt Pay .

DATES: Effective date: April 1, 1989, for contracts awarded, contracts renewed, and options exercised on or after that date.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755.

SUPPLEMENTARY INFORMATION:

A. Background.

FAC 84-45, Item I. Pub. L. 100-496, the Prompt Payment Act Amendments of 1988, significantly changes the bill paying practices of the Federal Government. The law provides that these changes apply to contracts awarded, contracts renewed, and contract options exercised after March 31, 1989. This final rule

contains changes to the Federal Acquisition Regulation to incorporate the required revisions. These revisions include (1) elimination of the 15-day grace period during which the Government was entitled to make invoice payments without incurring interest penalties; (2) establishment of an additional penalty if a contractor is not paid an interest penalty owed by the Government; (3) establishment of a 15-day payment period for contracts providing for "fast payment" procedures; (4) a requirement that construction contract progress payments generally be paid within 14 days; and (5) a requirement for specific provisions to be included in construction subcontracts.

B. Regulatory Flexibility Act.

FAC 84-45, Item I. The proposed rule published in the Federal Register on December 30, 1988 (53 FR 53364) contained an Initial Regulatory Flexibility Analysis. A Final Regulatory Flexibility Analysis has been prepared and is on file in the FAR Secretariat. The Final Analysis will be submitted to the Chief Counsel for Advocacy, Small Business Administration.

C. Paperwork Reduction Act.

FAC 84-45, Item I. The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501, et seq., under OMB Control Number 9000-0102.

FAC 84-45, Item I. On December 30, 1988, a proposed rule was published in the Federal Register (53 FR 53364). The comments that were received from 51 individuals and organizations were



considered by the Councils and a number of changes were made in the development of this final rule.

List of Subjects in 48 CFR Parts 1, 19, 32, and 52

Government procurement.

Dated:

HARRY S. ROSINSKI  
Acting Director  
Office of Federal Acquisition  
and Regulatory Policy

Federal Acquisition Circular (FAC) 84-45 amends the Federal Acquisition Regulation (FAR) as specified below:

ITEM I—PROMPT PAYMENT

FAR 1.105, Subparts 19.2 and 32.9, and the clauses at 52.232-5, 52.232-8, and 52.232-25 are revised and the clauses at 52.232-26, 52.232-27, and 52.232-28 are added to change the bill paying practices of the Federal Government. These revisions eliminate the 15-day grace period during which the Government is entitled to make invoice payments without incurring interest penalties, establish an additional penalty if a contractor is not paid an interest penalty owed by the Government, establish a 15-day payment period for contracts providing for "fast payment" procedures, require that construction contract progress payments generally be paid within 14 days, and require that construction contractors substantiate the amount of their progress payment request and certify the request. These changes apply to contracts awarded, contracts renewed, and contract options exercised after March 31, 1989.

Therefore, 48 CFR Parts 1, 19, 32, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 19, 32, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1.105 is amended by adding in numerical order two FAR segments and corresponding OMB Control numbers to read as follows:

1.105 OMB approval under the Paperwork Reduction Act.

\* \* \* \* \*

FAR segment	OMB Control Number
* * * * *	

32.9	9000-0102
------	-----------

\* \* \* \* \*

52.232-27	9000-0102
-----------	-----------

\* \* \* \* \*

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

3. Section 19.201 is amended by redesignating paragraphs (c) (5), (6), and (7) as (c) (6), (7), and (8) and by adding a new paragraph (c) (5) to read as follows:

19.201 General policy.

\* \* \* \* \*

(c) \* \* \*

(5) Assist small business concerns to obtain payments, late payment interest penalties, or information, in conformity with chapter 39 of Title 31, United States Code.

PART 32—CONTRACT FINANCING

4. Section 32.900 is amended to read as follows:

32.900 Scope of subpart.

This subpart prescribes policies, procedures, and clauses for implementing Office of Management and Budget (OMB) Circular A-125, "Prompt Payment."

5. Section 32.901 is amended to read as follows:

32.901 Applicability.

This subpart applies to all Government contracts (including small purchases as defined in Subpart 13.1), except for contracts where payment terms and late payment penalties have been established by other governmental authority (e.g., tariffs). The interest penalty provisions of this subpart do not apply to contracts awarded to foreign vendors outside the United States for work performed outside the United States.

6. Section 32.902 is amended by revising the definitions, "Contract financing payment", "Designated billing office", "Discount for prompt payment", "Due date", and "Proper invoice" to read as follows:

32.902 Definitions.

"Contract financing payment," as used in this subpart, means a Government disbursement of monies to a contractor under a contract clause or other authorization prior to acceptance of supplies or services by the Government. Contract financing payments include advance payments, progress payments based on cost under the clause at 52.232-16, Progress Payments, progress payments based on a percentage or stage of completion (see 32.102(e)(1)) other than those made under the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts or the clause at 52.232-10, Payments Under Fixed-Price Architect-Engineer Contracts, and interim payments on cost-type contracts. Contract financing payments do not include invoice payments or payments for partial deliveries.

\* \* \* \* \*

"Designated billing office," as used in this subpart, means the office or person designated in the contract where the contractor first submits invoices and contract financing requests. This might be the Government disbursing office, contract administration office, office accepting the supplies delivered or services performed by the contractor, contract audit office, or a nongovernmental agent. In some cases, different offices might be designated to receive invoices and contract financing requests.

\* \* \* \* \*

"Discount for prompt payment" means an invoice payment reduction voluntarily offered by the contractor, in conjunction with the clause at 52.232-8, Discounts for Prompt Payment, if payment is made by the Government prior to the due date. The due date is calculated from the date of the contractor's invoice.

"Due date" means the date on which payment should be made.

\* \* \* \* \*

"Proper invoice" means a bill or written request for payment which meets the minimum standards specified in the clauses at 52.232-25, Prompt Payment, 52.232-26, Prompt Payment for Fixed-Price Architect-Engineer Contracts, or 52.232-27, Prompt Payment for Construction Contracts (also see 32.905(e)), and other terms and conditions contained in the contract for invoice submission.

\* \* \* \* \*

7. Section 32.903 is revised to read as follows:

32.903 Policy.

All solicitations and contracts subject to this subpart shall specify payment procedures, payment due dates, and interest penalties for late invoice payment. Invoice payments and contract financing payments will be made by the Government as close as possible to (or earlier as determined by the Agency head to be necessary on a case-by-case basis), but not later than the due dates specified in the contract by incorporation of the clauses at 52.232-25, Prompt Payment, 52.232-26, Prompt Payment for Fixed-Price Architect-Engineer Contracts, or 52.232-27, Prompt Payment for Construction Contracts. Payment will be based on receipt of a proper invoice or contract financing request and satisfactory contract performance. Agency procedures shall ensure that, when specifying due dates, full consideration is given to the time reasonably required by Government officials to fulfill their administrative responsibilities under the contract. Checks will be mailed and electronic funds transfers will be transmitted on or

about the same day the payment action is dated. When appropriate, Government contracts should allow the contractor to be paid for partial deliveries that have been accepted by the Government (see 32.102(d)). Discounts for prompt payment offered by the contractor shall be taken only when payments are made within the discount period specified by the contractor. Agencies shall pay an interest penalty, without request from the contractor, for late invoice payments or improperly taken discounts for prompt payment. The interest penalty shall be absorbed within funds available for administration or operation of the program for which the penalty was incurred. The temporary unavailability of funds to make a timely payment does not relieve the obligation to pay interest penalties. For contracts awarded after October 1, 1989, if the interest penalty is not paid within 10 days after it is due and the contractor makes a written demand for payment within 40 days after payment of the principal amount due, agencies shall pay an additional penalty amount, which shall be calculated in accordance with regulations issued by the Office of Management and Budget.

8. Section 32.905 is revised to read as follows:

32.905 Invoice payments.

(a) Except as prescribed in 32.905(b), 32.905(c), and 32.905(d), the due date for making an invoice payment by the designated payment office shall be:

(1) The 30th day after the designated billing office has received a proper invoice from the contractor; or the 30th day after Government acceptance of supplies delivered or services performed by the contractor, whichever is later.

(i) On a final invoice where the payment amount is subject to contract settlement actions, acceptance shall be deemed to have occurred on the effective date of the contract settlement.

(ii) For the sole purpose of computing an interest penalty that might be due the contractor, Government acceptance shall be deemed to have occurred constructively on the 7th day after the contractor has delivered supplies or performed services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or contractor compliance with a contract requirement. In the event that actual acceptance occurs within the constructive acceptance period, the determination of an interest penalty shall be based on the actual date of acceptance. The constructive acceptance requirement does not, however, compel Government officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities. Except in the case of a contract for the procurement of a brand name commercial item for authorized resale (e.g., commissary items), the contracting officer may specify a longer period for constructive acceptance in the solicitation and resulting contract, if required to afford the Government a reasonable opportunity to inspect and test the property furnished or to evaluate the services performed. The contract file shall indicate the justification for extending the constructive acceptance period beyond 7 days.



(iii) If the contract does not require submission of an invoice for payment (e.g., periodic lease payments), the due date will be as specified in the contract.

(2) However, if the designated billing office fails to annotate the invoice with the actual date of receipt of the invoice, the invoice payment due date shall be deemed to be the 30th day after the date the contractor's invoice is dated, provided a proper invoice is received and there is no disagreement over quantity, quality, or contractor compliance with contract requirements.

(b) The due date for making payments on contracts that contain the clause at 52.232-10, Payments Under Fixed-Price Architect-Engineer Contracts, shall be as follows:

(1) The due date for work or services completed by the contractor shall be the later of the following two events:

(i) The 30th day after the designated billing office has received a proper invoice from the contractor.

(ii) The 30th day after Government acceptance of the work or services completed by the contractor. On a final invoice where the payment amount is subject to contract settlement actions (e.g., release of claims), acceptance shall be deemed to have occurred on the effective date of the settlement. For the sole purpose of computing an interest penalty that might be due the contractor, Government acceptance shall be deemed to have occurred constructively on the 7th day after the contractor has completed the work or services in accordance with the terms and conditions of the contract (see also 32.905(b)(4)). In the event that actual

acceptance occurs within the constructive acceptance period, the determination of an interest penalty shall be based on the actual date of acceptance.

(2) The due date for progress payments shall be the 30th day after Government approval of contractor estimates of work or services accomplished. For the sole purpose of computing an interest penalty that might be due the contractor, Government approval shall be deemed to have occurred constructively on the 7th day after contractor estimates have been received by the designated billing office (see also 32.905(b)(4)). In the event that actual approval occurs within the constructive approval period, the determination of an interest penalty shall be based on the actual date of approval.

(3) However, if the designated billing office fails to annotate the invoice or payment request with the actual date of receipt, the payment due date shall be the 30th day after the date the contractor's invoice or payment request is dated, provided a proper invoice or payment request is received and there is no disagreement over quantity, quality, or contractor compliance with contract requirements.

(4) The constructive acceptance and constructive approval requirements described in 32.905(b)(1) and (b)(2) are conditioned upon receipt of a proper payment request and no disagreement over quantity, quality, contractor compliance with contract requirements, or the requested progress payment amount. These requirements do not compel Government officials to accept work or services, approve contractor estimates, perform contract

administration functions, or make payment prior to fulfilling their responsibilities. The contracting officer may specify a longer period for constructive acceptance or constructive approval, if required to afford the Government a reasonable opportunity to inspect and test the property furnished or to evaluate the services performed.

(c) The due date for making payments on construction contracts shall be as follows:

(1) The due date for making progress payments based on contracting officer approval of the estimated amount and value of work or services performed, including payments for reaching milestones in any project, shall be 14 days after receipt of a proper payment request by the designated billing office. However, if the designated billing office fails to annotate the payment request with the actual date of receipt, the payment due date shall be deemed to be the 14th day after the date the contractor's payment request is dated, provided a proper payment request is received and there is no disagreement over quantity, quality, or contractor compliance with contract requirements. The contracting officer may specify a longer period in the solicitation and resulting contract if required to afford the Government a reasonable opportunity to adequately inspect the work and to determine the adequacy of the contractor's performance under the contract. The contract file shall indicate the justification for extending the due date beyond 14 days. The contracting officer or his representative shall not approve progress payment requests unless the certification and substantiation of amounts requested

are provided as required by the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts.

(2) The due date for payment of any amounts retained by the contracting officer in accordance with the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, shall be as specified in the contract or, if not specified, 30 days after approval by the contracting officer for release to the contractor. This release of retained amounts shall be based on the contracting officer's determination that satisfactory progress has been made.

(3) The due date for final payments based on completion and acceptance of all work (including any retained amounts), and payments for partial deliveries that have been accepted by the Government (e.g., each separate building, public work, or other division of the contract for which the price is stated separately in the contract) shall be as follows:

(i) Either the 30th day after receipt by the designated billing office of a proper invoice from the contractor, or the 30th day after Government acceptance of the work or services completed by the contractor, whichever is later. However, if the designated billing office fails to annotate the invoice with the actual date of receipt, the invoice payment due date shall be deemed to be the 30th day after the date the contractor's invoice is dated, provided a proper invoice is received and there is no disagreement over quantity, quality, or contractor compliance with contract requirements.

(ii) On a final invoice where the payment amount is subject to contract settlement actions (e.g., release of

contractor claims), acceptance shall be deemed to have occurred on the effective date of the contract settlement.

(4) For the sole purpose of computing an interest penalty that might be due the contractor for payments described in subdivision (c) (3) (i) of this section, Government acceptance or approval shall be deemed to have occurred constructively on the 7th day after the contractor has completed the work or services in accordance with the terms and conditions of the contract (see also 32.905(c) (5)). In the event that actual acceptance occurs within the constructive acceptance period, the determination of an interest penalty shall be based on the actual date of acceptance.

(5) The constructive acceptance and constructive approval requirements described in subparagraph (c) (4) of this section are conditioned upon receipt of a proper payment request and no disagreement over quantity, quality, contractor compliance with contract requirements, or the requested amount. These requirements do not compel Government officials to accept work or services, approve contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities. The contracting officer may specify a longer period for constructive acceptance or constructive approval in the solicitation and resulting contract, if required to afford the Government a reasonable opportunity to adequately inspect the work and to determine the adequacy of the contractor's performance under the contract.

(d) The payment terms on contracts for meat and meat food products, contracts for perishable agricultural commodities, and

contracts for dairy products, edible fats or oils, and food products prepared from edible fats or oils are as follows:

(1) The due date on contractor invoices for meat or meat food products, as defined in section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), as further defined in Pub. L. 98-181, including any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product, will be as close as possible to, but not later than, the seventh day after product delivery.

(2) The due date on contractor invoices for perishable agricultural commodities, as defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)), will be as close as possible to, but not later than, the tenth day after product delivery, unless another date is specified in the contract.

(3) The due date on contractor invoices for dairy products (as defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils, will be as close as possible to, but not later than, the tenth day after the date on which a proper invoice has been received.

(e) A proper invoice must include the items listed in subparagraphs (e)(1) through (e)(8) of this section. If the invoice does not comply with these requirements, then the contractor must be notified of the defect within 7 days (3 days on contracts for meat and meat food products, and 5 days on contracts for perishable agricultural commodities, dairy products, edible

fats or oils, and food products prepared from edible fats or oils) after receipt of the invoice at the designated billing office. The reason that the invoice is not a proper invoice must be specified. If such notice is not timely, then an adjusted due date for the purpose of determining an interest penalty, if any, will be established in accordance with 32.907-1(b):

(1) Name and address of the contractor.

(2) Invoice date.

(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 performed.

(5) Shipping and payment terms (e.g., shipment number and date of shipment, prompt payment discount 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 on a proper notice of assignment).

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

(8) Any other information or documentation required by the contract (such as evidence of shipment).

(f) All invoice payments shall be supported by a receiving report or any other Government documentation authorizing payment.

The receiving report or other Government documentation should be forwarded to the designated payment office by the 5th working day after Government acceptance or approval, unless other arrangements have been made. This period of time does not extend the due dates prescribed in 32.905. Acceptance should be completed as expeditiously as possible. The receiving report or other Government documentation authorizing payment shall, as a minimum, include the following:

(1) Contract number or other authorization for supplies delivered or services performed.

(2) Description of supplies delivered or services performed.

(3) Quantities of supplies received and accepted, if applicable.

(4) Date supplies delivered or services performed.

(5) Date supplies or services were accepted by the designated Government official (or progress payment request was approved if being made under the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, or the clause at 52.232-10, Payments Under Fixed-Price Architect-Engineer Contracts).

(6) Signature printed name, title, mailing address, and telephone number of the designated Government official responsible for acceptance or approval functions.

(7) If the contract provides for the use of certified invoices in lieu of a separate receiving report, the certified



invoice must also contain the information described in subparagraphs (f)(1) through (f)(6) of this section.

(g) When a discount for prompt payment is to be taken, payment will be made as close as possible to, but not later than, the end of the discount period. Payment terms are specified in the clause at 52.232-8, Discounts for Prompt Payment.

(h) The designated billing office shall immediately annotate each invoice with the actual date it receives the invoice.

(i) The designated payment office shall annotate each invoice and receiving report with the date a proper invoice was received by the designated payment office.

9. Section 32.907-1 is amended by revising paragraphs (a)(4), (b), (c), (d), and by adding paragraph (g) to read as follows:  
32.907-1 Late invoice payment.

(a) \* \* \*

(4) The designated payment office paid the contractor after the due date.

(b) The interest penalty computation shall not include (1) the time taken by the Government to notify the contractor of a defective invoice, unless it exceeds the periods prescribed in 32.905(e), or (2) the time taken by the contractor to correct the invoice. If the designated billing office failed to notify the contractor of a defective invoice within the periods prescribed in 32.905(e), then the due date on the corrected invoice will be adjusted by subtracting the number of days taken beyond the prescribed notification of defects period from the payment due

date. Any interest penalty owed the contractor will be based on this adjusted due date.

(c) An interest penalty shall be paid automatically by the designated payment office, without request from the contractor, if a discount for prompt payment is taken improperly. The interest penalty shall be calculated on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the contractor is paid.

(d) The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority (e.g., tariffs). The rate in effect on the day after the due date shall remain fixed during the period for which an interest penalty is calculated. This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the Federal Register semiannually on or about January 1 and July 1. The interest penalty will accrue daily on the invoice payment amount approved by the Government and be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice payment amount and be subject to interest penalties if not paid in the succeeding 30-day period. The interest penalty amount, interest rate and the period for which the interest penalty was computed, will be separately stated by the designated payment office on the check, in accompanying

remittance advice, or, in the case of wire transfers, by an appropriate electronic data message accompanying the wire transfer. Adjustments will be made by the designated payment office for errors in calculating interest penalties, if requested by the contractor.

\* \* \* \* \*

(g) For contracts awarded on or after October 1, 1989, a penalty amount (calculated in accordance with regulations issued by the Office of Management and Budget) shall be paid, in addition to the interest penalty amount, if the contractor—

(1) Is owed an interest penalty;

(2) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and

(3) Makes a written demand that the agency pay such a penalty not later than 40 days after the date the invoice amount is paid.

10. Section 32.908 is revised to read as follows:  
32.908 Contract clauses.

(a) If the solicitation or contract contains the clause at 52.232-10, Payments Under Fixed-Price Architect-Engineer Contracts, the contracting officer shall insert the clause at 52.232-26, Prompt Payment for Fixed-Price Architect-Engineer Contracts.

(b) The contracting officer shall insert the clause at 52.232-27, Prompt Payment for Construction Contracts, in all solicitations and contracts for construction (see Part 36).

(c) The contracting officer shall insert the clause at 52.232-25, Prompt Payment, in all other solicitations and contracts (including small purchases as defined in Subpart 13.1), except as indicated in 32.901.

(d) If payment may be made by electronic funds transfer, the contracting officer shall insert the clause at 52.232-28, Electronic Funds Transfer Payment Methods, in solicitations and contracts.

11. Section 32.909 is amended by adding a fourth sentence to read as follows:

32.909 Contractor inquiries.

\* \* \* Small business concerns may obtain additional assistance related to payment issues, late payment interest penalties, and information on the Prompt Payment Act, by contacting the Agency's local representative from the Office of Small and Disadvantaged Business Utilization.

#### PART 52-SOLICITATION PROVISIONS AND CONTRACT CLAUSES

14. Section 52.232-5 is amended by removing in the title of the clause the date "(AUG 1987)" and inserting in its place the date "(APR 1989)"; by revising the second sentence in paragraph (b) of the clause; by redesignating in the clause paragraphs (c), (d), (e), (f), (g), as (e), (f), (g), (h), and (i), and removing in the second sentence of the new paragraph (g) the reference "paragraph (c)" and inserting in its place "paragraph (e)"; and by adding new paragraphs (c) and (d) to read as follows:

52.232-5 Payments under Fixed-Price Construction Contracts.

\* \* \* \* \*

(b) \* \* \* The Contractor shall furnish a breakdown of the total contract price showing the amount included therein for each principal category of the work, which shall substantiate the payment amount requested in order to provide a basis for determining progress payments, in such detail as requested by the Contracting Officer. \* \* \*

\* \* \* \* \*

(c) Along with each request for progress payments, the contractor shall furnish the following certification, or payment shall not be made:

I hereby certify, to the best of my knowledge and belief, that—

(1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

(2) Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of chapter 39 of Title 31, United States Code; and

(3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract.

(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

(d) If the Contractor, after making a certified request for progress payments, discovers that a portion or all of such request constitutes a payment for performance by the Contractor that fails to conform to the specifications, terms, and conditions of this contract (hereinafter referred to as the "unearned amount"), the Contractor shall—

(1) Notify the Contracting Officer of such performance deficiency; and

(2) Be obligated to pay the Government an amount (computed by the Contracting Officer in the manner provided in 31 U.S.C

3903(c)(1)) equal to interest on the unearned amount from the date of receipt of the unearned amount until—

(i) The date the Contractor notifies the Contracting Officer that the performance deficiency has been corrected; or

(ii) The date the Contractor reduces the amount of any subsequent certified request for progress payments by an amount equal to the unearned amount.

\* \* \* \* \*

(g) In making these progress payments, the Government shall, upon request, reimburse the Contractor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the Contractor has furnished evidence of full payment to the surety. The retainage provisions in paragraph (e) of this clause shall not apply to that portion of progress payments attributable to bond premiums.

\* \* \* \* \*

15. Section 52.232-8 is amended by removing in the title of the clause the date "(JUL 1985)" and inserting in its place "(APR 1989)"; and by revising paragraph (b) of the clause to read as follows:

52.232-8 Discounts for Prompt Payment.

\* \* \* \* \*

(b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the date on which an electronic funds transfer was made.

\* \* \* \* \*

16. Section 52.232-25 is amended by revising the introductory text of the section, the introductory text of paragraph (a) of the section and of the clause; by removing in the title of the clause the date "(FEB 1988)" and inserting in its place "(APR 1989)"; by revising paragraphs (a)(2), (a)(2)(ii), (a)(3), (a)(3)(i), and (a)(3)(iii), the fourth sentence in paragraph (a)(4), the

introductory text of paragraph (a) (5), and the first sentence of paragraph (a) (6); by revising in the fifth sentence in paragraph (a) (6) the words "paragraph (a) (4)" to read "subparagraph (a) (4); by revising paragraphs (a) (6) (i), (a) (6) (ii) (A), (a) (6) (iii), (a) (6) (iv), and (a) (7); and by adding paragraphs (a) (8) and (c) to read as follows:

52.232-25 Prompt Payment.

As prescribed in 32.908(c), insert the following clause:

(a) As authorized in 32.905(a) (1) (ii), the Contracting Officer may modify the date in subdivision (a) (6) (i) of this clause to specify a period longer than 7 days for constructive acceptance, if required to afford the Government a reasonable opportunity to inspect and test the property furnished or evaluate the services performed, except in the case of a contract for the procurement of a brand-name commercial item for authorized resale.

\* \* \* \* \*

Notwithstanding any other payment clause in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or an electronic funds transfer is made. Definitions of pertinent terms are set forth in 32.902. All days referred to in this clause are calendar days, unless otherwise specified. The term "foreign vendor" means an incorporated concern not incorporated in the United States, or an unincorporated concern having its principal place of business outside the United States.

(a) \* \* \*

\* \* \* \* \*

(2) Except as indicated in subparagraph (a) (3) and paragraph (c) of this clause, the due date for making invoice payments by the designated payment office shall be the later of the following two events:

\* \* \* \* \*

(ii) The 30th day after Government acceptance of supplies delivered or services performed by the Contractor. On a final invoice where the payment amount is subject to contract settlement actions, acceptance shall be deemed to have occurred on

the effective date of the contract settlement. However, if the designated billing office fails to annotate the invoice with the actual date of receipt, the invoice payment due date shall be deemed to be the 30th day after the date the Contractor's invoice is dated, provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(3) The due date on contracts for meat and meat food products, contracts for perishable agricultural commodities, contracts for dairy products, edible fats or oils, and food products prepared from edible fats or oils, and contracts not requiring submission of an invoice shall be as follows:

(i) The due date for meat and meat food products, as defined in section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)) and further defined in Pub. L. 98-181 to include any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product, will be as close as possible to, but not later than, the 7th day after product delivery.

\* \* \* \* \*

(iii) The due date for dairy products, as defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils, will be as close as possible to, but not later than, the 10th day after the date on which a proper invoice has been received.

\* \* \* \* \*

(4) \* \* \* If the invoice does not comply with these requirements, then the Contractor will be notified of the defect within 7 days after receipt of the invoice at the designated billing office (3 days for meat and meat food products and 5 days for perishable agricultural commodities, edible fats or oils, and food products prepared from edible fats or oils. \* \* \*

\* \* \* \* \*

(5) An interest penalty shall be paid automatically by the Government, without request from the Contractor, if payment is not made by the due date and the conditions listed in subdivisions (a)(5)(i) through (a)(5)(iii) of this clause are met, if applicable. An interest penalty shall not be paid on contracts awarded to foreign vendors outside the United States for work performed outside the United States.

\* \* \* \* \*

(6) The interest penalty shall be at the rate established by the Secretary of the Treasury under Section 12 of the Contract



Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority. \* \* \*

(i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance shall be deemed to have occurred constructively on the 7th day (unless otherwise specified in this contract) after the Contractor delivered the supplies or performed the services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or contractor compliance with a contract provision. In the event that actual acceptance occurs within the constructive acceptance period, the determination of an interest penalty shall be based on the actual date of acceptance. The constructive acceptance requirement does not, however, compel Government officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

\* \* \* \* \*

(ii) \* \* \*

(A) The period taken to notify the Contractor of defects in invoices submitted to the Government, but this may not exceed 7 days (3 days for meat and meat food products and 5 days for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils).

\* \* \* \* \*

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233-1, Disputes, or for more than 1 year. Interest penalties of less than \$1.00 need not be paid.

(iv) Interest penalties are not required on payment delays due to disagreement between the Government and Contractor over the payment amount or other issues involving contract compliance or an amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233-1, Disputes.

(7) An interest penalty shall also be paid automatically by the designated payment office, without request from the Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated as described in subparagraph (a) (6) of this clause on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.

(8) If this contract was awarded on or after October 1, 1989, a penalty amount, calculated in accordance with regulations issued by the Office of Management and Budget, shall be paid in addition to the interest penalty amount if the Contractor—

(i) Is owed an interest penalty;

(ii) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and

(iii) Makes a written demand, not later than 40 days after the date the invoice amount is paid, that the agency pay such a penalty.

\* \* \* \* \*

(c) If this contract contains the clause at 52.213-1, Fast Payment Procedure, payments will be made within 15 days after the date of receipt of the invoice.

(End of clause)

17. Section 52.232-26 is added to read as follows:

52.232-26 Prompt Payment for Fixed-Price Architect-Engineer Contracts.

As prescribed in 32.908(a), insert the following clause:

(a) As authorized in 32.905(b)(4), the Contracting Officer may modify the date in subdivision (a)(5)(i) of this clause to specify a period longer than 7 days for constructive acceptance or constructive approval, if required to afford the Government a practicable opportunity to inspect and test the property furnished or evaluate the services performed.

(b) If applicable, as authorized in 32.906(a) and only as allowed under agency policies and procedures, the Contracting Officer may insert in paragraph (b) of this clause a period shorter than 30 days (but not less than 7 days) for making contract financing payments.

PROMPT PAYMENT FOR FIXED-PRICE ARCHITECT-ENGINEER CONTRACTS  
(APR 1989)

Notwithstanding any other payment terms in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or an electronic funds transfer is made. Definitions of pertinent terms are set forth in 32.902. All days referred to in this clause are calendar days, unless otherwise specified. The term "foreign vendor" means an incorporated concern not

incorporated in the United States, or an unincorporated concern having its principal place of business outside the United States.

(a) Invoice Payments. (1) For purposes of this clause, "invoice payment" means a Government disbursement of monies to a Contractor under a contract or other authorization for work or services accepted by the Government, payments for partial deliveries that have been accepted by the Government, and progress payments based on contracting officer approval of the estimated amount and value of work or services performed.

(2) The due date for making invoice payments shall be as described in this subparagraph (a)(2).

(i) The due date for work or services completed by the Contractor shall be the later of the following two events:

(A) The 30th day after the designated billing office has received a proper invoice from the Contractor.

(B) The 30th day after Government acceptance of the work or services completed by the Contractor. On a final invoice where the payment amount is subject to contract settlement actions (e.g., release of claims), acceptance shall be deemed to have occurred on the effective date of the contract settlement.

(ii) The due date for progress payments shall be the 30th day after Government approval of Contractor estimates of work or services accomplished.

(iii) However, if the designated billing office fails to annotate the invoice or payment request with the actual date of receipt, the payment due date shall be deemed to be the 30th day after the date the Contractor's invoice or payment request is dated, provided a proper invoice or payment request is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(3) An invoice is the Contractor's bill or written request for payment under the contract for work or services performed under the contract. An invoice shall be prepared and submitted to the designated billing office. A proper invoice must include the items listed in subdivisions (a)(3)(i) through (a)(3)(viii) of this clause. If the invoice does not comply with these requirements, then the Contractor will be notified of the defect within 7 days after receipt of the invoice at the designated billing office. Untimely notification will be taken into account in the computation of any interest penalty owed the Contractor in the manner described in subparagraph (a)(5) of this clause:

(i) Name and address of the Contractor.

(ii) Invoice date.

(iii) Contract number or other authorization for work or services performed (including order number and contract line item number).

(iv) Description of work or services performed.

(v) Delivery and payment terms (e.g., prompt payment discount terms).

(vi) 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).

(vii) Name (where practicable), title, phone number, and mailing address of person to be notified in event of a defective invoice.

(viii) Any other information or documentation required by the contract.

(4) An interest penalty shall be paid automatically by the designated payment office, without request from the Contractor, if payment is not made by the due date and the conditions listed in subdivisions (a)(4)(i) through (a)(4)(iii) of this clause are met, if applicable. An interest penalty shall not be paid on contracts awarded to foreign vendors outside the United States for work performed outside the United States.

(i) A proper invoice was received by the designated billing office.

(ii) A receiving report or other Government documentation authorizing payment was processed and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount.

(iii) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(5) The interest penalty shall be at the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority. This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the Federal Register semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice payment amount approved by the Government and be compounded in 30-

day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice payment amount and be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in subparagraph (a)(3) of this clause, then the due date on the corrected invoice will be adjusted by subtracting the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties, if requested by the Contractor.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance or approval shall be deemed to have occurred constructively as shown in subdivisions (a)(5)(i)(A) and (B) of this clause. In the event that actual acceptance or approval occurs within the constructive acceptance or approval period, the determination of an interest penalty shall be based on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, Contractor compliance with a contract provision, or requested progress payment amounts. These requirements also do not compel Government officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(A) For work or services completed by the Contractor, Government acceptance shall be deemed to have occurred constructively on the 7th day after the Contractor has completed the work or services in accordance with the terms and conditions of the contract.

(B) For progress payments, Government approval shall be deemed to have occurred on the 7th day after Contractor estimates have been received by the designated billing office.

(ii) The following periods of time will not be included in the determination of an interest penalty:

(A) The period taken to notify the Contractor of defects in invoices submitted to the Government, but this may not exceed 7 days.

(B) The period between the defects notice and resubmission of the corrected invoice by the Contractor.

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233-1, Disputes, or for more than 1 year. Interest penalties of less than \$1.00 need not be paid.

(iv) Interest penalties are not required on payment delays due to disagreement between the Government and Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable will be resolved in accordance with the clause at 52.233-1, Disputes.

(6) An interest penalty shall also be paid automatically by the designated payment office, without request from the Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.

(7) If this contract was awarded on or after October 1, 1989, a penalty amount, calculated in accordance with regulations issued by the Office of Management and Budget, shall be paid in addition to the interest penalty amount if the Contractor—

(i) Is owed an interest penalty;

(ii) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and

(iii) Makes a written demand, not later than 40 days after the date the invoice amount is paid, that the agency pay such a penalty.

(b) Contract Financing Payments.

(1) For purposes of this clause, if applicable, "contract financing payment," means a Government disbursement of monies to a Contractor under a contract clause or other authorization prior to acceptance of supplies or services by the Government, other than progress payments based on estimates of amount and value of work performed. Contract financing payments include advance payments.

(2) If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the (insert day as prescribed by Agency head; if not prescribed, insert 30th day) day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified. For advance payments, loans, or other arrangements that do not involve recurrent submissions of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the

Contracting Officer. Contract financing payments shall not be assessed an interest penalty for payment delays.

(End of clause)

18. Section 52.232-27 is added to read as follows:

52.232-27 Prompt Payment for Construction Contracts.

As prescribed in 32.908(b), insert the following clause:

(a) As authorized in 32.905(c)(1), the Contracting Officer may modify the date in subdivision (a)(1)(i)(A) of the clause to specify a period longer than 14 days if required to afford the Government a reasonable opportunity to adequately inspect the work and to determine the adequacy of the Contractor's performance under the contract.

(b) As authorized in 32.905(c)(5), the Contracting Officer may modify the date in subdivision (a)(4)(i) of the clause to specify a period longer than 7 days for constructive acceptance or constructive approval if required to afford the Government a reasonable opportunity to inspect and test the property furnished, or evaluate the services performed.

(c) If applicable, as authorized in 32.906(a) and only as allowed under agency policies and procedures, the Contracting Officer may insert in paragraph (b) of the clause a period shorter than 30 days (but not less than 7 days) for making contract financing payments.

#### PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS (APR 1989)

Notwithstanding any other payment terms in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or an electronic funds transfer is made. Definitions of pertinent terms are set forth in 32.902. All days referred to in this clause are calendar days, unless otherwise specified. The term "foreign vendor" means an incorporated concern not incorporated in the United States or an unincorporated concern having its principal place of business outside the United States.

##### (a) Invoice Payments.

(1) For purposes of this clause, there are several types of invoice payments which may occur under this contract, as follows:

(i) Progress payments, if provided for elsewhere in this contract, based on Contracting Officer approval of the estimated amount and value of work or services performed, including payments for reaching milestones in any project:

(A) The due date for making such payments shall be 14 days after receipt of the payment request by the designated billing office. However, if the designated billing office fails to annotate the payment request with the actual date of receipt, the payment due date shall be deemed to be the 14th day after the date the Contractor's payment request is dated, provided a proper payment request is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) The due date for payment of any amounts retained by the Contracting Officer in accordance with the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, shall be as specified in the contract or, if not specified, 30 days after approval for release to the Contractor by the Contracting Officer.

(ii) Final payments based on completion and acceptance of all work and presentation of release of all claims against the Government arising by virtue of the contract, and payments for partial deliveries that have been accepted by the Government (e.g., each separate building, public work, or other division of the contract for which the price is stated separately in the contract):

(A) The due date for making such payments shall be either the 30th day after receipt by the designated billing office of a proper invoice from the Contractor, or the 30th day after Government acceptance of the work or services completed by the Contractor, whichever is later. However, if the designated billing office fails to annotate the invoice with the date of actual receipt, the invoice payment due date shall be deemed to be the 30th day after the date the Contractor's invoice is dated, provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) On a final invoice where the payment amount is subject to contract settlement actions (e.g., release of claims), acceptance shall be deemed to have occurred on the effective date of the contract settlement.

(2) An invoice is the Contractor's bill or written request for payment under the contract for work or services performed under the contract. An invoice shall be prepared and submitted to the designated billing office. A proper invoice must include the items listed in subdivisions (a)(2)(i) through (a)(2)(ix) of this clause. If the invoice does not comply with these requirements, the Contractor will be notified of the defect within 7 days after receipt of the invoice at the designated billing office. Untimely notification will be taken into account in the computation of any interest penalty owed the Contractor in the manner described in paragraph (a)(4) of this clause:



- (i) Name and address of the Contractor.
- (ii) Invoice date.
- (iii) Contract number or other authorization for work or services performed (including order number and contract line item number).
- (iv) Description of work or services performed.
- (v) Delivery and payment terms (e.g., prompt payment discount terms).
- (vi) 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).
- (vii) Name (where practicable), title, phone number, and mailing address of person to be notified in event of a defective invoice.
- (viii) For payments described in subdivision (a)(1)(i) of this clause, substantiation of the amounts requested and certification in accordance with the requirements of the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts.
- (ix) Any other information or documentation required by the contract.

(3) An interest penalty shall be paid automatically by the designated payment office, without request from the Contractor, if payment is not made by the due date and the conditions listed in subdivisions (a)(3)(i) through (a)(3)(iii) of this clause are met, if applicable. An interest penalty shall not be paid on contracts awarded to foreign vendors outside the United States for work performed outside the United States.

- (i) A proper invoice was received by the designated billing office.
- (ii) A receiving report or other Government documentation authorizing payment was processed and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount.
- (iii) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(4) The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority. This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the Federal Register semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice payment amount approved by the Government and be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice payment amount and be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in subparagraph (a)(2) of this clause, then the due date on the corrected invoice will be adjusted by subtracting the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties, if requested by the Contractor.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor for payments described in subdivision (a)(1)(ii) of this clause, Government acceptance or approval shall be deemed to have occurred constructively on the 7th day after the Contractor has completed the work or services in accordance with the terms and conditions of the contract. In the event that actual acceptance or approval occurs within the constructive acceptance or approval period, the determination of an interest penalty shall be based on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. These requirements also do not compel Government officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The following periods of time will not be included in the determination of an interest penalty:

(A) The period taken to notify the Contractor of defects in invoices submitted to the Government, but this may not exceed 7 days.

(B) The period between the defects notice and resubmission of the corrected invoice by the Contractor.

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at

52.233-1, Disputes, or for more than 1 year. Interest penalties of less than \$1.00 need not be paid.

(iv) Interest penalties are not required on payment delays due to disagreement between the Government and Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233-1, Disputes.

(5) An interest penalty shall also be paid automatically by the designated payment office, without request from the Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.

(6) If this contract was awarded on or after October 1, 1989, a penalty amount, calculated in accordance with regulations issued by the Office of Management and Budget, shall be paid in addition to the interest penalty amount if the Contractor—

(i) Is owed an interest penalty;

(ii) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and

(iii) Makes a written demand, not later than 40 days after the date the invoice amount is paid, that the agency pay such a penalty.

(b) Contract Financing Payments.

(1) For purposes of this clause, if applicable, "contract financing payment" means a Government disbursement of monies to a Contractor under a contract clause or other authorization prior to acceptance of supplies or services by the Government, other than progress payments based on estimates of amount and value of work performed. Contract financing payments include advance payments and interim payments under cost-type contracts.

(2) If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the (insert day as prescribed by Agency head; if not prescribed, insert 30th day) day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make

payment by the due date specified. For advance payments, loans, or other arrangements that do not involve recurrent submissions of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer. Contract financing payments shall not be assessed an interest penalty for payment delays.

(c) The Contractor shall include in each subcontract for property or services (including a material supplier) for the purpose of performing this contract the following:

(1) A payment clause which obligates the Contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days from receipt of payment out of such amounts as are paid to the Contractor under this contract.

(2) An interest penalty clause which obligates the Contractor to pay to the subcontractor an interest penalty for each payment not made in accordance with the payment clause—

(i) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(ii) Computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(3) A clause requiring each subcontractor to include a payment clause and an interest penalty clause conforming to the standards set forth in subparagraphs (c)(1) and (c)(2) of this clause in each of its subcontracts, and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(d) The clauses required by paragraph (c) of this clause shall not be construed to impair the right of Contractor or a subcontractor at any tier to negotiate, and to include in their subcontract, provisions which—

(1) Permit the Contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

(2) Permit the Contractor or subcontractor to make a determination that part or all of the subcontractor's request for

payment may be withheld in accordance with the subcontract agreement; and

(3) Permit such withholding without incurring any obligation to pay a late payment penalty if—

(i) A notice conforming to the standards of paragraph (g) of this clause has been previously furnished to the subcontractor, and

(ii) A copy of any notice issued by a Contractor pursuant to subdivision (d) (3) (i) of this clause has been furnished to the Contracting Officer.

(e) If a Contractor, after making a request for payment to the Government but before making a payment to a subcontractor for the subcontractor's performance covered by the payment request, discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the Contractor shall—

(1) Furnish to the subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;

(2) Furnish to the Contracting Officer, as soon as practicable, a copy of the notice furnished to the subcontractor pursuant to subparagraph (e) (1) of this clause;

(3) Reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under subparagraph (e) (1) of this clause;

(4) Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency, and—

(i) Make such payment within—

(A) Seven days after correction of the identified subcontract performance deficiency (unless the funds therefor must be recovered from the Government because of a reduction under subdivision (e) (5) (i)) of this clause; or

(B) Seven days after the Contractor recovers such funds from the Government; or

(ii) Incur an obligation to pay a late payment interest penalty computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts

Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty;

(5) Notify the Contracting Officer upon—

(i) Reduction of the amount of any subsequent certified application for payment; or

(ii) Payment to the subcontractor of any withheld amounts of a progress payment, specifying—

(A) The amounts withheld under subparagraph (e) (1) of this clause; and

(B) The dates that such withholding began and ended; and

(6) Be obligated to pay to the Government an amount equal to interest on the withheld payments (computed in the manner provided in 31 U.S.C. 3903(c)(1)), from the 8th day after receipt of the withheld amounts from the Government until—

(i) The day the identified subcontractor performance deficiency is corrected; or

(ii) The date that any subsequent payment is reduced under subdivision (e) (5) (i) of this clause.

(f) (1) If a Contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor (hereafter referred to as a "second-tier subcontractor") a written notice in accordance with section 2 of the Act of August 24, 1935 (40 U.S.C. 270b, Miller Act), asserting a deficiency in such first-tier subcontractor's performance under the contract for which the Contractor may be ultimately liable, and the Contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, then the Contractor may, without incurring an obligation to pay an interest penalty under subparagraph (e) (6) of this clause—

(i) Furnish to the first-tier subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon making such determination; and

(ii) Withhold from the first-tier subcontractor's next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under subdivision (f) (1) (i) of this clause.

(2) As soon as practicable, but not later than 7 days after receipt of satisfactory written notification that the identified subcontract performance deficiency has been corrected,

the Contractor shall pay the amount withheld under subdivision (f) (1) (ii) of this clause to such first-tier subcontractor, or shall incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(g) A written notice of any withholding shall be issued to a subcontractor (with a copy to the Contracting Officer of any such notice issued by the Contractor), specifying—

- (1) The amount to be withheld;
- (2) The specific causes for the withholding under the terms of the subcontract; and
- (3) The remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

(h) The Contractor may not request payment from the Government of any amount withheld or retained in accordance with paragraph (d) of this clause until such time as the Contractor has determined and certified to the Contracting Officer that the subcontractor is entitled to the payment of such amount.

(i) A dispute between the Contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to paragraph (c) of this clause does not constitute a dispute to which the United States is a party. The United States may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

(j) Except as provided in paragraph (i) of this clause, this clause shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor or deficient subcontract performance or nonperformance by a subcontractor.

(k) The Contractor's obligation to pay an interest penalty to a subcontractor pursuant to the clauses included in a subcontract under paragraph (c) of this clause shall not be construed to be an obligation of the United States for such interest penalty. A cost reimbursement claim may not include any amount for reimbursement of such interest penalty.

(End of clause)

19. Section 52.232-28 is added to read as follows:

52.232-28 Electronic Funds Transfer Payment Methods.

As prescribed in 32.908(d), insert the following clause:

ELECTRONIC FUNDS TRANSFER PAYMENT METHODS (APR 1989)

Payments under this contract will be made by the Government either by check or electronic funds transfer (through the Treasury Fedline Payment System (FEDLINE) or the Automated Clearing House (ACH)), at the option of the Government. After award, but no later than 14 days before an invoice or contract financing request is submitted, the Contractor shall designate a financial institution for receipt of electronic funds transfer payments, and shall submit this designation to the Contracting Officer or other Government official, as directed.

(a) For payment through FEDLINE, the Contractor shall provide the following information:

(1) Name, address, and telegraphic abbreviation of the financial institution receiving payment.

(2) The American Bankers Association 9-digit identifying number for wire transfers of the financing institution receiving payment if the institution has access to the Federal Reserve Communications System.

(3) Payee's account number at the financial institution where funds are to be transferred.

(4) If the financial institution does not have access to the Federal Reserve Communications System, name, address, and telegraphic abbreviation of the correspondent financial institution through which the financial institution receiving payment obtains wire transfer activity. Provide the telegraphic abbreviation and American Bankers Association identifying number for the correspondent institution.

(b) For payment through ACH, the Contractor shall provide the following information:

(1) Routing transit number of the financial institution receiving payment (same as American Bankers Association identifying number used for FEDLINE).

(2) Number of account to which funds are to be deposited.

(3) Type of depositor account ("C" for checking, "S" for savings).



(4) If the Contractor is a new enrollee to the ACH system, a "Payment Information Form," SF 3881, must be completed before payment can be processed.

(c) In the event the Contractor, during the performance of this contract, elects to designate a different financial institution for the receipt of any payment made using electronic funds transfer procedures, notification of such change and the required information specified above must be received by the appropriate Government official 30 days prior to the date such change is to become effective.

(d) The documents furnishing the information required in this clause must be dated and contain the signature, title, and telephone number of the Contractor official authorized to provide it, as well as the Contractor's name and contract number.

(e) Contractor failure to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amounts otherwise properly due.

(End of clause)