32.904 Determining payment due dates.

(a) *General.* Agency procedures *must* ensure that, when specifying *due dates*, *contracting officers* give full consideration to the time reasonably required by Government officials to fulfill their administrative responsibilities under the contract.

(b) *Payment due dates.* Except as prescribed in paragraphs (c) through (f) of this section, or as authorized in 32.908(a)(2) or (c)(2), the *due date* for making an *invoice payment* is as follows:

(1) The later of the following two events:

(i) The 30 thday after the *designated billing office* receives a *proper invoice* from the contractor (except as provided in paragraph (b)(3) of this section).

(ii) The 30 thday after Government acceptance of *supplies* delivered or services performed.

(A) For a final *invoice*, when the payment amount is subject to contract settlement actions, acceptance is deemed to occur on the effective date of the contract settlement.

(B) For the sole purpose of computing an interest penalty that might be due the contractor-

(1) Government acceptance is deemed to occur constructively on the 7 thday after the contractor delivers *supplies* or performs 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;

(2) If actual acceptance occurs within the constructive acceptance period, the Government *must* base the determination of an interest penalty on the actual date of acceptance;

(3) The constructive acceptance requirement does not compel Government officials to accept *supplies* or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities; and

(4) Except for a contract for the purchase of a *commercial product* or *commercial service*, including a brand-name *commercial product* 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 *supplies* furnished or to evaluate the services performed. The *contracting officer must* document in the contract file the justification for extending the constructive acceptance period beyond 7 days. Extended acceptance periods *must* not be a routine agency practice and *must* be used only when necessary to permit proper Government *inspection* and testing of the *supplies* delivered or services performed.

(2) If the contract does not require submission of an *invoice* for payment (e.g.,periodic lease payments), the *contracting officer must* specify the *due date* in the contract.

(3) If the *designated billing office* fails to annotate the *invoice* with the actual date of receipt at the time of receipt, the *invoice payment due date* is the 30 thday after the date of the contractor's *invoice*, provided the *designated billing office* receives a *proper invoice* and there is no disagreement over quantity, quality, or contractor compliance with contract requirements.

(c) Architect-engineer contracts.

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

(i) The *due date* for work or services completed by the contractor is the later of the following two events:

(A) The 30 thday after the *designated billing office* receives a *proper invoice* from the contractor.

(B) The 30 thday after Government acceptance of the work or services completed by the contractor.

(1) For a final *invoice*, when the payment amount is subject to contract settlement actions (*e.g.,* release of *claims*), acceptance is deemed to occur on the effective date of the settlement.

(2) For the sole purpose of computing an interest penalty that might be due the contractor, Government acceptance is deemed to occur constructively on the 7 thday after the contractor completes the work or services in accordance with the terms and conditions of the contract (see also paragraph (c)(2) of this section). If actual acceptance occurs within the constructive acceptance period, the Government *must* base the determination of an interest penalty on the actual date of acceptance.

(ii) The *due date* for progress payments is the 30 thday 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-

(A) Government approval is deemed to occur constructively on the 7 thday after the *designated billing office* receives the contractor estimates (see also paragraph (c)(2) of this section).

(B) If actual approval occurs within the constructive approval period, the Government *must* base the determination of an interest penalty on the actual date of approval.

(iii) If the *designated billing office* fails to annotate the *invoice* or payment request with the actual date of receipt at the time of receipt, the payment *due date* is the 30 thday after the date of the contractor's *invoice* or payment request, provided the *designated billing office* receives a *proper invoice* or payment request and there is no disagreement over quantity, quality, or contractor compliance with contract requirements.

(2) The constructive acceptance and constructive approval requirements described in paragraphs (c)(1)(i) and (ii) 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 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 *supplies* furnished or to evaluate the services performed. The *contracting officer must* document in the contract file the justification for extending the constructive acceptance or approval period beyond 7 days.

(d) *Construction* contracts.

(1) The *due date* for making payments on *construction* contracts is as follows:

(i) 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, is 14 days after the *designated billing office* receives a proper payment request.

(A) If the *designated billing office* fails to annotate the payment request with the actual date of receipt at the time of receipt, the payment *due date* is the 14 thday after the date of the contractor's payment request, provided the *designated billing office* receives a proper payment request and there is no disagreement over quantity, quality, or contractor compliance with contract requirements.

(B) 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 *contracting officer must* document in the contract file the justification for extending the *due date* beyond 14 days.

(C) The *contracting officer must* 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.

(ii) 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, will be as specified in the contract or, if not specified, 30 days after approval by the *contracting officer* for release to the contractor. The *contracting officer must* base the release of retained amounts on the *contracting officer*'s determination that satisfactory progress has been made.

(iii) 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) is as follows:

(A) The later of the following two events:

(1) The 30 thday after the *designated billing office* receives a *proper invoice* from the contractor.

(2) The 30 thday after Government acceptance of the work or services completed by the contractor. For a final *invoice*, when the payment amount is subject to contract settlement actions (*e.g.,* release of contractor *claims*), acceptance is deemed to occur on the effective date of the contract settlement.

(B) If the *designated billing office* fails to annotate the *invoice* with the actual date of receipt at the time of receipt, the *invoice payment due date* is the 30 thday after the date of the contractor's *invoice*, provided the *designated billing office* receives a *proper invoice* and there is no disagreement over quantity, quality, or contractor compliance with contract requirements.

(2) For the sole purpose of computing an interest penalty that might be due the contractor for payments described in paragraph (d)(1)(iii) of this section-

(i) Government acceptance or approval is deemed to occur constructively on the 7 thday after the contractor completes the work or services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, contractor compliance with a contract requirement, or the requested amount;

(ii) If actual acceptance occurs within the constructive acceptance period, the Government *must* base the determination of an interest penalty on the actual date of acceptance;

(iii) The constructive acceptance requirement does not compel Government officials to accept work or services, approve contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities; and

(iv) 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. The *contracting officer must* document in the contract file the justification for extending the constructive acceptance or approval beyond 7 days.

(3) *Construction* contracts contain special provisions concerning contractor payments to subcontractors, along with special contractor certification requirements. The Office of Management and Budget has determined that these certifications *must* not be construed as final acceptance of the subcontractor's performance. The certification in 52.232-5(c) implements this determination; however, certificates are still acceptable if the contractor deletes paragraph (c)(4) of 52.232-5 from the certificate.

(4)

(i) Paragraph (d) of the clause at 52.232-5, Payments under Fixed-Price *Construction* Contracts, and paragraph (e)(6) of the clause at 52.232-27, Prompt Payment for *Construction* Contracts, provide for the contractor to pay interest on unearned amounts in certain circumstances. The Government *must* recover this interest from subsequent payments to the contractor. Therefore, *contracting officers* normally *must* make no demand for payment. *Contracting officers must-*

(A) Compute the amount in accordance with the clause;

(B) Provide the contractor with a final decision; and

(C) Notify the payment office of the amount to be withheld.

(ii) The payment office is responsible for making the deduction of interest. Amounts collected in accordance with these provisions revert to the *United States* Treasury.

(e) *Cost-reimbursement contracts for services.* For purposes of computing late payment interest penalties that *may* apply, the *due date* for making interim payments on cost-reimbursement contracts for services is 30 days after the date of receipt of a *proper invoice*.

(f) *Food and specified items*.

If the items delivered are:	Payment *must* be made as close as possible to, but not later than:
(1) *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)), and as further defined in Public Law98-181, including any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product.	7th *day* after product delivery.

(2) *Fresh or frozen fish*. As defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)).	7th *day* after product delivery.
(3) *Perishable agricultural commodities*. As defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)).	10th *day* after product delivery, unless another date is specified in the contract.
(4) *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. Liquid milk, cheese, certain processed cheese *products*, butter, yogurt, ice cream, mayonnaise, salad dressings, and other similar *products* fall within this classification. Nothing in the Act limits this classification to refrigerated *products*. If questions arise regarding the proper classification of a specific product, the *contracting officer must* follow prevailing industry practices in specifying a contract payment *due date*. The burden of proof that a classification of a specific product is, in fact, prevailing industry practice is upon the contractor making the representation.	10th *day* after a *proper invoice* has been received.

(g) *Multiple payment due dates*. *Contracting officers may* encourage, but not require, contractors to submit separate *invoices* for *products* with different payment *due dates* under the same contract or order. When an *invoice* contains items with different payment *due dates* (*i.e.*,a *mixed invoice*), the payment office will, subject to agency policy-

(1) Pay the entire *invoice* on the earliest *due date*; or

(2) Split *invoice payments*, making payments by the applicable *due dates*.

Parent topic: Subpart 32.9 - Prompt Payment