

32.1004 Procedures.

Performance-based payments *may* be made either on a whole contract or on a deliverable item basis, unless otherwise prescribed by agency regulations. Financing payments to be made on a whole contract basis are applicable to the entire contract, and not to specific deliverable items. Financing payments to be made on a deliverable item basis are applicable to a specific individual deliverable item. (A deliverable item for these purposes is a separate item with a distinct unit price. Thus, a *line item* for 10 airplanes, with a unit price of \$1,000,000 each, has 10 deliverable items-the separate planes. A *line item* for 1 lot of 10 airplanes, with a lot price of \$10,000,000, has only one deliverable item-the lot.)

(a) Establishing performance bases.

(1) The basis for performance-based payments *may* be either specifically described events (*e.g.*, milestones) or some measurable criterion of performance. Each event or performance criterion that will trigger a finance payment *shall* be an integral and necessary part of contract performance and *shall* be identified in the contract, along with a description of what constitutes successful performance of the event or attainment of the performance criterion. The signing of contracts or modifications, the exercise of *options*, the passage of time, or other such occurrences do not represent meaningful efforts or actions and *shall* not be identified as events or criteria for performance-based payments. An event need not be a critical event in order to trigger a payment, but the Government *must* be able to readily verify successful performance of each such event or performance criterion.

(2) Events or criteria *may* be either severable or cumulative. The successful completion of a severable event or criterion is independent of the accomplishment of any other event or criterion. Conversely, the successful accomplishment of a cumulative event or criterion is dependent upon the previous accomplishment of another event. A contract *may* provide for more than one series of severable and/or cumulative performance events or criteria performed in parallel. The *contracting officer shall* include the following in the contract:

(i) The contract *shall* not permit payment for a cumulative event or criterion until the dependent event or criterion has been successfully completed.

(ii) The contract *shall* specifically identify severable events or criteria.

(iii) The contract *shall* specifically identify cumulative events or criteria and identify which events or criteria are preconditions for the successful achievement of each event or criterion.

(iv) Because performance-based payments are contract financing, events or criteria *shall* not serve as a vehicle to reward the contractor for completion of performance levels over and above what is required for successful completion of the contract.

(v) If payment of performance-based finance amounts is on a deliverable item basis, each event or performance criterion *shall* be part of the performance necessary for that deliverable item and *shall* be identified to a specific *line item* or *subline item*.

(b) Establishing performance-based finance payment amounts.

(1) The *contracting officer shall* establish a complete, fully defined schedule of events or performance criteria and payment amounts when negotiating contract terms. If a *contract action* significantly affects the price, or event or performance criterion, the *contracting officer* responsible for *pricing the contract modification shall* adjust the performance-based payment schedule appropriately.

(2) Total performance-based payments *shall*-

(i) Reflect prudent contract financing provided only to the extent needed for contract performance (see [32.104\(a\)](#)); and

(ii) Not exceed 90 percent of the contract price if on a whole contract basis, or 90 percent of the delivery item price if on a delivery item basis.

(3) The contract *shall* specifically state the amount of each performance-based payment either as a dollar amount or as a percentage of a specifically identified price (*e.g.*, contract price or unit price of the deliverable item). The payment of contract financing has a cost to the Government in terms of interest paid by the Treasury to borrow funds to make the payment. Because the *contracting officer* has wide discretion as to the timing and amount of the performance-based payments, the *contracting officer shall* ensure that-

(i) The total contract price is fair and reasonable, all factors considered; and

(ii) Performance-based payment amounts are commensurate with the value of the performance event or performance criterion and are not expected to result in an unreasonably low or negative level of contractor investment in the contract. To confirm sufficient investment, the *contracting officer may* request expenditure profile information from *offerors*, but only if other information in the proposal, or information otherwise available to the *contracting officer*, is expected to be insufficient.

(4) Unless agency procedures prescribe the bases for establishing performance-based payment amounts, *contracting officers may* establish them on any rational basis, including (but not limited to)-

(i) Engineering estimates of stages of completion;

(ii) Engineering estimates of hours or other measures of effort to be expended in performance of an event or achievement of a performance criterion; or

(iii) The estimated projected cost of performance of particular events.

(5) When subsequent *contract modifications* are issued, the *contracting officer shall* adjust the performance-based payment schedule as necessary to reflect the actions required by those *contract modifications*.

(c) *Instructions for multiple appropriations.* If there is more than one appropriation account (or subaccount) funding payments on the contract, the *contracting officer shall* provide instructions to the Government payment office for distribution of financing payments to the respective funds accounts. Distribution instructions *shall* be consistent with the contract's liquidation provisions.

(d) *Liquidating performance-based finance payments.* Performance-based amounts *shall* be liquidated by deducting a percentage or a designated dollar amount from the *delivery payments*. The *contracting officer shall* specify the liquidation rate or designated dollar amount in the contract. The method of liquidation *shall* ensure complete liquidation no later than final payment.

(1) If the *contracting officer* establishes the performance-based payments on a delivery item basis, the liquidation amount for each *line item* is the percent of that delivery item price that was previously paid under performance-based finance payments or the designated dollar amount.

(2) If the performance-based finance payments are on a whole contract basis, liquidation is by predesignated liquidation amounts or liquidation percentages.

(e) Competitive negotiated *solicitations*.

(1) If a *solicitation* requests *offerors* to propose performance-based payments, the *solicitation shall* specify-

(i) What, if any, terms *shall* be included in all *offers*; and

(ii) The extent to which and how *offeror*-proposed performance-based payment terms will be evaluated. Unless agencies prescribe other evaluation procedures, if the *contracting officer* anticipates that the cost of providing performance-based payments would have a significant impact on determining the *best value offer*, the *solicitation should* state that the evaluation of the *offeror's* proposed prices will include an adjustment to reflect the estimated cost to the Government of providing each *offeror's* proposed performance-based payments (see *Alternate I* to the provision at [52.232-28](#)).

(2) The *contracting officer shall*-

(i) Review the proposed terms to ensure they comply with this section; and

(ii) Use the adjustment method at [32.205\(c\)](#) if the price is to be adjusted for evaluation purposes in accordance with paragraph (e)(1)(ii) of this section.

Parent topic: [Subpart 32.10 - Performance-Based Payments](#)