

# Subpart 232.10 - PERFORMANCE-BASED PAYMENTS

**Parent topic:** [Part 232 - CONTRACT FINANCING](#)

## **232.1001 Policy.**

(a) As with all contract financing, the purpose of performance-based payments is to assist the contractor in the payment of costs incurred during the performance of the contract. See PGI [232.1001](#) (a) for additional information on use of performance-based payments. However, in accordance with 10 U.S.C. 3802(a)(2), performance-based payments shall not be conditioned upon costs incurred in contract performance, but on the achievement of performance outcomes. Subject to the criteria in [232.1003-70](#) , all companies, including nontraditional defense contractors, are eligible for performance-based payments, consistent with best commercial practices.

(d) The contracting officer shall use the following standard payment terms for performance-based payments: The contractor entitlement date, if any, specified in the contract, or 14 days after receipt by the designated billing office of a proper request for payment, whichever is later.

## **232.1003 Reserved.**

### **232.1003-70 Criteria for use.**

In accordance with 10 U.S.C. 3802(c)(1), a contractor's financial statements shall be in compliance with Generally Accepted Accounting Principles, in order to receive performance-based payments. 10 U.S.C. 3802(c)(2) specifies that it does not grant the Defense Contract Audit Agency the authority to audit compliance with Generally Accepted Accounting Principles.

## **232.1004 Procedures.**

(b) *Establishing performance-based finance payment amounts.*

(i) The contracting officer should include in a solicitation both the progress payments and performance-based payments provisions and clauses prescribed in this part, when considering both types of payment methods. Only one type of financing will be included in the resultant contract, except as may be authorized on separate orders subject to FAR 32.1003(c)).

(ii) The contracting officer shall analyze the performance-based payment schedule using the performance-based payments (PBP) analysis tool. The PBP analysis tool is on the DPC website in the Price, Cost and Finance section. The PBP analysis tool and Performance Based Payment - Guidebook are available at <https://www.acq.osd.mil/asda/dpc/pcf/pricing-topics.html#pdp> .

(A) When considering performance-based payments, obtain from the offeror/contractor a proposed performance-based payments schedule that includes all performance-based payments events,

completion criteria and event values along with the projected monthly expenditure profile in order to negotiate the value of the performance events such that the performance-based payments are not expected to result in an unreasonably low or negative level of contractor investment in the contract.

If performance-based payments are deemed practical, the Government will evaluate and negotiate the details of the performance-based payments schedule.

(B) For modifications to contracts that already use performance-based payments financing, the basis for negotiation must include performance-based payments. The PBP analysis tool will be used in the same manner to help determine the price for the modification;

(iii) The contracting officer shall document in the contract file that the performance-based payment schedule provides a mutually beneficial settlement position that reflects adequate consideration to the Government for the improved contractor cash flow.

(c) *Instructions for multiple appropriations.* If the contract contains foreign military sales requirements, the contracting officer shall provide instructions for distribution of the contract financing payments to each country's account.

## **232.1005 Reserved.**

### **232.1005-70 Solicitation provisions and contract clauses.**

(a) The contracting officer shall include the following clauses with appropriate fill-ins in solicitations and contracts that include performance-based payments:

(1) For performance-based payments made on a whole-contract basis, use the clause at [252.232-7012](#) , Performance-Based Payments-Whole-Contract Basis.

(2) For performance-based payments made on a deliverable-item basis, use the clause at [252.232-7013](#) , Performance-Based Payments-Deliverable-Item Basis.

(b) Use the provision at [252.232-7015](#) , Performance-Based Payments-Representation, in solicitations where the resulting contract may include performance-based payments.

(c) Use the provision at [252.232-7016](#) , Notice of Progress Payments or Performance-Based Payments, in lieu of FAR 52.232-13, Notice of Progress Payments, when the solicitation contains clauses for progress payments and performance-based payments (only one type of financing will be included in the resultant contract, except as may be authorized on separate orders subject to FAR 32.1003(c)).