

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

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

Prompt Payment for Fixed-Price Architect-Engineer Contracts (Jan 2017)

Notwithstanding any other payment terms in this contract, the Government will make *invoice* payments under the terms and conditions specified in this clause. The Government considers payment as being made on the *day* a check is dated or the date of an *electronic funds transfer*. Definitions of pertinent terms are set forth in sections 2.101, 32.001, and 32.902 of the Federal *Acquisition* Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see paragraph (a)(3) of this clause concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) *Invoice* payments-

(1) *Due date*. The due date for making *invoice* payments is-

(i) For work or services completed by the Contractor, the later of the following two events:

(A) The 30th *day* after the designated billing office receives a *proper invoice* from the Contractor (except as provided in paragraph (a)(1)(iii) of this clause).

(B) The 30th *day* 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 *claims*), acceptance is deemed to occur on the effective date of the settlement.

(ii) The due date for progress payments is the 30 thday after Government approval of Contractor estimates of work or services accomplished.

(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) *Contractor's invoice*. The Contractor *shall* prepare and submit *invoices* to the designated billing office specified in the contract. A *proper invoice must* include the items listed in paragraphs (a)(2)(i) through (a)(2)(x) of this clause. If the *invoice* does not comply with these requirements, the designated billing office will return it within 7 days after receipt, with the reasons why it is not a *proper invoice*. When computing any interest penalty owed the Contractor, the Government will take into account if the Government notifies the Contractor of an improper *invoice* in an untimely manner.

(i) Name and address of the Contractor.

(ii) *Invoice* date and *invoice* number. (The Contractor *should* date *invoices* as close as possible to the date of mailing or transmission.)

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

(iv) Description of work or services performed.

(v) Delivery and payment terms (*e.g.*, discount for prompt payment 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 notify in the event of a defective *invoice*.

(viii) *Taxpayer Identification Number (TIN)*. The Contractor *shall* include its TIN on the *invoice* only if required elsewhere in this contract.

(ix) *Electronic funds transfer (EFT)* banking information.

(A) The Contractor *shall* include EFT banking information on the *invoice* only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the *invoice*, in order for the *invoice* to be a *proper invoice*, the Contractor *shall* have submitted correct EFT banking information in accordance with the applicable *solicitation* provision (*e.g.*, [52.232-38](#), Submission of *Electronic Funds Transfer Information with Offer*), *contract clause* (*e.g.*, [52.232-33](#), Payment by *Electronic Funds Transfer-System for Award Management*, or [52.232-34](#), Payment by *Electronic Funds Transfer-Other Than System for Award Management*), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

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

(3) *Interest penalty*. The designated payment office will pay an interest penalty automatically, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(3)(i) through (a)(3)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday, the designated payment office *may* make payment on the following working *day* without incurring a late payment interest penalty.

(i) The designated billing office received a *proper invoice*.

(ii) The Government processed a *receiving report* or other Government documentation authorizing payment 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) *Computing penalty amount*. The Government will compute the interest penalty in accordance with the Office of Management and Budget prompt payment regulations at 5 CFR Part 1315.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor,

Government acceptance or approval is deemed to occur constructively as shown in paragraphs (a)(4)(i)(A) and (B) of this clause. If actual acceptance or approval occurs within the constructive acceptance or approval period, the Government will base the determination of an interest penalty 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 is deemed to occur constructively on the 7<sup>th</sup> day after the Contractor completes the work or services in accordance with the terms and conditions of the contract.

(B) For progress payments, Government approval is deemed to occur on the 7<sup>th</sup> day after the designated billing office receives the Contractor estimates.

(ii) The prompt payment regulations at 5 CFR 1315.10(c) do not require the Government to pay interest penalties if payment delays are due to disagreement between the Government and the 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. The Government and the Contractor *shall* resolve *claims* involving disputes, and any interest that *may* be payable in accordance with the clause at FAR 52.233-1, Disputes.

(5) *Discounts for prompt payment.* The designated payment office will pay an interest penalty automatically, without request from the Contractor, if the Government takes a discount for prompt payment improperly. The Government will calculate the interest penalty in accordance with 5 CFR Part 1315.

(6) Additional interest penalty.

(i) The designated payment office will pay a penalty amount, calculated in accordance with the prompt payment regulations at 5 CFR Part 1315, in addition to the interest penalty amount only if-

(A) The Government owes an interest penalty of \$1 or more;

(B) The designated payment office does not pay the interest penalty within 10 days after the date the *invoice* amount is paid; and

(C) The contractor makes a written demand to the designated payment office for additional penalty payment, in accordance with paragraph (a)(6)(ii) of this clause, postmarked not later than 40 days after the date the *invoice* amount is paid.

(ii)

(A) The Contractor *shall* support written demands for additional penalty payments with the following data. The Government will not request any additional data. The Contractor *shall*-

(1) Specifically assert that late payment interest is due under a specific *invoice*, and request payment of all overdue late payment interest penalty and such additional penalty as *may* be required;

- (2) Attach a copy of the *invoice* on which the unpaid late payment interest is due; and
- (3) State that payment of the principal has been received, including the date of receipt.

(B) If there is no postmark or the postmark is illegible-

(1) The designated payment office that receives the demand will annotate it with the date of receipt, provided the demand is received on or before the 40 thday after payment was made; or

(2) If the designated payment office fails to make the required annotation, the Government will determine the demand's validity based on the date the Contractor has placed on the demand, provided such date is no later than the 40 thday after payment was made.

(iii) The additional penalty does not apply to payments regulated by other Government regulations (*e.g.*, payments under utility contracts subject to tariffs and regulation).

(b) *Contract financing payments.* If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.

(c) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or *invoice* payment or that the Government has otherwise overpaid on a contract financing or *invoice* payment, the Contractor *shall*-

(1) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the-

(i) Circumstances of the overpayment (*e.g.*, duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(ii) Affected contract number and *delivery order* number if applicable;

(iii) Affected *line item* or *subline item*, if applicable; and

(iv) Contractor point of contact.

(2) Provide a copy of the remittance and supporting documentation to the *Contracting Officer*.

(End of clause)

**Parent topic:** [52.232 \[Reserved\]](#)