

UNIT 61: ADMINISTERING FINANCING TERMS

October 2003

Overall Duty	Assure that the contractor receives the appropriate contract financing in accordance with contract financing requirements and related contract performance.
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Overall Conditions	Given a contract with a financing clause and a request for payment under that clause.
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Overall Standards	Only pay amounts properly due the contractor under the contract financing clause. Protect the interests of the Government related to contract financing.
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Part A: Commercial Financing

Sub-Duty	Approve the amount to pay the contractor in accordance with the financing clause.
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Additional Conditions	Given a contract with a commercial financing clause and a request for payment under that clause.
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Sub-Duty Standard	Only pay amounts properly due the contractor under the clause. Avoid contractor indebtedness to the Government at the end of contract performance. Mitigate risks to performance of both the Government and the contractor from cash flow problems. Mitigate the Government's risk of providing financing payments when the contractor is not likely to perform for other reasons.
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Part B: Progress Payments

Sub-Duty Approve appropriate progress payments and determine the need to adjust the progress payment or liquidation rates.

Sub-Duty Standard Given a contract with a progress payments clause and a request for progress payments.

Sub-Duty Only pay amounts properly due the contractor under the progress payment clause. Avoid contractor indebtedness to the Government at the end of contract performance. Mitigate risks to performance of both the Government and the contractor from cash flow problems. Mitigate the Government's risk of providing progress payments when the contractor is not likely to perform for other reasons.

Part C: Advance Payments for Noncommercial Items

Sub-Duty Reserved.

Sub-Duty Standard

Sub-Duty

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Part D: Performance-Based Payments

Sub-Duty Approve appropriate performance-based payments and determine the need to adjust payment requirements.

Sub-Duty Standard Given a contract with a performance-based payments clause and a request for payments under that clause.

Sub-Duty Only pay amounts properly due the contractor under the clause.

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Policies

<i>FAR</i>	<i>Agency Suppl.</i>	<i>Subject</i>
32.104		Providing contract financing.
32.105		Uses of contract financing.
32.2		Commercial item purchase financing.
32.408		Application for advance payments.
32.409		Contracting Officer action.
32.410		Findings determination and authorization.
32.411		Agreement for a special account at a financial institution.
32.501		General policy regarding progress payments based on costs.
32.503		Post-award matters with respect to progress payments based on costs.
32.504		Subcontracts under prime contracts providing progress payments.
42.703-1(b)		Use of billing rates in determining progress payments based on costs.
52.232 -12		Advance payments.
52.232-16		Progress payments.
52.232-29		Terms for financing of purchases of commercial items.
52.232-30		Installment payments for commercial items.
52.232-31		Invitation to propose financing terms.
52.232-32		Performance-based payments.

Other KSAs

1. Knowledge business finance and accounting.
2. Knowledge of the methods of contract financing commonly used in the commercial marketplace.
3. Ability to understand and interpret clauses related to contract financing.
4. Ability to conscientiously attend to the details involved in administering contract financing.
5. Ability to persuade others to make appropriate changes in contract financing when required by the acquisition situation.
6. Ability to make the mathematical computations required to calculate the correct amount due the contractor under the contract financing clause.

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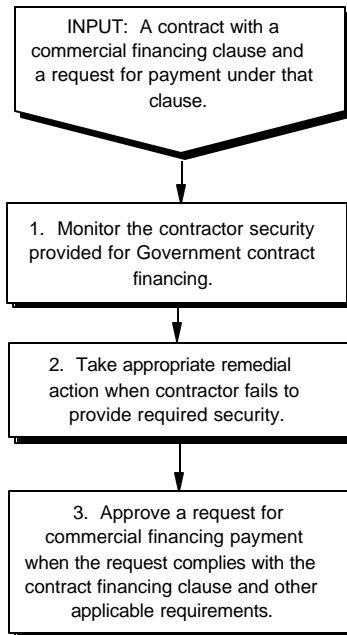
7. Ability to identify problems related to contract financing, determine the accuracy and relevance of available information, use sound judgment to recommend alternative solutions, and make appropriate recommendations.
8. Ability to maintain the honesty and integrity of the acquisition process.

Other Policies and References (Annotate As Necessary):

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Part A: Commercial Financing

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Part A: Commercial Financing

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Tasks	Related Standards
<p>1. Monitor the contractor security provided for Government contract financing.</p> <p>2. Take appropriate remedial action when contractor fails to provide required security.</p>	<p>When monitoring the security provided by the contractor, consider the following:</p> <ul style="list-style-type: none"> • If the contractor's financial condition is security for contract financing, monitor the contractor's financial condition. • Assure the contractor provides and maintains the type and amount of any other security required by the contract, such as: <ul style="list-style-type: none"> – A paramount lien; – Irrevocable letter of credit; – A bond from an acceptable surety; – A guarantee of repayment from a person or corporation of demonstrated net worth that is connected by significant ownership to the contractor; or – Title to identified assets of adequate worth. • If at any time during contract performance, additional security is required (e.g., as a result of a deteriorating financial condition), require the contractor to provide such additional security as the Contracting Officer determines necessary. <p>For example:</p> <ul style="list-style-type: none"> • If the contractor fails to provide adequate security as required by the contract, make no financing payments. • In the event the contractor fails to provide required additional security: <ul style="list-style-type: none"> – Collect or liquidate any security that has been provided; – Suspend further payments to the contractor; – Require the contractor to repay to the Government the amount of unliquidated financing payments as the Contracting Officer deems repayable; or – Any combination of the above.

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Part A: Commercial Financing

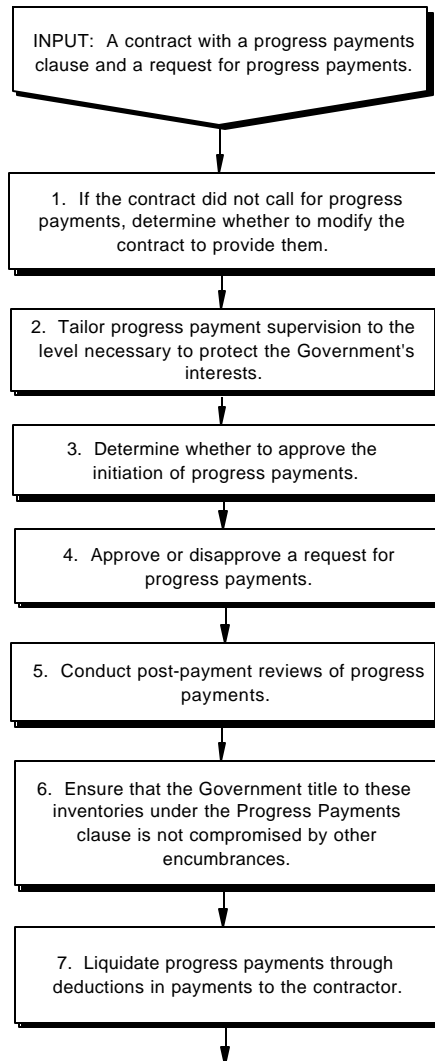
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Tasks	Related Standards
3. Approve a request for commercial financing payment when the request complies with the contract financing clause and other applicable requirements.	<p>Approve only if:</p> <ul style="list-style-type: none">• The contractor has provided adequate security as required by the contract;• The contractor's request includes all the elements required by the financing clause;• The contractor has not requested a finance payment more often than monthly;• Amounts are properly calculated and otherwise due;• Prior to any performance of work under the contract, advance payments do not total more than 15% of the contract price;• There has been no impairment or diminution of the Government's security;• The supplies or services will be delivered or performed in accordance with all contract terms and conditions; and• Payments will be properly liquidated. <p>Each approval must specify the:</p> <ul style="list-style-type: none">• Amount to be paid;• Necessary contractual information; and• Account(s) to be charged for the payment.

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Part B: Progress Payments

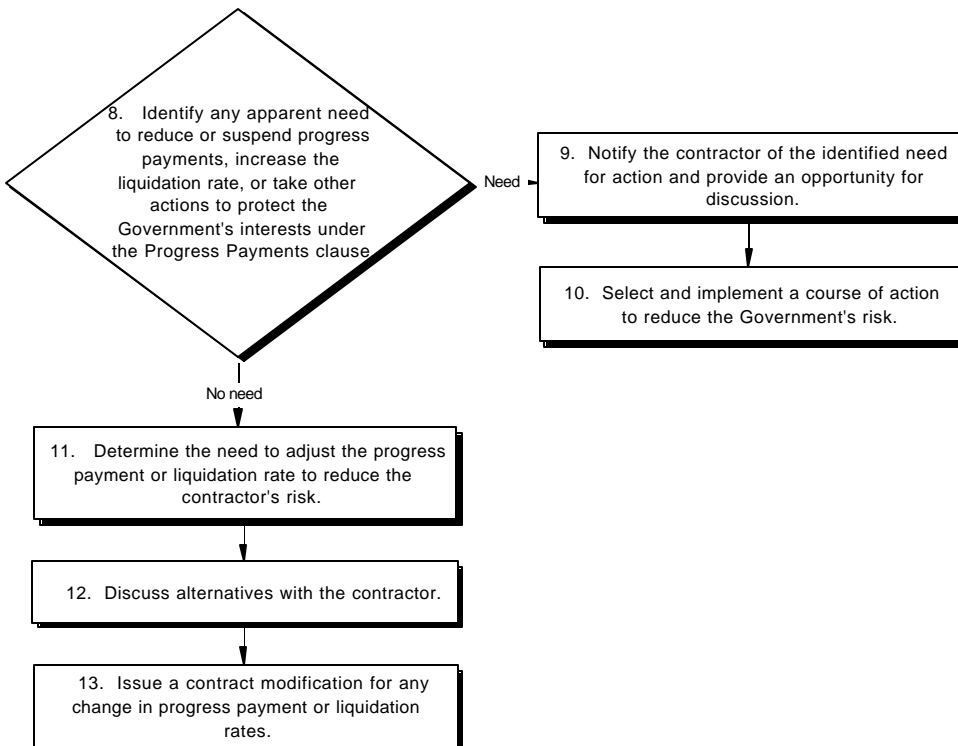
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Part B: Progress Payments

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Part B: Progress Payments

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Tasks	Related Standards
<p>1. If the contract did not call for progress payments, determine whether to modify the contract to provide them.</p>	<p>Contract financing through progress payments based on cost may be added to a contract based on the contractor's request, if it is needed for prompt and efficient contract performance. (FAR 32.104) However, new consideration is required for the addition of contract financing after contract award. (FAR 32.005)</p> <p>In considering whether to provide for progress payments by contract modification:</p> <ul style="list-style-type: none"> • Determine whether progress payments are needed for prompt and efficient contract performance. • Prepare a negotiation position on consideration for adding progress payments considering the following: <ul style="list-style-type: none"> – The contractor may provide new consideration by monetary or nonmonetary means, provided the value is adequate. – The fair and reasonable consideration should approximate the amount by which the price would have been less had the contract financing terms been contained in the initial contract. In the absence of definite information, apply the following criteria in evaluating whether the proposed new consideration is adequate: <ul style="list-style-type: none"> ? The value to the contractor of the anticipated amount and duration of the contract financing at the imputed financial costs of the equivalent working capital. ? The estimated profit rate to be earned through contract performance. • Negotiate an acceptable bilateral contract modification.

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Tasks	Related Standards
2. Tailor progress payment supervision to the level necessary to protect the Government's interests.	<p>Vary progress payments supervision, by prepayment review or periodic review, inversely with the contractor's experience, performance record, reliability, quality of management, and financial strength, and with the adequacy of the contractor's accounting system and controls.</p> <ul style="list-style-type: none">• Supervision must be of a kind and degree sufficient to provide timely knowledge of the need for, and timely opportunity for, any actions necessary to protect Government interests.• Keep informed about the contractor's overall operations and financial condition. Difficulties encountered and losses suffered in operations outside the particular progress payment contract may affect adversely the performance of that contract and the liquidation of the progress payments.• Obtain and frequently analyze full information on contract progress, the contractor's other operations, and overall financial condition for contracts with contractors:<ul style="list-style-type: none">– Whose financial condition is doubtful or not strong in relation to progress payments outstanding or to be outstanding;– With management of doubtful capacity;– Whose accounting controls are found by experience to be weak; or– Experiencing substantial difficulties in performance.• So far as practicable, all cost problems, particularly those involving indirect costs, that are likely to create disagreements in future administration of the contract should be identified and resolved at the inception of the contract.

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Tasks	Related Standards
3. Determine whether to approve the initiation of progress payments.	<p>Progress payments should be approved as a matter of course for contractors that previous experience or a recent audit review (within the last 12 months) shows to be:</p> <ul style="list-style-type: none">• Reliable, competent, and capable of satisfactory performance;• Possessed of an adequate accounting system and controls; and• In sound financial condition. <p>For all other contractors, progress payments must not be approved before determining that:</p> <ul style="list-style-type: none">• Either the:<ul style="list-style-type: none">– Contractor will be capable of liquidating any progress payments; or– Government is otherwise protected against loss by additional protective provisions; and• The contractor's accounting system and controls are adequate for proper administration of progress payments. <p>When an audit is necessary, use the services of the responsible audit agency or office to the greatest extent practicable. However, if the auditor so advises, a complete audit may not be necessary.</p>

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Tasks	Related Standards
4. Approve or disapprove a request for progress payments.	<p>When determining whether to approve or disapprove a request, consider the following:</p> <ul style="list-style-type: none">• Each request must:<ul style="list-style-type: none">– Be submitted on the appropriate form no less than a month after the last request;– Include any additional information reasonably required by the Contracting Officer; and– Be for \$2,500 or more, unless agency procedures authorize a lower amount.• When the reliability of the contractor and the adequacy of the contractor's accounting system and controls have been established, rely upon that accounting system and upon the contractor's certification, without requiring audit or review of the request before payment.• Do not routinely ask for audits of progress payment requests. However, consider asking for a review or audit of the request before approving a payment or otherwise disposing of a request when there is reason to:<ul style="list-style-type: none">– Question the reliability or accuracy of the contractor's certification; or– Believe that the contract will involve a loss, the ACO.• When there is reason to doubt the amount of a progress payment request:<ul style="list-style-type: none">– Only withhold the doubtful amount, subject to later adjustment after review or audit.– Any clearly proper and due amounts should be paid without awaiting resolution of the differences.

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Tasks	Related Standards
<p>5. Conduct post-payment reviews of progress payments.</p>	<p>While the contractor's accounting system and certification may be relied upon when approving progress payments, post-payment reviews (including audits when considered necessary) must be made periodically, or when considered desirable to determine the validity of progress payments already made and expected to be made.</p> <p>These post-payment reviews or audits must (as a minimum) include a determination of whether or not:</p> <ul style="list-style-type: none"> • The unliquidated progress payments are fairly supported by the value of the work accomplished on the undelivered portion of the contract; • The applicable limitation on progress payments in the Progress Payments clause has been exceeded; • Either the: <ul style="list-style-type: none"> – Unpaid balance of the contract price will be adequate to cover the anticipated cost of completion; or – Contractor has adequate resources to complete the contract; and • There is reason to doubt the adequacy and reliability of the contractor's accounting system and controls and certification. <p>Under indefinite-delivery contracts, administer progress payments made under each individual order as if the order constituted a separate contract, unless agency procedures provide otherwise.</p>
<p>6. Ensure that the Government title to these inventories under the Progress Payments clause is not compromised by other encumbrances.</p>	<p>In the absence of reason to believe otherwise, rely upon the contractor's certification contained in the progress payment request. However, investigate any information or complaint that Government title has been compromised.</p>

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Tasks	Related Standards
7. Liquidate progress payments through deductions in payments to the contractor.	<p>Except as provided in the Termination for Convenience of the Government clause, liquidate progress payments by deducting from any payment under this contract (other than advance or progress payments) the unliquidated progress payments, or 80 percent of the amount invoiced, whichever is less.</p> <p>The Contractor must repay to the Government any amounts required by a retroactive price reduction, after computing liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly.</p> <p>The Government reserves the right to unilaterally change from the ordinary liquidation rate to an alternate rate when deemed appropriate for proper contract financing.</p>

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Tasks	Related Standards
<p>8. Identify any apparent need to reduce or suspend progress payments, increase the liquidation rate, or take other actions to protect the Government's interests under the Progress Payments clause.</p>	<p>The Progress Payments clause provides a Government right to reduce or suspend progress payments, increase the liquidation rate, or take other actions under specified conditions. For example:</p> <ul style="list-style-type: none"> • In accordance with FAR 32.503-6, action may be appropriate if: <ul style="list-style-type: none"> – The contractor fails to comply with all material requirements of the contract and the failure results from the contractor's fault or negligence; – Contract performance is endangered by the contractor's unsatisfactory financial condition; – Inventory allocated to the contract exceeds reasonable requirements; – The contractor is delinquent in paying the costs of contract performance in the ordinary course of business; – The fair value of undelivered work is not at least equal to the amount of unliquidated progress payments; or – The sum of the total costs incurred under the contract plus the estimated costs to complete the contract are likely to exceed the contract price. • In accordance with FAR 32.503-12, action may be appropriate if unliquidated progress payments exceed the limit in the Progress Payments clause. • In accordance with FAR 32.503-14(c), action may be appropriate if the Government's title to inventories under the progress payments clause is compromised by other encumbrances.
<p>9. Notify the contractor of the identified need for action and provide an opportunity for discussion.</p>	<p>Provide the contractor an opportunity to present its views and any supporting facts.</p>

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Part B: Progress Payments

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Tasks	Related Standards
<p>10. Select and implement a course of action to reduce the Government's risk.</p>	<p>A course of action should only be selected after:</p> <ul style="list-style-type: none"> • Notifying the contractor of the intended action and providing an opportunity for discussion; • Evaluating the effect of the action on the contractor's operations, based on the contractor's: <ul style="list-style-type: none"> – Financial condition; – Projected cash requirements; and – Existing or available credit arrangements; and • Considering the general equities of the particular situation. <p>Select and implement a course of action in accordance with the Progress Payments clause and FAR requirements (e.g., FAR 32.503-6, 32.503-12, or 32.503-14(c)).</p>
<p>11. Determine the need to adjust the progress payment or liquidation rate to reduce the contractor's risk.</p>	<p>Normally, a determination to adjust the progress payment or liquidation rate will be based on a request from the contractor to provide unusual progress payments or reduce the liquidation rate.</p> <p>Consider such adjustments, when:</p> <ul style="list-style-type: none"> • Contractor cash flow is not sufficient to sustain contract performance, even with normal progress and liquidation rates. • The Government is otherwise protected against loss. • The contractor is otherwise capable and competent to perform.

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Tasks	Related Standards
<p>12. Discuss alternatives with the contractor.</p>	<p>Provide the contractor an opportunity to present its views and any supporting facts.</p> <p>Emphasize that:</p> <ul style="list-style-type: none"> • A liquidation rate: <ul style="list-style-type: none"> – May only be reduced when the conditions in FAR 32.503-9 apply; and – Must be established by correctly applying the factors at FAR 32.503-10. • Unusual progress payments: <ul style="list-style-type: none"> – May only be used when the conditions in FAR 32.501-2 apply; and – Require additional consideration when provided after contract award. <p>Attempt to reach agreement with contractor on the need for and the terms of a contract modification.</p>
<p>13. Issue a contract modification for any change in progress payment or liquidation rates.</p>	<p>Assure that any modification for:</p> <ul style="list-style-type: none"> • A change in the liquidation rate correctly applies the factors at FAR 32.503-10. • Use of unusual progress payments: <ul style="list-style-type: none"> – Is approved by the head of the contracting activity; and – Includes adequate consideration from the contractor.

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Part C: Advance Payments for Noncommercial Items

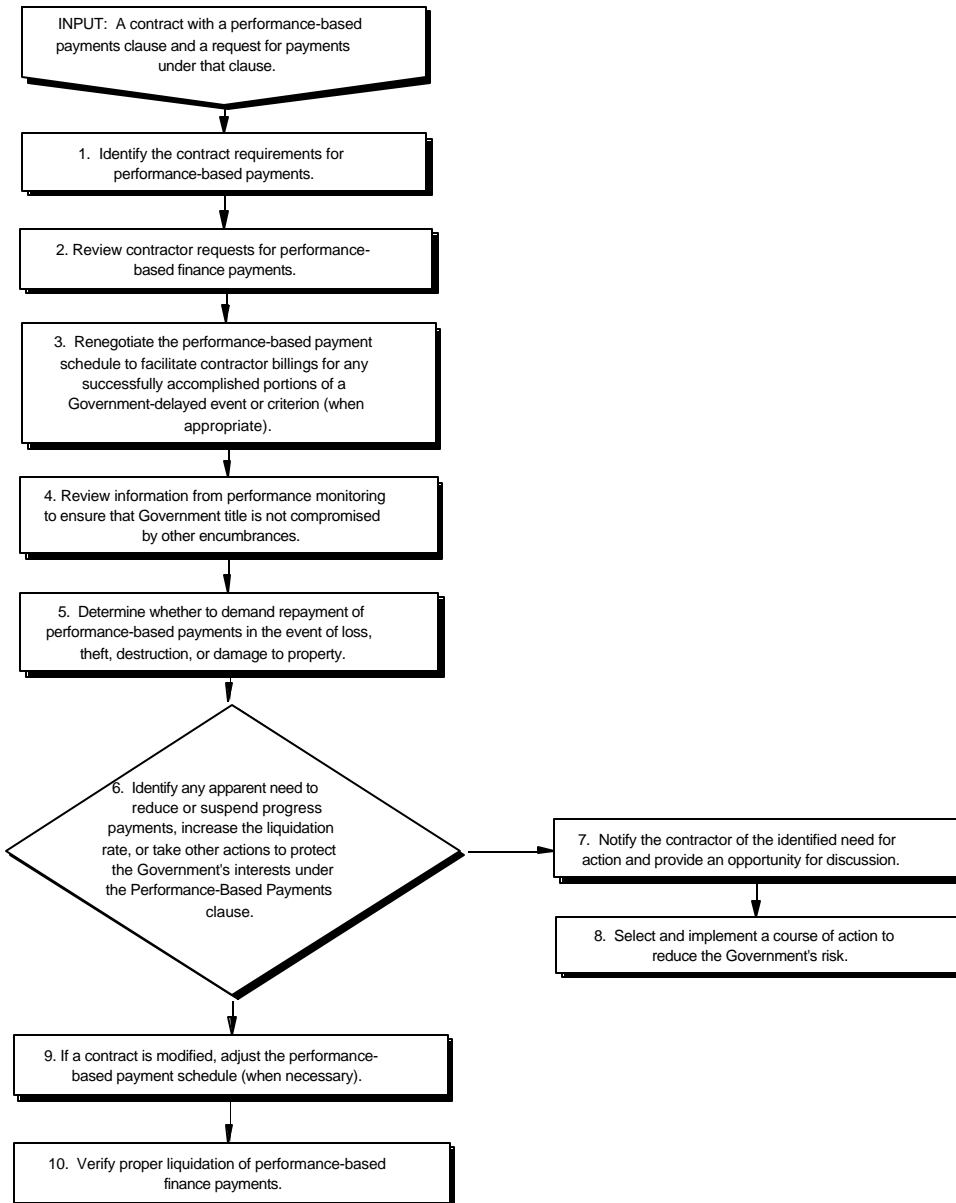
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This unit reserved.

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Part D: Performance-Based Payments

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Part D: Performance-Based Payments

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Tasks	Related Standards
1. Identify the contract requirements for performance-based payments.	As a minimum, identify: <ul style="list-style-type: none">• Performance events or criteria for performance-based payments;• Whether the performance events are severable or cumulative;• Payment amounts;• Any instructions for multiple appropriations;• Method for liquidating performance-based payments;• Minimum interval between performance-based payment requests (i.e., not more frequently than monthly); and• Form and manner in the contractor must request performance-based payments.

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Part D: Performance-Based Payments

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Tasks	Related Standards
2. Review contractor requests for performance-based finance payments.	<p>In determining what level of review is required to protect the Government's interests, consider the contractor's:</p> <ul style="list-style-type: none">• Experience,• Performance record,• Reliability,• Financial strength, and• Adequacy of controls established by the contractor for the administration of performance-based payments. <p>As a minimum:</p> <ul style="list-style-type: none">• Review the invoice to assure that the Contractor's request for performance-based payment contains the following:<ul style="list-style-type: none">– The name and address of the contractor;– The date of the request for performance-based payment;– The contract number and/or other identifier of the contract or order under which the request is made;– Such information and documentation as is required by the contract's description of the basis for payment; and– A certification by a contractor official authorized to bind the Contractor, as specified in FAR 52.232-32(m).• Never approve a performance-based payment until:<ul style="list-style-type: none">– The specified event or performance criterion has been successfully accomplished in accordance with the contract; and– If an event is cumulative, until all identified preceding events or criteria are also accomplished. <p>Based upon the risk to the Government, additional pre or post-payment review and verification may be appropriate.</p>

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Part D: Performance-Based Payments

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Tasks	Related Standards
<p>3. Renegotiate the performance-based payment schedule to facilitate contractor billings for any successfully accomplished portions of a Government-delayed event or criterion (when appropriate).</p> <p>4. Review information from performance monitoring to ensure that Government title is not compromised by other encumbrances.</p>	<p>Entitlement to a performance-based payment is solely on the basis of successful performance of the specified events or performance criteria.</p> <p>However, if there is a Government-caused delay, the performance-based payment schedule may be renegotiated (as part of an equitable adjustment) to facilitate contractor billings for any successfully accomplished portions of the delayed event or criterion.</p> <p>Ordinarily rely upon the contractor's certification contained in the payment request. If Government title has been compromised, initiate actions to protect the Government's interests (e.g., require additional protective provisions, consider suspending or reducing performance, or consult legal counsel).</p>
<p>5. Determine whether to demand repayment of performance-based payments in the event of loss, theft, destruction, or damage to property.</p>	<p>Before delivery to and acceptance by the Government, the contractor bears the risk of loss for property, the title to which vests in the Government under the Performance-Based Payments clause, except to the extent the Government expressly assumes the risk.</p> <p>If any property is damaged, lost, stolen, or destroyed:</p> <ul style="list-style-type: none"> • The basis of payment (the events or performance criteria) to which the property is related must be deemed to be not in compliance with the terms of the contract and not payable (if the property is part of or needed for performance); and • The contractor must refund the related performance-based payments to the Government.

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Part D: Performance-Based Payments

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Tasks	Related Standards
<p>6. Identify any apparent need to reduce or suspend progress payments, increase the liquidation rate, or take other actions to protect the Government's interests under the Performance-Based Payments clause.</p>	<p>The Performance-Based Payments clause provides a Government right to reduce or suspend performance-based payments or liquidate performance-based payments if:</p> <ul style="list-style-type: none"> • The contractor fails to comply with all material requirements of the contract and the failure results from the contractor's fault or negligence; • Contract performance is endangered by the contractor's unsatisfactory financial condition; or • The contractor is delinquent in paying the costs of contract performance in the ordinary course of business.
<p>7. Notify the contractor of the identified need for action and provide an opportunity for discussion.</p> <p>8. Select and implement a course of action to reduce the Government's risk.</p>	<p>Provide the contractor an opportunity to present its views and any supporting facts.</p> <p>A course of action should only be selected after:</p> <ul style="list-style-type: none"> • Notifying the contractor of the intended action and providing an opportunity for discussion; • Evaluating the effect of the action on the contractor's operations, based on the contractor's: <ul style="list-style-type: none"> – Financial condition; – Projected cash requirements; and – Existing or available credit arrangements; and • Considering the general equities of the particular situation. <p>Select and implement a course of action in accordance with the Performance-Based Payments clause and FAR requirements (e.g., FAR 32.1008 and 32.503-6).</p> <p>Whenever a contract modification affects price or delivery of any contract item(s) covered by performance-based payments, adjust the performance-based payment schedule.</p>
<p>9. If a contract is modified, adjust the performance-based payment schedule (when necessary).</p>	<p>Whenever a contract modification affects price or delivery of any contract item(s) covered by performance-based payments, adjust the performance-based payment schedule.</p>

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Part D: Performance-Based Payments

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Tasks	Related Standards
10. Verify proper liquidation of performance-based finance payments.	<p>Performance-based amounts must be liquidated by deducting a percentage or a designated dollar amount from the delivery payments. The contract must specify the liquidation rate or designated dollar amount. The method of liquidation must ensure complete liquidation no later than final payment.</p> <ul style="list-style-type: none">• If the contract 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.• If the performance-based finance payments are on a whole contract basis, liquidation is by predesignated liquidation amounts or liquidation percentages.