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.

32.1006 Solicitation provision and contract clause.

(a) Insert the clause at 52.232–32, Performance-Based Payments, in—

(1) Solicitations that may result in contracts providing for performance-based payments; and
(2) Fixed-price contracts under which the Government will provide performance-based payments.

(b)(1) Insert the solicitation provision at 52.232–28, Invitation to Propose Performance-Based Payments, in negotiated solicitations that invite offerors to propose performance-based payments.

(2) Use the provision with its Alternate I in competitive negotiated solicitations if the Government intends to adjust proposed prices for proposal evaluation purposes (see 32.1004(e)).

[72 FR 73222, Dec. 26, 2007]

32.1007 Administration and payment of performance-based payments.

(a) Responsibility. The contracting officer responsible for administering performance-based payments (see 42.302(a)(13)) for the contract shall review and approve all performance-based payments for that contract.

(b) Approval of financing requests. Unless otherwise provided in agency regulations, or by agreement with the appropriate payment official—

(1) The contracting officer shall be responsible for receiving, approving, and transmitting all performance-based payment requests to the appropriate payment office; and
(2) Each approval shall specify the amount to be paid, necessary contractual information, and the appropriation account(s) (see 32.1004(c)) to be charged for the payment.

32.1005 Solicitation provision and contract clause.

(a) Insert the clause at 52.232–32, Performance-Based Payments, in—

(1) Solicitations that may result in contracts providing for performance-based payments; and
(2) Fixed-price contracts under which the Government will provide performance-based payments.

Federal Acquisition Regulation

32.1010 Risk of loss.

(a) Under the clause at 52.232–32, Performance-Based Payments, and except for normal spoilage, the contractor bears the risk for lost, stolen, damaged, or destroyed property, even though title is vested in the Government, unless the Government has expressly assumed this risk. The clauses prescribed in this regulation related to performance-based payments, default, and terminations do not constitute a Government assumption of risk.

(b) If a loss occurs in connection with property for which the contractor bears the risk, and the property is needed for performance, the contractor is obligated to repay the Government the performance-based payments related to the property.

(c) The contractor is not obligated to pay for the loss of property for which the Government has assumed the risk of loss. However, a serious loss may impede the satisfactory progress of contract performance, so that the contracting officer may need to act under paragraph (e)(2) of the Performance-Based Payments clause. In addition, while the contractor is not required to repay previous performance-based payments in the event of a loss for which the Government has assumed the risk, such a loss may prevent the contractor from making the certification required by the Performance-Based Payments clause.

[64 FR 10540, Mar. 4, 1999, as amended at 75 FR 38680, July 2, 2010]