Federal Acquisition Regulation

32.909 Contractor inquiries.
(a) Direct questions involving—
(1) Delinquent payments to the des-
nignated billing office or designated
payment office; and
(2) Disagreements in payment
amount or timing to the contracting
officer for resolution. The contracting
officer must coordinate within appro-
priate contracting channels and seek
the advice of other offices as necessary
to resolve disagreements.
(b) Small business concerns may con-
tact the agency’s local small business
specialist or representative from the
Office of Small and Disadvantaged
Business Utilization to obtain addi-
tional assistance related to payment
issues, late payment interest penalties,
and information on the Prompt Pay-
ment Act.

Subpart 32.10—Performance-
Based Payments

Source: 60 FR 49715, Sept. 26, 1995, unless
otherwise noted.

32.1000 Scope of subpart.
This subpart provides policy and pro-
cedures for performance-based pay-
ments under noncommercial purchases
pursuant to Subpart 32.1.
[72 FR 73220, Dec. 26, 2007]

32.1001 Policy.
(a) Performance-based payments are
the preferred Government financing
method when the contracting officer
finds them practical, and the con-
tractor agrees to their use.
(b) Performance-based payments are
contract financing payments that are
not payment for accepted items.
(c) Performance-based payments are
fully recoverable, in the same manner
as progress payments, in the event of
default.
(d) Performance-based payments are
contract financing payments and,
therefore, are not subject to the inter-
est-penalty provisions of prompt pay-
ment (see Subpart 32.9). These pay-
ments shall be made in accordance
with agency policy.
(e) Performance-based payments
shall not be used for—
(1) Payments under cost-reimburse-
ment line items;
(2) Contracts for architect-engineer
services or construction, or for ship-
building or ship conversion, alteration,
or repair, when the contracts provide
for progress payments based upon a
percentage or stage of completion; or
(3) Contracts awarded through sealed
bid procedures.
[72 FR 73220, Dec. 26, 2007]

32.1002 Bases for performance-based
payments.
Performance-based payments may be
made on any of the following bases:
(a) Performance measured by objec-
tive, quantifiable methods.
(b) Accomplishment of defined
events.
(c) Other quantifiable measures of re-
results.
[72 FR 73220, Dec. 26, 2007]

32.1003 Criteria for use.
The contracting officer may use per-
formance-based payments for indi-
vidual orders and contracts provided—
(a) The contracting officer and offer-
or agree on the performance-based pay-
ment terms;
(b) The contract, individual order, or
line item is a fixed-price type;
(c) For indefinite delivery contracts,
the individual order does not provide
for progress payments; and
(d) For other than indefinite delivery
contracts, the contract does not pro-
vide for progress payments.
[72 FR 73220, Dec. 26, 2007]

32.1004 Procedures.
Performance-based payments may be
made either on a whole contract or on
a deliverable item basis, unless other-
wise prescribed by agency regulations.
Financing payments to be made on a
deliverable item 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 con-
tact line item for 10 airplanes, with a
unit price of $1,000,000 each, has 10 de-
liverable items—the separate planes. A