



National Aeronautics and  
Space Administration  
Washington, DC 20546

Deactivated with issuance of PIC 02-03 on 1/25/2002

# Procurement Class Deviation

PCD 00-26  
December 20, 2000

## INTEREST PENALTIES ON INTERIM PAYMENTS UNDER COST-REIMBURSEMENT SERVICE CONTRACTS

**PURPOSE:** To provide guidance on the payment of interest penalties for interim payments under cost-reimbursement service contracts.

**BACKGROUND:** Contractors who are awarded cost-reimbursement contracts are generally authorized to seek reimbursement during contract performance for the allowable costs they incur in performance of the contract through interim payments. Such payments have not been subject to the Prompt Payment Act interest penalties. Section 1010 of the National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398) imposes a statutory requirement on agencies to pay an interest penalty on interim payments that are made late under cost-reimbursement service contracts. Specifically, Section 1010(a) states that "an agency acquiring services from a business concern under a cost-reimbursement contract requiring interim payments who does not pay the concern a required interim payment by the date that is 30 days after the date of the receipt of a proper invoice shall pay an interest penalty to the concern on the amount of the payment due." The interest to be paid is to be computed as provided in the interest provision of the Prompt Payment Act, which is set forth in 31 U.S.C. 3901 et seq. Section 1010(b) directs the Office of Management and Budget (OMB) to prescribe regulations to carry out this section. Finally, section 1010(d) states that section 1010(a) is to take effect on December 15, 2000.

OMB published an interim rule in the December 15, 2000, Federal Register (65 FR 78403) to implement Section 1010 of the National Defense Authorization Act for Fiscal Year 2001 in 5 CFR, Part 1315. This interim rule requests public comment. The rule requires agencies to immediately apply the revisions made by the interim rule to all interim payment requests received under cost-reimbursement service contracts awarded on or after December 15, 2000.

In order for the Federal Acquisition Regulation (FAR) to comply with Public Law 106-398, an interim rule is in the process of being developed. However, the FAR rule will not be published in time to meet the December 15, 2000 date. Consequently, this PIC is being issued so that NASA contracts will be in compliance.

***GUIDANCE:*** As a result of Section 1010 of the National Defense Authorization Act, an agency is required to pay an interest penalty whenever the agency makes an interim payment under a cost-reimbursement service contract more than 30 days after the agency receives a proper payment request from the contractor. This requirement is to apply to interim payments under cost-reimbursement service contracts awarded on or after December 15, 2000.

Requests for interim payments under cost-reimbursement service contracts are to be treated as invoice payments for the purposes of computing interest penalties. However, unlike invoice payments, no receiving report or Government acceptance is required for payment to be made. In addition, the information contents required for an invoice to be considered a proper invoice are not required for interim payments under cost-reimbursement service contracts. Rather, an interim payment request under a cost-reimbursement contract is considered to be a proper invoice as long as all the information required by the contract is included in the payment request.

Enclosure 1 provides the FAR deviation to implement the statutory requirement, while Enclosure 2 provides the language to be inserted in the Prompt Payment clause at FAR 52.232-25 for cost-reimbursement service contracts.

***EFFECTIVE DATE:*** This PIC is effective as dated and shall remain in effect until canceled or superseded.

***HEADQUARTERS CONTACT:*** Joe Le Cren, Code HK, (202) 358-0444, e-mail: [jlecren@hq.nasa.gov](mailto:jlecren@hq.nasa.gov).

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Enclosures

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## Enclosure 1

Baseline is the current FAR through FAC 97-20. There are no changes to the FAR other than those provided below:

### **32.902 Definitions.**

(Revised)

"Contract financing payment," as used in this subpart, means a Government disbursement of monies to a contractor under a contract clause or other authorization prior to acceptance of supplies or services by the Government. Contract financing payments include advance payments, progress payments based on cost under the clause at 52.232-16, Progress Payments, progress payments based on a percentage or stage of completion (see 32.102(e)(1)) other than those made under the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts or the clause

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at 52.232-10, Payments Under Fixed-Price Architect Engineer Contracts, and interim payments on cost-type contracts other than service contracts. Contract financing payments do not include invoice payments or payments for partial deliveries.

"Invoice Payment," as used in this subpart means a Government disbursement of monies to a contractor under a contract or other authorization for supplies or services accepted by the Government. This includes payments for partial deliveries that have been accepted by the Government and final cost or fee payments where amounts owed have been settled between the Government and the contractor. For purposes of this subpart, invoice payments also include all payments made under the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, the clause at 52.232-10, Payments Under Fixed-Price Architect-Engineer Contracts, and the clause at 52.232-25, Prompt Payment, when Alternate I is used for interim payments under cost-reimbursement service contracts. Invoice payments do not include contract financing payments.

### **32.905 Invoice Payments.**

(Redesignate paragraphs (e) through (j) as (f) through (k); insert the following as paragraph (e), and revise the introductory text of redesignated paragraphs (f) and (g))

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(e) *Interim payments under cost reimbursement service contracts.* For purposes of computing late payment interest penalties that may apply, the due date for making interim payments under cost-reimbursement service contracts shall be 30 days after the date of receipt of a proper invoice.

(f) *Contents of invoices.* A proper invoice must include the items listed in subparagraphs (f)(1) through (f)(8) of this section except for interim payments under cost reimbursement service contracts. An interim payment request under a cost-reimbursement service contract constitutes a proper invoice for purpose of this subpart if it correctly includes all the information required by the contract. If the invoice does not comply with these requirements, it shall be returned within 7 days after the billing office received the invoice (3 days on contracts for meat, meat food products, or fish; 5 days on contracts for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils), with a statement of the reasons why it is not a proper invoice. If such notice is not timely, then an adjusted due date for the purpose of determining an interest penalty, if any, will be established in accordance with 32.907-1(b):

\* \* \* \* \*

(g) *Authorization to pay.* All invoice payments, with the exception of interim payments under cost-reimbursement service contracts, shall be supported by a receiving report or any other Government documentation authorizing payment. The agency receiving official should forward the receiving report to the designated payment office by the 5<sup>th</sup> working day after Government acceptance or approval, unless other arrangements have been made. This period of time does not extend the due dates prescribed in this section. Acceptance should be completed as expeditiously

as possible. The receiving report or other Government documentation authorizing payment shall, as a minimum, include the following:

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### **32.907-1 Late invoice payment.**

(Paragraph (a)(5) is added)

(5) In the case of interim payments under cost-reimbursement service contracts, when payment is made more than 30 days after the designated office receives a proper invoice.

### **32.908 Contract clauses.**

(Paragraph (c)(4) is added)

Insert the basic with its Alternate I only in contracts that are primarily cost-reimbursement service contracts.

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**Enclosure 2**

Baseline is the current FAR through FAC 97-20.

The following Alternate I must be included in full text in contracts that are primarily cost-reimbursement service contracts.

### **52.232-25 Prompt Payment.**

*Alternate I (Dec 2000).* For interim payments under this cost-reimbursement service contract, the following paragraphs of the basic clause do not apply: (a)(2), (a)(4)(ii), (a)(4)(iii), and (a)(5)(i). Substitute the following paragraphs for (a)(1)(i) and (a)(3) of the basic clause:

(a) *Invoice payments--(1) Due date.* (i) For purposes of computing late payment interest penalties that may apply, the due date for payment is the 30<sup>th</sup> day after the designated office receives a proper invoice.

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(a)(3) *Contractor's invoice.* Invoices for interim payments must be submitted to the office designated in the contract and comply with all other requirements as specified elsewhere in the contract. If the invoice does not comply with the contract requirements, it shall be returned within 7 days after the date the designated office received the invoice.