



PROMPT PAY

I. Purpose

Establish Federal Emergency Management Agency (FEMA) standards, procedures, and responsibilities for the timely payment of commercial obligations and for the payment of interest penalties when payments are late.

II. Scope

This Directive applies to all FEMA personnel.

III. Policy and Procedures

A. The Prompt Payment Act ensures the timely payment of vendors by Federal agencies. A timely payment is generally considered to be within 30 days of the specified agency's receipt of an invoice that is considered proper for payment. Payments will be based on the receipt of a proper invoice and satisfactory contract performance. For an invoice to be determined or considered proper, it must include (at a minimum) the following:

1. Name of vendor;
2. Invoice date;
3. Government contract number or other authorization for delivery of goods and services;
4. Vendor invoice number, account number, and/or any other identifying number agreed to by contract;
5. Description (including contract line/sub-line number), price, and quantity of goods and services rendered;
6. Shipping and payment terms, unless mutually agreed that this information is only required in the contract;
7. Taxpayer Identifying Number (TIN), unless FEMA procedures provide otherwise;
8. Banking information, unless FEMA procedures provide otherwise, or except in situations where the electronic funds transfer (EFT) requirement is waived under 31 Code of Federal Regulation (CFR) 208.4;
9. Contact name (where practicable), title, and telephone number; and
10. Other substantiating documentation or information required by the contract.

B. FEMA's policy is to ensure prompt payments for goods and services that are covered by the Prompt Payment Act, in accordance with the provisions of Title 5 CFR Part 1315.

- C. FEMA offices must make payments under contracts as prescribed in the Prompt Payment Act, but not later than the due date in the contract or, if appropriate, the discount date. Payment must be based on receipt of proper invoices and satisfactory performance of contract terms.
1. FEMA will only take discounts when payments are made on or before the discount date. If FEMA offices take discounts after the discount date, or if FEMA fails to make timely payment, interest penalties must be paid to the contractor.
 2. Checks must be mailed prior to the payment date and electronic fund transfers made on the payment date.
 3. FEMA offices must pay interest penalties automatically, without waiting for a contractor's request, and must absorb the cost of interest penalty payments from funds available for the administration of the program for which the penalty was incurred. Temporary unavailability of funds does not relieve FEMA offices of the obligation to pay interest penalties when funds become available. FEMA may be required to pay an additional penalty under specified circumstances.
 4. FEMA's implementation must be consistent with sound cash management practices, related Treasury regulations (Treasury Financial Manual, I TFM 6-8000, Section 8040), and the Federal Acquisition Regulation (FAR) (Title 48 CFR Subpart 32.9 and Title 48 CFR § 52.232).
- D. The U.S. Department of Homeland Security (DHS) Acquisition Manual (3032.7001), dated October 2009; provides that:

It is the policy of DHS to perform an in-depth review of all invoices and vouchers submitted by contractors under contracts. Contracting Officers (COs) are ultimately responsible for the review and approval of each invoice and/or voucher submitted by the contractor. However, the Contracting Officer may delegate to a representative the authority to review and approve invoices submitted for payment. Throughout FEMA, Contracting Officers delegate authority to (Contracting Officer's Technical Representatives - COTRs), or Approving Officials to review and approve vendor invoices for a specific contract. This is done in the form of an appointment letter that describes the COTRs' or the Approving Official's assigned responsibilities. For specific FEMA acquisition policies and procedures, please refer to the FEMA Guide of the Acquisition Process Version 1.0, issued March 2010. A Guide to the FEMA Acquisition Process, can be found on the Office of the Chief Procurement Officer (OCPO) home page at:

http://online.fema.net/mgmt_acquisition/doc/FEMA-Acquisition-Guide.pdf

- E. Payment Documentation and Process:
1. Invoices should be forwarded to the FEMA Finance Center (FFC) or other designated payment office(s) for payment.
 2. The FFC or other designated payment office(s) will:
 - a. Immediately clock/date-stamp all invoices immediately upon receipt.
 - b. Promptly forward all invoices to the appropriate COTR or Approving Official for signature, date, and assignment of the appropriate financial management code.

- c. Pay interest (upon presentation of a proper invoice) on any invoiced amount which is not paid by the due date.
 - d. Take all cost-effective discounts offered.
3. Late Payment Interest Calculation:
- a. The FFC or other designated payment office(s) calculates interest at the interest rate applicable on the day after the due date (i.e., the date FEMA incurred an obligation to pay an interest penalty). The following calculation will apply:
 - i. Compute interest from the day after the due date through payment date.
 - ii. Adjust any errors made in calculating interest.
 - iii. Add any interest penalties unpaid for a 30-day period to the principal. Interest accrues monthly on the total principal and previously accrued interest.
 - iv. Calculate interest using a 360-day year.
 - b. Interest penalties cease accruing after the filing of a claim for penalties or after one year.
 - c. Interest is paid only after acceptance has occurred.
 - d. Interest penalties will be paid whether or not the contractor has requested payment of a penalty.
 - e. If funds are not available to pay an invoice, FEMA remains liable for the principal and any interest penalties that may accrue, once funds become available.
 - f. Each payment for a late payment interest penalty will be accompanied by a notice stating the amount of the interest penalty included in the payment. The contract number and any invoice number assigned by the contractor will also be included in the notice to assist the contractor in reconciling the payment.
4. Limitations on Discount Payments
- a. The Treasury Financial Manual (Section 6-8040.30, "*Cash Management, Disbursements for Goods and Services*") provides guidance on determining cost-effective discounts.
 - b. FEMA will only take discounts when payments are made on or before the discount date specified in the contract or invoice and when the discount is cost-effective to the Government.
 - c. If FEMA takes the discount after the specified time and does not repay it before the due date, the interest payment will be calculated on the amount of the discount taken for the period beginning the day after the specified discount date through the payment date.
5. Exclusions/Qualifications to Timely Interest Penalty Payments
- a. Interest payments of less than \$1.00 need not be paid.

- b. Interest payments may be delayed because of a disagreement between FEMA and a contractor over the amount of the payment or other issues concerning compliance with the terms of the contract.
 - c. Interest payments are not required when made solely for financing purposes, or in advance, except for interest payments required under 31 United States Code (U.S.C.) § 3902 (h)(1) and (h)(2).
 - d. Interest payments may be temporarily withheld per the terms of the contract.
6. Exemptions – The following are exempt from the provisions of the Prompt Payment Act:
 - a. Contract financing payments.
 - b. Payments related to certain declared state of emergencies directing any Federal agency to utilize its resources in support of State and local disaster assistance efforts, as defined in the Disaster Relief Act of 1974 (P.L. 93-288).
7. Additional Interest Penalties. A contractor is entitled to additional penalties under the following conditions:
 - a. The contractor is owed a late interest penalty by FEMA.
 - b. The contractor received payment after the due date and a required interest penalty was not included. The amount of the penalty doubles the amount due on the late payment of the invoice.
 - c. The contractor is not paid the interest penalty by FEMA within ten days of the date on which the payment is made.
 - d. The contractor made a written request which was received 40 days or less after the date the payment was made. The request must include the following:
 - i. A statement indicating late payment interest is due under a specific invoice.
 - ii. A request for payment of all overdue late payment interest penalties and additional penalties to which they are entitled.
 - iii. A copy of the invoice on which late payment interest was due but unpaid, certification that payment for the principal had been received, and the date of the receipt.
 - iv. A valid request from the contractor postmarked by the 40th day.
 - e. The additional penalty paid to the contractor will be equal to 100% of the original late payment.
 - f. An additional penalty cannot be greater than \$5,000, or less than \$25. Late payment interest penalties cease to accrue at the end of one year. Additional penalties may continue to accrue, and will be calculated as described in Section III.E.3.a. For the purpose of determining the maximum and minimum penalty, the test shall be the interest due on each separate payment made for each separate contract. Penalties will not be based on individual invoices unless the invoices are paid by separate payment. Where payments are consolidated for disbursing purposes, penalty determinations will be made separately for each

contract. Additional penalties do not apply to the payment of utility bills because late payment penalties for these bills are determined through the rate-setting process.

IV. Responsibilities

A. The Office of the Chief Financial Officer (OCFO) shall (directly or through delegation):

1. Establish Agency-wide financial policies and procedures.
2. Ensure that effective internal control systems are established and maintained as required by Office of Management and Budget (OMB) Circular A-123, "Internal Control Systems," to provide reasonable assurance that the requirements of Title 5 CFR Part 1315 are effectively and efficiently carried out within FEMA.
3. Ensure that payments are made in accordance with OMB Circular A-123, "Internal Control Systems".
4. Develop and issue internal procedures to implement this Directive.
5. Establish a quality control program to assess performance of payment systems and provide a reliable way to estimate payment performance.
6. Monitor the causes of interest penalties and take corrective action.
7. Provide prompt payment data and reports to all payment offices describing how well their office is complying with the Prompt Payment Act, and identify any required corrective actions.
8. Assemble and analyze the reasons for the incurrence of payment penalties; document discussions with the payment section and programs/components to determine the root cause of the interest payments; and recommend any revisions to policy/procedures, as appropriate.
9. Conduct internal audits as needed.
10. Report in a timely and accurate manner to DHS, which includes the annual requirement to report, no later than November 30, information on FEMA's agency-wide invoice paying performance for, and improvements made over, the prior fiscal year.

B. The FFC or Designated Payment Offices shall:

1. Oversee and manage all aspects of payments.
2. Ensure that contracts include the correct FFC or other designated payment office address for forwarding invoices by the contractor.
3. Immediately clock/date-stamp all invoices upon receipt.
4. Log and sort all incoming invoices before they are sent to the respective COTR or Approving Official for approval.

5. Track the return of invoices from the COTR or Approving Official and report to the Contracting Officer any invoices not returned within seven days after receipt by the FFC or other designated payment office.
6. Ensure that all invoices processed for payment have the approval, signature, and date of the COTR or the Approving Official and the appropriate financial accounting code.
7. Take all cost-effective discounts offered.
8. Pay interest on a properly invoiced amount which is not paid by the due date.
9. Assist the Agency with resolving any critical items and manage the long-term performance of payments and certification.
10. Enter the information from invoices into the Agency's finance system.
11. Ensure that proper payment documentation is maintained to support all transactions recorded in the financial system.
12. Maintain accurate supporting documentation for all files for a minimum of seven calendar years from the date of the transaction. The documentation must be sufficient for external audit purposes.

C. The Office of the Chief Procurement Officer (OCPO) shall:

1. Ensure that the Contracting Officer delegates a COTR or an Approving Official on every contract to approve invoices.
2. Ensure an active and consistently updated list of all COTRs and Approving Officials per contract number is available for the FFC or other designated payment office.
3. Ensure that FEMA contracts include the correct payment address for sending of invoices by the contractor.
4. Require each vendor or contractor to indicate whether an invoice is for partial, progress, advance, provisional, or final payment.
5. Include the criteria required for a proper invoice in every contract.
6. Include the appropriate articles specified in internal OCPO directives, to include the due dates for payment.
7. Include, when necessary, a stated inspection period to begin upon delivery of property and services.
8. Ensure that the appropriate payment terms are included in all contracts, in accordance with Title 5 CFR Part 1315 and the FAR.
9. Include a due date for each separate item in any contract which provides for separate payment for partial delivery of property and services.
10. Ensure that award and modification documents are forwarded to the FFC or other designated payment office within seven working days of execution.
11. Ensure invoices are returned back to the FFC or other designated payment office within seven days after receipt.

D. Program Offices shall:

1. Ensure that all goods/services have been received prior to submitting invoices to the FFC for payment.
2. Ensure that all invoices forwarded for payment have the appropriate approval, signature, date, and appropriate financial accounting code.
3. Ensure that contracts include the correct address for the forwarding of the invoices by the contractor.
4. Ensure that invoices are quickly forwarded to the FFC or other designated payment office.
5. Ensure that funds are obligated to permit prompt payment of invoices and, if necessary, fund any late payments.

V. **Definitions**

- A. **Acceptance** - Acknowledgment by an authorized FEMA official that property and services received conform to the requirements of the particular contract involved.
- B. **Approving Official** - A representative delegated by a Contracting Officer to approve invoices for payment under the Simplified Acquisition Threshold.
- C. **Agency Payment Office** - The FEMA office responsible for scheduling invoices for payment.
- D. **Applicable Interest Rate** - The interest rate established by the Secretary of the Treasury for interest payments under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. § 611) that is in effect on the day after the due date. The Prompt Payment Act Interest Rate is published semi-annually in the Federal Register, on or about January 1 and July 1.
- E. **Contract** - An enforceable agreement, including rental and lease agreements, purchase orders, delivery orders (including obligations under Federal Supply Schedule contracts), requirements-type (open-ended) service contracts, and blanket purchase agreements, between an agency and a contractor for the acquisition of property or services and agreements entered into under the Agricultural Act of 1949.
- F. **Contract Financing Payments** - Authorized disbursements of monies prior to acceptance of supplies or services including advance payments, progress payments based on costs, progress payments (other than under construction contracts or architect engineer contracts) based on percentage or stage of completion, and interim payments on cost-type contracts. Contract financing payments do not include invoice payments or payments for partial deliveries.
- G. **Contracting Officer (CO)** - A warranted Federal employee with the authority to negotiate, enter into, administer, modify, and terminate contracts on behalf of the Government. The CO is the Federal procurement Subject Matter Expert (SME).
- H. **Contracting Officer's Technical Representative (COTR)** - A Federal employee, designated in writing by the CO, appointed to furnish technical administration and direction within the confines of the contract. The primary role of the COTR is to

support the CO with administering the contract although the CO maintains lead responsibility for contract administration.

- I. **Contractor** - Any person, organization, or business concern engaged in a profession, trade, or business and any not-for-profit entity operating as a contractor (including State and local governments but excluding Federal entities).
- J. **Day** - A calendar day, including weekends and holidays, unless otherwise indicated.
- K. **Designated Payment Office** - The payment office designated in the contract.
- L. **Discount Date** - The date by which, if payment is made, a specified invoice payment reduction, or discount, can be taken.
- M. **Due Date** - The date on which Federal payments should be made. Unless otherwise specified, the payment is due either on the date(s) specified in the contract or if a payment due date is not specified in the contract, 30 days after the start of the payment period.
- N. **FEMA Finance Center** - The primary designated payment office within the OCFO responsible for scheduling invoices for payments.
- O. **Invoice** - A bill or written request for payment provided by a contractor for property or services rendered. In this instruction, the term bill is synonymous with the term "invoice."
- P. **Payment Date** - The date of a check for payment or the date of an EFT payment (settlement date). Payments made by EFT mechanism will be made so as to be received by the contractor's financial institution by the established due date.
- Q. **Receipt of Invoice** - The method used for purposes of determining a payment due date and the date on which interest will begin to accrue.
- R. **Receiving Report** - Written evidence of acceptance of property or services by a FEMA official. If receiving reports are not used, authorized FEMA approving officials (i.e., COTRs) will sign and date the invoice indicating that the invoice is "approved for payment".

VI. Authorities

- A. The Prompt Payment Act, Chapter 39 of Title 31, U.S.C.
- B. Part 1315 of Title 5, CFR, "*Prompt Payment.*"
- C. Contract Disputes Act of 1978, Sections 6 and 12.

VII. Responsible Office

Office of the Chief Financial Officer

VIII. Supersession


This Directive supersedes FEMA Instruction 2600.1, dated November 1, 1991, and Interim CFO Directive 2600-10, dated June 30, 2009.

IX. References

- A. OMB Circular A-123, *"Internal Control Systems"*.
- B. U.S. Treasury Financial Manual, Section 6-8040, *"Disbursements for Goods and Services"*.
- C. FAR, Chapter 1 of Title 48, CFR.

X. Questions

All questions or concerns regarding this Directive shall be addressed to the FEMA Director of Financial Management at (202) 646-4146.



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Chief Financial Officer

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