

**PROMPT PAYMENT ACT AMENDMENTS OF 1988-(Sec. 11;
implementation through federal acquisition regulation)**

【Currency: This publication is a compilation of the text of Section 11 of Public Law 100-496. It was last amended by the public law listed in the As Amended Through note above and below at the bottom of each page of the pdf version and reflects current law through the date of the enactment of the public law listed at <https://www.govinfo.gov/app/collection/comps/>】

【Note: While this publication does not represent an official version of any Federal statute, substantial efforts have been made to ensure the accuracy of its contents. The official version of Federal law is found in the United States Statutes at Large and in the United States Code. The legal effect to be given to the Statutes at Large and the United States Code is established by statute (1 U.S.C. 112, 204).】

IMPLEMENTATION THROUGH THE FEDERAL ACQUISITION REGULATION

SEC. 11.¹ 【31 U.S.C. 3903 note】 (a) The Federal Acquisition Regulation shall be modified to provide appropriate solicitation provisions and contract clauses that implement chapter 39 of title 31, United States Code, as amended by this Act, and the regulations prescribed under section 3903 of such title (as amended).

(b) The solicitation provisions and contract clauses required by subsection (a) of this section shall include (but not be limited to) the following matters:

(1) Authority for a contracting officer to specify for a contract or class of contracts a specific payment period, which—

(A) in the case of payments for commercial items or services, is similar to the payment period or periods permitted in prevailing private industry contracting practices;

(B) in the case of payments for noncommercial items and services, does not exceed 30 days unless the circumstances of the procurement action is determined to require a longer period for payment and such determination is approved above the level of the contracting officer;

(C) in the case of payments for items of property or services in an amount less than the amount specified as a small purchase in section 303(g)(2) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(2)), does not exceed 15 days after the date of receipt of the invoice, if—

(i) the contract provides for such “fast payment” terms;

(ii) title to any property will vest in the Government upon delivery (including delivery to a common carrier); and

(iii) the business concern offers appropriate warranties to furnish property or services conforming to

¹Most of the other sections of the Prompt Payment Act Amendments of 1988 (P.L. 100-496; 102 Stat. 2455) amended chapter 39 of title 31, United States Code.

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the requirements of the contract or purchase order, if payment will be due prior to acceptance of the items or services; and

(D) in the case of progress payments under construction contracts, does not exceed 14 days, unless the solicitation specifies a longer period which the contracting officer has determined is required to afford the Government a practicable opportunity to adequately inspect the work and to evaluate the adequacy of the contractor's performance under the contract.

(2) Requirements to make periodic payments, in the case of a property or service contract which does not prohibit periodic payments for partial deliveries or other contract performance during the contract period, upon—

(A) submission of an invoice for property delivered or services performed during the contract period, if an invoice is required by the contract; and

(B) either—

(i) acceptance of the property or services by an employee of the contracting agency authorized to accept the property or services; or

(ii) the making of a determination by such an employee, that the performance covered by the payment conforms to the terms and conditions of the contract.

(3) A conclusive presumption, exclusively for the purposes of determining when an agency becomes obligated to pay a late payment interest penalty (other than under construction contracts), that the Federal Government has accepted property or services by the 7th day after the date on which, in accordance with the terms and conditions of the contract, the property is delivered or final performance of the services is completed, unless the solicitation specifies a longer period which is determined by the contracting officer to be required to afford the agency a practicable opportunity to inspect and test the property furnished or evaluate the services performed.

(4) The limitation that the Federal Government may take a discount offered by a contractor for early payment by the Federal Government only in accordance with the time limits specified by the contractor, determined in accordance with the second sentence of section 3904 of title 31, United States Code.

(5) The requirements of section 3902(c) of title 31, United States Code.

(6) The requirements of section 3903(a)(6) of title 31, United States Code.

(7) The requirements of section 3905 of title 31, United States Code.

(c) The regulations required by subsection (a) of this section shall be published as proposed regulations for public comment as provided in section 22 of the Office of Federal Procurement Policy Act (41 U.S.C. 418b) within 120 days after the date of the enactment of this Act.