

New proposed rule seeks to implement accelerated payments to small business contractors across the government

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In late September, the FAR Council issued a proposed rule that would potentially speed up payments to small business prime contractors and subcontractors across the federal government.

The proposed rule, found at 86 Fed. Reg. 53,923,¹ seeks to incentivize agencies to pay prime contractors that are small businesses within 15 days instead of 30 days after receipt of a proper invoice if no payment date is specified in the contract. It also would apply to prime contractors that subcontract with small businesses, applying a similar 15-day requirement to pay small subcontractors when accelerated payments are received.

The proposed rule specifically requests agency heads to set a goal of paying small business prime contractors within 15 days of receiving an invoice instead of 30 days.

According to the proposed rule, the FAR Council will apply this to most federal contracts by seeking determinations to make this new rule applicable to commercial contracts as well as those under the Simplified Acquisition Threshold.

The proposed rule is intended to implement section 873 the 2020 NDAA,² which was passed on December 20, 2019. It specifically requests agency heads to set a goal of paying small business prime contractors within 15 days of receiving an invoice instead of 30 days.

It also lays out a similar approach for prime contractors with small business subcontractors, recommending a 15-day payment deadline if no deadline is established in the contract and the prime contractor agrees to make payment to the subcontractor without imposing any additional consideration or fees. A similar provision for defense contracts is contained under 10 U.S.C. § 2307(a)(2).³

The FAR Council intends to implement this provision under a standard contract clause and its prescribing provision. FAR 32.009-1⁴ already directs agencies to take measures to ensure prime contractors pay small business subcontractors on an accelerated timetable whenever accelerated payments are received from the government.

Section (2) of the clause would additionally prohibit prime contractors from requesting additional consideration or fees from the subcontractor for the accelerated payment.

The proposed amendments to FAR 32.009-1 would closely track the statutory language and set a goal of 15-day payments for both small business prime contractors and prime contractors with small business subcontractors.

The associated standard contract provision, FAR 52.232-40,⁵ would also be amended to provide that a contractor “shall make accelerated payments to its small business subcontractors under this contract, to the maximum extent practicable and prior to when such payment is otherwise required under the applicable contract or subcontract, after receipt of a proper invoice and all other required documentation from the small business subcontractor, if a specific payment date is not established by contract.”

Section (2) of the clause would additionally prohibit prime contractors from requesting additional consideration or fees from the subcontractor for the accelerated payment.

Those interested in providing feedback about this proposed rule have until November 29, 2021 to submit their comments. Specific instructions to submit comments are contained in the proposed rule⁶ and are done through the government’s Federal eRulemaking portal.⁷

Notes

¹ <https://bit.ly/3aBDXdU>

² <https://bit.ly/2YUPXER>

³ <https://bit.ly/2YI4fbx>

⁴ <https://bit.ly/3BDJ215>

⁵ <https://bit.ly/3awKuGA>

⁶ <https://bit.ly/3aBDXdU>

⁷ <https://bit.ly/3iTYjn9>

About the author



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