POLICY ADVISORY NOTE

Subject: Contract Payments in Support of Emergencies and Contingency Operations

References:

- FAR Subpart 32.9 – Prompt Payment
- DFARS Subpart 232.9 – Prompt Payment
- DFARS Clause 252.232-7011 Payments in Support of Emergencies and Contingency Operations

Issue: Given the current environment in support of COVID-19 Coronavirus Pandemic, there have been concerns voiced by industry and Members of Congress regarding the Department’s ability to make timely contract payments consistent with terms in the contract.

Discussion: The information provided was developed to assist the contracting community to appropriately modify contacts (when required) and update the payment terms of the contract and reaffirm minimally required contract payment steps and documentation requirements.

- Subject to limitations outlined in FAR and DFARS, Prompt Payment does not apply under contingency and emergency operations, when the head of the contracting activity has made a determination, after consultation with the cognizant comptroller, that conditions exist that limit normal business operations; and payments will be made in the operational area or made contingent upon receiving supporting documentation (i.e., contract, invoice, and receiving report) from the operational area.
- The referenced DFARS Clause and FMR appendix provides information to assist certifying officers in identifying the critical data elements necessary to properly certify a payment made in support of emergencies and contingency operations.
- The certifying officer must use professional judgment to determine if a payment request and supporting documentation is sufficient to demonstrate that the payment is legal, correct, and proper.
- The FMR allows for critical data elements missing from one document, but present somewhere in the payment package.
- When a payment package does not contain a critical data element required by the FMR, the certifying officer must be confident that there is: (1) a legal obligation to pay, (2) the payee has fulfilled any prerequisites to payment, (3) the amount of the payment and identity of the payee are correct, and (4) the payment is legal under the appropriation or fund involved. For any payment package missing any required critical data element, the
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certifying officer must justify in writing why they certified the payment. This justification can either be on the voucher or on a separate attachment provided with the voucher.

- Other contract payment considerations. Defense Finance and Accounting Services (DFAS) ‘Quick Pay’ procedures, are currently in affect and eliminate the normal wait times before payment. Other remaining considerations include Fast Pay under FAR Subpart 13.4/DFARS Subpart 213.4, but may be difficult to justify if the Government workforce is working remotely and on-line, as it is predicated on a lack of capability to transmit acceptances. Another consideration is Certificates of Conformance (CoC) under FAR Subpart 46.5/DFARS Subpart 246.5. Acceptance based on a CoC could reduce the need for on-site visits and inspections.

Recommendation: Take the substance of the information provided and utilize as the agency sees fit as tools available to promptly and accurately pay contractors.

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