

PPD ALERT

Interest Penalty on Late Payments under Cost Reimbursement Contracts (Revisions to OMB's Prompt Payment Act Regulations)

Background. The Prompt Payment Act (PPA) has been revised to extend its coverage to interim payments under a cost-reimbursement contract for services *and* to require payment of interest penalties whenever an interim payment request has not been paid within a period exceeding 30 days after a proper invoice has been received from the contractor. Previously, contractors awarded cost-reimbursement contracts have been authorized to seek reimbursement of allowable costs incurred in contract performance and interim payments had not been subject to PPA interest penalties. Now, when the interim payment has not been made within 30 days of the receipt of a proper invoice, the payment will be subject to PPA interest penalties. This rule is effective immediately on all cost-reimbursement service contracts awarded on or after December 15, 2000.

This interim final rule has been implemented in Section 1010 of the National Defense Authorization Act for FY 2001, Public Law 106-398, (114 Stat. 1654). The interim rule was published in the Federal Register on December 15, 2000, (Volume 65, Number 242) Page 78403-78405.

Effective Date: December 15, 2000

Applicability. The new requirement will be applied to payments under contracts awarded, contracts renewed, and contract options exercised on or after the statutory effective date. Existing contracts shall be modified to consistently apply these provisions across all cost-reimbursement service contracts to conform them to the provisions implemented in this statute. Additionally, these provisions shall apply to those payments made under contracts awarded, contracts renewed, and contract options exercised on or after December 15, 2000.

Contract Modifications. The following suggested wording is provided for modification of contract to include the provision of this statute:

Notice of Obligation To Make Interest Payment Under Cost-Reimbursement Service Contracts

The PPA has extended its coverage to interim payments under a cost-reimbursement contract for services *and* requires payment of interest penalties whenever an interim payment request has not been paid within 30 days after a proper invoice has been

received from the contractor. Cost reimbursement contractors are authorized to seek reimbursement of allowable costs incurred in contract performance. Now, interim payments which have not been made within 30 days of the receipt of a proper invoice, will be subject to interest penalties.

“Proper” Invoice. A “proper” invoice under a cost reimbursement service contract is an interim request for payment which correctly includes all of the information required by the contract or by agency procedures including items prescribed by FAR 32.232-25(a)(3). Invoices which do not meet these requirements will be returned to the contractor within 7 days after receipt and will identify all defects that prevent payment of the invoice.

Payment Due Date. For cost-reimbursement contracts, the payment due date shall be 30 days after the date of receipt of a proper invoice at the designated location. The period available to make a timely payment without incurring an interest penalty begins on the date of receipt of a proper invoice. The payment due date does not begin until the invoice has been received by the designated agency office. The interest payment shall be paid on the amount of the payment due and is computed in accordance with Title 31, USC 3902.

Modification of Existing Contracts. Existing cost-reimbursement contracts for services awarded prior to December 15, 2000 shall be modified to conform to the provisions of this rule, however, no interest penalty shall accrue for any delays in payment occurring prior to December 15, 2000. Interest penalties will apply only to payments made under contracts awarded on or after December 15, 2000. Generally, these requirements will apply to contracts awarded, contracts renewed, and contract options exercised on or after the statutory effective date.