



*Dixon Hughes Goodman LLP  
Government Contractor Services Industry Group*

**IMPORTANT NEWS FLASH FOR SMALL BUSINESSES**

*On September 14th – the Administration announced that the President is ordering all federal agencies to pay small businesses faster to spur hiring and job growth. The following memorandum was issued by the OMB Director, Jack Lew, to all executive branch departments and agencies:*

As critical drivers of job creation and economic growth across the country, small businesses must receive, in a timely and efficient manner, the money that the Federal Government owes them for the goods and services that the Government has accepted. All told, the Federal Government pays small businesses nearly \$100 billion each year for goods and services. By taking actions that will enable these payments to be made as promptly as possible, we will improve cash flow for small businesses and provide them with a more predictable stream of resources, thereby preserving and increasing small business participation in Federal contracting.

Accordingly, the following memorandum establishes the Executive Branch's policy regarding the acceleration by Federal agencies of their payments to small business contractors. The Prompt Payment Act (PPA) generally requires an agency to pay its contractors within 30 days of receipt of relevant documents, including a proper invoice for the amount due and confirmation that the goods and services have been received and accepted by the Federal Government. This memorandum outlines the Executive Branch policy that, to the full extent permitted by law, agencies shall make their payments to small business contractors as soon as practicable, with the goal of making payments within 15 days of such receipt.

**BACKGROUND:**

Under the PPA and OMB's implementing regulations,<sup>1</sup> a Federal agency is generally required to make payments within 30 days from when the agency receives proper documentation. If an agency does not pay a vendor the amount due by the "required payment date" prescribed by the PPA, the agency must pay the vendor a late-payment interest penalty.

In accordance with prudent cash management practices, agencies generally pay contractors no earlier than seven days in advance of this 30-day deadline. However, the PPA and OMB's implementing regulations authorize agencies to make accelerated payments when the agency determines that doing so is "necessary." In addition, OMB's regulations specifically support agencies in making accelerated payments to small businesses, stating that "[a]gencies may pay a small business as quickly as possible, when all proper documentation, including acceptance, is received in the payment office and before the payment due date."<sup>2</sup>

**ACCELERATING AGENCY PAYMENTS TO SMALL BUSINESS CONTRACTORS:**

It is the policy of the Executive Branch that agencies shall exercise their PPA authority, to the full extent permitted by law, to establish an earlier, accelerated date for their making of payments to small business contractors.<sup>3</sup> To the extent practicable, Federal agencies shall establish a goal of paying small business contractors within 15 days of receiving proper documentation, including an invoice for the amount due and confirmation that the goods or services have been received and accepted by the Federal Government. At the same time, agencies need to ensure expeditious processing throughout (including in inspection and acceptance) to facilitate prompt payment to small businesses, while also maintaining necessary internal controls.

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As noted above, the PPA authorizes agencies to accelerate the timeline for their making of payments, based upon a determination by the agency that an accelerated timeline is "necessary." Moreover, as also noted above, OMB's PPA regulations support agencies in making earlier payments to their small business vendors. These regulations, and the policy in this memorandum, are based on OMB's conclusion that an agency may lawfully determine, under the PPA, that it is "necessary" for the agency to make accelerated payments to small business vendors. The acceleration of payments to small businesses is necessary because, as is previously indicated, this acceleration improves cash flow for small businesses and provides them with a more predictable stream of resources. These outcomes have the effect of preserving and increasing small business participation in Federal contracting, which benefits Federal agencies and the taxpayers.

OMB recognizes that agencies, in their implementation of this accelerated-payment policy, will not be able to guarantee that they will make payments to small business contractors within the accelerated (15 day) period. Moreover, the establishment of this accelerated-payment policy, and its implementation by Federal agencies, does not change the application of the PPA's late-payment interest penalty provisions. Under the PPA and OMB's implementing regulations, the late-payment interest penalty is triggered when an agency does not pay the contractor the amount due by "the required payment date." This policy and its implementation do not modify the "required payment date" and do not otherwise modify the operation of the PPA's late payment interest penalty.

Agencies shall begin making accelerated payments to small businesses as soon as practicable, in accordance with this memorandum. By November 1, 2011, each agency shall notify OMB of (1) the date by which the agency will begin making accelerated payments, along with the agency's explanation for why an earlier date is not practicable, and (2) the name and contact information for the agency senior official assigned the responsibility for overseeing implementation of this policy. Notifications should be sent to Daniel Werfel, OMB Controller.

If you have any questions regarding this memorandum, please contact Debra Bond, OMB Deputy Controller, at 202.395.3993.

*If you have any questions or need assistance please contact your Government Contracting Consultant or **Bill Walter** at 703.970.0509 or [bill.walter@dhgllp.com](mailto:bill.walter@dhgllp.com).*

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<sup>1</sup> The PPA is at 31 U.S.C. Chapter 39. OMB's implementing regulations are at 5 C.F.R. Part 1315

<sup>2</sup> 5 C.F.R. § 1315.5(b). The provision also explains that earlier payments to small businesses "are not subject to payment restrictions stated elsewhere" in OMB's PPA regulations. These restrictions include the instruction to agencies that their PPA authority to make an earlier payment "must be used cautiously," 5 C.F.R. § 1315.4(j).

<sup>3</sup> This policy applies to all small businesses, including small disadvantaged businesses, service-disabled veteran-owned small businesses, women-owned small businesses, and small businesses operating in Historically Underutilized Business (HUB) Zones, as these terms are defined in Part 2 of the Federal Acquisition Regulation (48 C.F.R. § 2.101).