DFARS Case 2017-D019
Performance-Based Payments and Progress Payments

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INDUSTRY CONCERNS

Overview & Recommendation

- **This Rule…**
  - Discourages industry investment in innovation
  - Is duplicative and unnecessarily increases bureaucracy and oversight
  - Disrupts cashflow and drives prices higher
  - Distorts competition
  - Punishes contractors who accept high risk and challenging performance requirements
  - Contradicts congressional intent
- **We Recommend…**
  - That DoD rescind this proposed rule in its current form
  - Or extend the comment period and provide another public meeting with industry to discuss further

Decreases Investment in Innovation

- **Increasing working capital requirements for production and slowing the recovery of capital via contract financing payments will reduce the capital available for:**
  - Innovation (Company-funded R&D + IRAD)
  - Affordability (Capital improvements)
- **This contradicts DoD's emphasis on innovation and capability**

Increased Bureaucracy & Oversight

- **Currently, DoD has the ability to establish performance requirements, metrics and incentives for each contractor**
- **Implementation of this rule at the enterprise level will complicate reporting and planning for both the contractor and government**
- **This rule would create a duplicative requirement and would add another layer of bureaucracy in an already cumbersome process**

Disrupts Cashflow and Increases Prices

- **Cash flow disruptions at the Prime level will flow down to all tiers of the supply chain**
  - Reducing lower-tier companies' desire to do business with DoD
  - Negatively impacting contractors' ability to meet basic payment requirements including payroll
- **Prices will increase as industry seeks greater margins to offset loss of government provided financing**
  - Weighted Guidelines (WGL) calculations specifically allow for greater margins where industry has assumed greater financing risks

Distorts Competition

- **This rule allows the government to pick "winners and losers" by subjective application of the payment rate criteria**
- **Contractors preserving (or enhancing) contract financing payment rates will have a competitive advantage built in during the bidding process**
  – These companies/BUs can then bid lower prices and win more business
- **Historically, the government has avoided allowing access to contract financing to become competitive advantage**
  – This is why interest on commercial financing is an unallowable cost

Punishes Contractors

- **Contractors that accept high risk and challenging performance requirements are unfairly punished**
- **Performance on all contracts will be punished – even the highest performing – due to the challenges and risks in others**

Contradicts Congressional Intent

- **Section 831 of the FY17 NDAA sought to align DoD practices on performance-based payments with the FAR and remove barriers for their increased use**
  - (e.g. unique accounting systems/ties to cost incurred)
- **Section 831 did NOT address progress payments based on cost**
- **This proposed rule would:**
  - Erect new barriers for the use of PBPs and progress payments
  - Bring DoD further out of alignment with FAR based practices
  - Irrationally discriminate based on end item
    - (Selectively applying the rule to progress payments to aircraft, satellites, vehicles, but not shipbuilding or Navy MRO work, etc.)

Recommendations

- **DoD should rescind this proposed rule**
- **If not, extend the comment period and provide another opportunity for industry to publicly comment**

Thank You

Direct questions to:

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