



DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS-2022-0012]

Department of Defense Contract Finance Study Follow-up Activity

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Request for information.

SUMMARY: This notice requests input on improving the timeliness of payments to defense subcontractors as a means of enhancing and securing the financial health of these critical members of the Defense Industrial Base, as well as attracting new entrants into the Defense Industrial Base while retaining existing participants. Input is solicited from the public, including companies currently participating in the Defense Industrial Base as a prime contractor, subcontractor, supplier, or vendor; as well as other interested parties.

DATES: Interested parties should submit written comments to the address shown in the **ADDRESSES** section on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit comments in response to the questions provided below, using either of the following methods:

- o *Federal eRulemaking Portal:* <https://www.regulations.gov>.

Search for "Docket Number DARS-2022-0012." Select "Comment" and follow the instructions to submit a comment. Please include your name, company name (if any), and "Docket Number DARS-2022-

0012" on any attached document(s).

- o *Email: osd.pentagon.ousd-a-s.mbx.dpc-pcf@mail.mil.*

Include "DoD Contract Finance Study Follow-up Activity" in the subject line of the message.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission, to verify posting.

FOR FURTHER INFORMATION CONTACT: Ms. Regina Bova, telephone 937-200-4020.

SUPPLEMENTARY INFORMATION:

A. Background

The DoD Contract Finance Study, published in April 2023 and available at <https://www.acq.osd.mil/asda/dpc/pcf/finance-study.html>, was the first comprehensive contract finance study since publication of the Defense Financial and Investment Review in June 1985. The DoD Contract Finance Study concluded that, in the aggregate, the defense industry is financially healthy, and that its financial health has improved over time. However, the findings were not as auspicious when specifically considering the supply base (the members of the Defense Industrial Base operating as first-tier or lower-tier subcontractors and suppliers). The DoD Contract Finance Study found that defense subcontractors and suppliers generally do not receive favorable cash flow benefits as consistently or to the same extent enjoyed

by defense prime contractors. This is a crucial finding, as the Government Accountability Office (GAO) has noted estimates of 60 to 70% of defense work being performed by subcontractors (GAO-11-61r). In response to the findings of the DoD Contract Finance Study, the Department is investigating ways to improve cash flow and payment timeliness for the supplier base. Enhancements in this area would not only improve the financial health of defense subcontractors and suppliers, but could potentially assist in attracting new entrants into the Defense Industrial Base, including at the supply chain level.

B. Areas of Interest

The Department is seeking input on the following questions, all of which but one relate to Tenet 2 in the DoD Contract Finance Study Report (see page 6 of the Report for the Summary Table identifying all tenets). The Department anticipates requesting public comments on other areas of the DoD Contract Finance Study in subsequent Federal Register notices (e.g., responses to question 6.c. may inform further exploration of Tenet 4).

1. What are your thoughts about extending the protections provided by the Prompt Payment Act to subcontractors? Generally, the Prompt Payment Act establishes payment due dates (in most cases, 30 days after receipt of a proper invoice or after acceptance of the product or service, whichever is later); establishes constructive acceptance criteria for purposes of starting the "interest clock"; and requires payment of interest

from the payment due date to the actual payment date when payment is not made timely. (Reference: Tenet 2, Action 2a; details available in the Study Report, Section 3, under the headings of "Favorable Payment Terms and the Prompt Payment Act" and "Payment Timeliness"; see pages 56-62.)

2. What are your ideas about how to improve the timeliness of payments to subcontractors? (Reference: Tenet 2, Action 2b; details available in the Study Report, Section 3, under the heading of "Payment Timeliness"; see pages 60-62.)

3. Do you think it is necessary to improve the ability of subcontractors to bring payment issues to the attention of the Government contracting officer? If so, how can the Department facilitate subcontractor reporting of nonpayment issues to the cognizant contracting officer? (Reference: Tenet 2, Action 2d; details available in the Study Report, Section 3, under the heading "Oversight Concerns and Recourse for Non-payment"; see pages 64-66.)

4. Please share your thoughts about how to improve the implementation of the Executive Branch policy on accelerating payments to small business subcontractors, which was originally laid out by Office of Management and Budget memorandum M-12-16. (This policy is currently implemented through Federal Acquisition Regulation (FAR) clause 52.232-40, Providing Accelerated Payments to Small Business Subcontractors.) What are your thoughts about the concerns laid out in Section 4 of the Defense Contract Finance Study Report regarding providing

accelerated payments to small business contractors? For example, on the potential effectiveness of expanding the flowdown of 52.232-40 to all subcontractors, rather than only small business subcontractors? (Reference: Tenet 2, Action 2e; details available in the Study Report, Section 4, under the heading "FAR 52.232-40, Providing Accelerated Payments to Small Business Subcontractors"; see pages 76-78.)

5. Do you have any other ideas for improving payments to subcontractors on DoD contracts? (Reference: Tenet 2.)

6. Please tell us about your business relationship to the areas of interest enumerated above:

a. In what capacity are you commenting? If you are commenting on behalf of a professional association or a company, what is the size status (see FAR part 19) of your company (or for associations, member companies) for the majority of your contracts and subcontracts? What is your company's (or for associations, member companies') usual role or position in the DoD supply chain? (For context, please see page 53 of the Study Report, Section 3, "Financing and Payment Policy Impacts to Subcontractors," first paragraph.)

b. If you have experienced payment timeliness issues as a member of the DoD supply chain, please provide insights into these experiences, including your role or position in the DoD supply chain at the time, the timeframe (when this occurred and how long it continued), and how frequently such experiences occurred.

c. If you have experienced an inability to obtain financing as a member of the DoD supply chain, please provide insights into these experiences, including your role or position in the DoD supply chain at the time, the timeframe, and how frequently such experiences occurred.

Authority: DoD Instruction 5000.35, Defense Acquisition Regulations (DAR) System.

Jennifer D. Johnson,

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