



DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS-2024-0038]

Department of Defense Progress Payment Incentive Pilot

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

ACTION: Request for information.

SUMMARY: DoD is seeking public input to inform the implementation of a section of the National Defense Authorization Act for Fiscal Year 2024 that authorizes DoD to establish a pilot program to incentivize performance for specific, measurable criteria under approved contracts by increasing the customary progress payment rate.

DATES: DoD will consider all comments received by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

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

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

Search for "Docket Number DARS-2024-0038." Select "Comment" and follow the instructions to submit a comment. Please include your name, company name (if any), and "Docket Number DARS-2024-0038" on any attached document(s).

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

Include "DoD Progress Payment Incentive Pilot" 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. Sara Higgins, telephone 937-200-4020.

SUPPLEMENTARY INFORMATION:

A. Background

Section 874 of the National Defense Authorization Act for Fiscal Year 2024 authorizes the Under Secretary of Defense for Acquisition and Sustainment to establish and implement a progress payment pilot program to incentivize contractor performance on a contract-by-contract basis. By statute, the incentive criteria must be clear and measurable, and contractor participation must be voluntary.

This notice requests comments and information from the public on DoD's possible implementation of the pilot program, in accordance with section 874. DoD is particularly interested in comments and information from companies currently in the Defense Industrial Base.

B. Possible Implementation

DoD is planning to focus the Progress Payment Incentive Pilot (PPIP) on payment time to subcontractors in order to improve cash flow throughout the supply base. This is a key interest area highlighted in the 2023 Defense Contract Finance Study,

available at <https://www.acq.osd.mil/asda/dpc/pcf/finance-study.html>.

DoD is particularly interested in comments and information from all business sizes with regard to DoD's notional eligibility and incentive criteria, and supporting documentation concept, especially the following:

1. *Eligibility Criteria*

Section 874 authorizes an increase of up to 10 percentage points higher than the current customary progress payment rate (80 percent for large businesses) for contractor performance against clear, measurable criteria on a contract-by-contract basis. To be eligible for the PPIP, a participant must be eligible for customary progress payments, and their participation must be voluntary. Notionally, the participant must be performing under a new sole-source, noncommercial, definitized contract or order. The progress payment rate for small entities has been temporarily increased to 95 percent, which is 5 percentage points higher than the maximum incentive rate eligible to be earned under the authority of section 874. Therefore, the pilot program will be open only to other than small entities.

For inclusion in the pilot program, DoD is planning to require contract actions to be nominated by the cognizant contracting officer and approved by the Director, Price, Cost and Finance, Defense Pricing, Contracting, and Acquisition Policy during the preaward phase of the acquisition, since the extent of contract

financing provided by the Government is required to be a consideration in price negotiations after contract award. It is also anticipated that the nominated contract or order must have a performance period of no more than three years to ensure that all performance, including options and potential new work, will be completed before the pilot program's sunset date.

DoD anticipates requiring that the bill of material, excluding material from affiliated concerns and indirect costs, will constitute at least 25 percent of the nominated contract or order's estimated value to ensure the incentive benefits the supply chain and to assess the efficacy of using an increased progress payment rate as an incentive.

To optimize pilot program participation and to collect insights from multiple sources, DoD plans to approve only one contract per parent entity (including all divisions, business segments, subsidiaries, etc.).

2. Incentive Criteria

DoD anticipates structuring the progress payment incentive as follows, with a focus on incentivizing payment time to the supply base:

a. The maximum incentive (a progress payment rate of 90 percent in lieu of the customary 80 percent rate for large businesses) may be earned if more than 95 percent of the cumulative invoice dollars have been or will be paid within 20 calendar days of receipt of subcontract invoices.

b. A progress payment rate of 85 percent may be earned if more than 85 percent but less than or equal to 95 percent of the cumulative invoice dollars have been or will be paid within 20 calendar days of receipt of subcontract invoices.

c. If 85 percent or less of the cumulative invoice dollars have been or will be paid within 20 calendar days of receipt of subcontract invoices, no incentive is earned, and the customary large business progress payment rate of 80 percent will be used.

d. DoD plans to reassess the progress payment rate with each contractor request for progress payment, based on the reported payment time for cumulative subcontract invoice dollars. If the contractor's performance against the incentive criterion merits an increase or decrease to the progress payment rate currently on contract, it is anticipated that the rate will be changed by a unilateral contract modification.

e. If the progress payment rate on the contract is decreased based on the contractor's cumulative performance against the incentive criterion, this may result in an overpayment status. For purposes of overpayments arising in this manner, the expectation is not to issue a demand for repayment, but to withhold additional progress payments until either—

(1) The progress payment rate is increased as a result of the contractor's performance against the incentive criterion; or

(2) The incurred cost increases to the point that the total incurred cost multiplied by the current progress payment rate is

greater than the amount of progress payments already paid to the contractor.

3. *Supporting Documentation Concept*

DoD plans to measure contractor performance against incentive criteria through the use of a Government-provided spreadsheet, which the PPIP participant will submit as an attachment to each SF 1443, Contractor's Request for Progress Payment. It is envisioned that the completed spreadsheet will list each subcontract delivery invoice reflected in the incurred cost claimed in the progress payment request and include the following information at a minimum:

- o Subcontractor, supplier, or vendor name;
- o Subcontract or purchase order number; part number; description of part or service;
- o Subcontract invoice number and any tracking number affixed by the prime;
- o Subcontract invoice date;
- o Subcontract invoice amount;
- o Actual or anticipated date of invoice payment;
- o Amount of payment;
- o Calculated payment time (date of payment minus date of invoice) for the invoice; and
- o Any unpaid amount on the invoice.

The spreadsheet will calculate the percentage of cumulative subcontract invoice dollars paid within the established payment time criterion. It is planned that the PPIP participant will

update and mark new and actual payment data with each progress payment request.

It is anticipated that the PPIP participant will be required to provide any additional documentation required by the contracting officer to support its claimed progress against incentive criteria. DoD plans for the Defense Contract Audit Agency to audit PPIP participants' claimed subcontract payment timing semi-annually.

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

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2024-30947 Filed: 12/27/2024 8:45 am; Publication Date: 12/30/2024]