

Regulatory Christmas Gifts

Written by Nick Sanders
Monday, 26 December 2016 00:00

We already wrote about the new privacy training requirement. Here are some more Christmas 2016 gifts from our regulatory rule-makers.

1.

Interim rule effective 01 January 2017: [Paid Sick Leave](#) for Federal Contractors. We already discussed the genesis of this one [here](#)

. Look to FAR 22.21 for some details. Interestingly, the interim rule urges contracting officers to add the new requirement into existing contracts via bilateral modification. If your contracting officer wants to stick you with that new requirement—and you didn't originally propose it or negotiate the cost of compliance into your contract price—then you need not accept it. Or, if you feel pressured to accept it, then you are entitled to "appropriate consideration" for doing so. At a minimum, we believe that you would be entitled to an equitable price adjustment for any additional costs resulting from compliance—plus profit/fee.

2.

Final rule effective 16 December 2016: [Fair Pay](#) and Safe Workplaces; Injunction. Revises FAR as required in order to implement the judicial injunction against enforcement of certain FAR revisions implemented in August, 2016.

3.

Final rule for [NASA](#) contractors, effective 17 January 2017, revising the NASA FAR Supplement to require contractors having custody of \$10 million or more in NASA-owned Plant, Property and Equipment (PP&E) to submit monthly reports. Interestingly: "The Contracting Officer may ... withhold payment until a reserve not exceeding \$25,000 or 5 percent of the amount of the contract, whichever is less, has been set aside, if the Contractor fails to submit annual NF 1018 reports in accordance with NFS subpart 1845.71, any monthly report in accordance with (c)(3) of this clause, and any supplemental instructions for the current reporting period issued by NASA. Such reserve shall be withheld until the Contracting Officer has determined that NASA has received the required reports."

4.

[Final rule](#) effective 19 January 2017, requiring contractors to "notify the contracting officer, in writing, if the contractor pays a reduced price to a small business subcontractor or if the contractor's payment to a small business subcontractor is more than 90 days past due." Contracting officers will record the names of these deadbeat prime contractors in the Federal

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Awardee Performance and Integrity Information System (FAPIS). There are five listed circumstances in which a prime's late or reduced payment may be justified; we suggest you visit the new rule and review them.

5.

[Final DFARS rule](#) effective 22 December 2016, permitting contracting officers to provide "customary" contract financing (other than loan guarantees and advance payments), without any further justification. According to the promulgating comments: "DoD has determined that the use of such customary contract financing provides improved cash flow as an incentive for commercial companies to do business with DoD, is in the Department's best interest, and requires no further justification of its use." Left unmentioned was the fact that use of progress payments based on costs incurred requires the "commercial companies" to have an accounting system determined to be adequate by government auditors, unlike performance-based payments—the use of which require additional justification.

Merry Christmas from Apogee Consulting, Inc.