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Recently we **told** readers that the Dept. of Defense was increasing its progress payment rates to help its contractors through the COVID-19 crisis. In that article we documented a bit of confusion regarding which contracts where eligible for the increased rates, whether consideration would be required, and whether DOD was going to take advantage of "block modifications" versus modifications of individual contracts.

For the most part, that confusion was resolved satisfactorily. DCMA modified some 1,500 active contracts via a block change, and no consideration from the contractor was required. Sure, there were some outliers that didn't make the DCMA list, but that small group could be dealt with relatively easily on an individual basis.

So far, so good.

But what wasn't being satisfactorily resolved was the implementation of the new progress payment rates. DOD leadership seemed firm that the new rates were to be implemented *prospectively*, effective March 20, 2020, and not retrospectively on all inception-to-date incurred costs. This was a problem.

Remember, the SF 1443 progress payment request requires the contractor to apply the rate to inception-to-date costs. There is no way to stratify incurred costs into "pre-20 March" and "post-20 March" to apply different rates. Further, our understanding is that DFAS and MOCAS didn't have the functionality to have two different progress payment rates associated with the same contract.

Finally, there was a potential cash flow problem if a 90% liquidation rate was applied to a cost that had been previously subject to an 80% progress payment rate. It was quite possible that a contractor could actually see negative cash flow in that situation, which was a result that was obviously contrary to the intent of the Class Deviation.

That last bit of confusion was resolved via an undated "Q&A" guidance document from Kim Herrington, Acting Director, Defense Pricing and Contracting. Here's **a link** to that updated guidance document. That document resolves any remaining confusion, as follows:

The [Class] Deviation for the increased progress payment rate applies to prospective Progress Payment Requests (PPRs) only and not to prior requests. However, 52.232-16 (DEVIATION 2020-O0010), paragraph (a)(1), explicitly states, “Unless the Contractor requests a smaller amount, the Government will compute each progress payment at 90 percent of the Contractor’s **total costs incurred under this contract** whether or not actually paid, plus financing payments to subcontractors (see paragraph (j) of this clause), less the sum of all previous progress payments made by the Government under this contract.” Therefore, there is no need to resubmit adjustments to previous PPRs. The SF1443 should continue to be completed based upon inception to date cost. As a result, the first post-modification PPR will result in the application of the higher progress payment rate against all qualified costs, including costs that have been incurred prior to the issuance of the Deviation

(Emphasis in original.)

In addition, the guidance clarifies that there is no intent to impact contractor cash flow negatively. If the scenario where the increase in financing requested is offset by the increase in required liquidations, then “the contractor should stop progress billing until the progress payment calculation turns positive.”

To conclude, DOD implemented new, higher, progress payment rates for all fixed-price contracts—both existing ones and new ones to be awarded. Although there was some confusion about how those new rates actually would be implemented on existing contracts, that confusion was sorted relatively quickly. So: good on DOD!