

February 23, 2021

All companies both primes and subcontractors need to be familiar with FAR 9.103 and 9.104. Success in the federal marketplace in part depends upon awareness of these requirements and being able to put forth information that provides the necessary documentation needed for a contracting officer to make a determination.

FAR 9.103 states “Purchases shall be made from, and contracts shall be awarded to, responsible prospective contractors only.” According to this statement, if a contracting officer cannot determine that a company meets the requirements of being responsible, they cannot award a contract. The FAR also addresses Subcontractor Responsibility in subpart 9.104-4 with the following statement – “Generally, prospective prime contractors are responsible for determining the responsibility of their prospective subcontractors (but see [9.405](#) and [9.405-2](#) regarding debarred, ineligible, or suspended firms).”

Knowledge of companies in your supply chain continues to grow in importance especially when the business relationship would entail the sharing of sensitive information such as ITAR, JCP, FCI and/or CUI. It is not enough to know that a subcontractor has an acceptable quality program or acceptable past performance. Primes holding sensitive information must determine if entities with which that information may be shared are eligible to receive that information. Additionally, just because a company may be eligible to receive information related to one program (category) doesn’t automatically qualify them to receive all types of information. Companies change - employees may leave and new employees take over responsibilities; ownership may change; investors may change and programs and/or processes may change. Eligibility to receive specific types of information in the past does not authorize either current or future sharing. Determinations to share information need to be on-going and current.

Companies should use a variety of information sources to keep current with both changes to existing requirements and to be alerted to new and future requirements. Articles, webinars and emails help to provide this information, they should not be viewed as being authoritative. These sources are providing the highlights and summarizations; often the ideas presented are limited by space. Develop a variety of resources but when taking action, use the source document to fully understand the limits and intent of the change.

The last two screen shots help to clarify this point. The first screen shot is taken from the DLA magazine – The Link. It provides information concerning an important change but it does not address under what conditions a Contracting Officer may vary from the 30 day payment terms and authorize payment earlier than 30 days. However, DLAD 32.904(b)(1)(S-90) does provide additional details. It doesn’t state that earlier payment will be guaranteed or be available in every situation. It does indicate that early payment may be possible and under what conditions.

The Importance of Being Familiar with FAR 9.103 and 9.104

Marc Violante, WPI

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ATTENTION SUPPLIERS WHO USE SUBCONTRACTORS



As the prime contractor, you are responsible for ensuring the delivery of material that conforms to DLA contract requirements and that you inspect material for contract compliance. Accordingly, DLA encourages you to exercise due diligence in your selection of subcontractors under all government contracts. We recommend that you not allow a supplier to direct ship until you have vetted that supplier and the supplier's quality systems, and that your quality system is able to ensure delivery of conforming material. Vetting of your suppliers would include reviews of the subcontractor's business history, public corporate records, location based data, and other information that could verify its manufacturing capabilities. Additional steps such as undertaking a manufacturing and testing capability assessment would provide further assurance that your subcontractors are legitimate sources.

https://www.dla.mil/Portals/104/Documents/InformationOperations/EBS%20Supplier%20Information/TheLink_Issue18_October%202020.pdf?ver=iyIkyXFTbjkDzAFm1SA1Cg%3d%3d

PROCESS FOR ACCESSING EXPORT-CONTROLLED TECHNICAL DATA IN CFOLDERS

The Defense Logistics Agency (DLA) has instituted a single process for accessing technical data subject to export control under either the International Traffic in Arms Regulations (ITAR) or the Export Administration Regulations (EAR). DLA maintains these data in its Collaboration Folders (cFolders). For automated solicitations issued on or after 14 February, 2020, the offeror and any source(s) of supply it will use for contract performance must have an active US/Canada Joint Certification Program (JCP) certification; have completed the "Introduction to Proper Handling of DOD Export Controlled Technical Data Training" and the DLA "Export-Controlled Technical Data Questionnaire"; and have approval from the DLA controlling authority to access export-controlled technical data in cFolders. Prospective offerors can find detailed instructions for obtaining access to export-controlled technical data at:

[https://www.dla.mil/HQ/LogisticsOperations/EnhancedValidation/.](https://www.dla.mil/HQ/LogisticsOperations/EnhancedValidation/)

https://www.dla.mil/Portals/104/Documents/InformationOperations/EBS%20Supplier%20Information/TheLink_Issue16_April%202020.pdf?ver=2020-04-13-085156-353

CHANGES TO DLA CONTRACT PAYMENTS AND DIBBS PAYMENT TERMS

As of November 15, 2019, DLA transitioned from a 15-day accelerated payment for small businesses to payment within 30 days for contracts with payment terms of 30 days.

Also on November 15, 2019, for all suppliers, DIBBS no longer accepts a quote with the payment terms of Net 10 in accordance with DLAD 32.904(b)(1)(S-90) (Revised October 11, 2019 through PROCLTR 19-19). The web quote form will no longer provide this option in the Prompt Payment Discount Terms drop down. Batch/EDI will now return an error for field 25 when using a value of "15" representing Net 10 payment terms, so please select a different valid value. For those that have set the default value on DIBBS to Net 10 it will be reset to Net 30. If you wish to default to one of the other valid values (Net 30; 2% 10 days; 1/2% 20 days; 1/2%10 days, or 1/4% 20 days), then you must access your profile and change your default to a valid value.

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https://www.dla.mil/Portals/104/Documents/InformationOperations/EBS%20Supplier%20Information/TheLink_Issue15_January%202020.pdf?ver=2020-01-10-154409-410

SUBPART 32.9 – PROMPT PAYMENT

(Revised June 10, 2020 through PROCLTR 20-07)

32.904 Determining payment due dates.

(b)(1)(S-90) DLA is placing renewed emphasis on contract funding controls as a result of reduced cash reserves and audit readiness. Contracting officers shall not specify contract payment terms providing for payment earlier than the 30-day period specified in FAR 52.232-25, Prompt Payment, or the prompt payment regulations referenced in FAR 52.212-4, Contract Terms and Conditions – Commercial Items, as applicable; unless the contracting officer negotiates adequate consideration in exchange for more favorable contract payment terms.

(S-91) Consideration may include, but is not limited to, the following:

- (A) Reduced pricing or discounts;
- (B) Expedited delivery schedule;
- (C) Warranty guarantees;
- (D) Additional testing of a critical part; or
- (E) Prioritization.

https://www.dla.mil/Portals/104/Documents/J7Acquisition/DLAD_Rev_5_PDF_Version_10-15-20.pdf?ver=aHp7TdPvQB0UZPkZFj-f2g%3D%3D

If you have questions about the FAR, please contact Marc Violante at MarcV@wispro.org or call (414) 456-9990