

estimate the number of small businesses that prospectively will hold Federal construction contracts subject to the Miller Act and subsequently, the number of prospective subcontractors or suppliers that will request a copy of the payment bond. However, a previous DOD analysis estimated that the previous DOD-only equivalent rule would have impacted less than 20 percent of all small businesses that would have held DOD construction contracts subject to the Miller Act.

A copy of the IRFA may be obtained from the FAR Secretariat at the address given under the ADDRESSES caption. Comments are invited. Comments from small entities concerning the affected FAR parts will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and should cite FAR Case 94-762 in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) is deemed to apply because the proposed rule contains information collection requirements. Accordingly, a request for approval of a new information collection requirement concerning Subcontractor Payments is being submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Public comments concerning this request will be invited through a subsequent **Federal Register** notice.

List of Subjects in 48 CFR Parts 28, 32, and 52

Government procurement.

Dated: January 27, 1995.

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Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, it is proposed that 48 CFR Parts 28, 32, and 52 be amended as set forth below:—

1. The authority citation for 48 CFR Parts 28, 32, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 28—BONDS AND INSURANCE—

2. Section 28.106-4 is amended by designating the existing text as paragraph (a) and adding (b) to read as follows:

28.106-4 Contract clause.

* * * * *

(b) In accordance with Section 806(a)(2) of Pub. L. 102-190, as amended by Sections 2091 and 8105 of the Federal Acquisition Streamlining

Act of 1994, Pub. L. 103-355, the contracting officer shall insert the clause at 52.228-00, Prospective Subcontractor Requests for Bonds, in solicitations and contracts with respect to which a payment bond will be furnished pursuant to the Miller Act (see 28.102-1), except for contracts for the acquisition of commercial items as defined in 48 CFR part 12.

3. Section 28.106-6 is amended by adding paragraph (d) to read as follows:

28.106-6 Furnishing information.

* * * * *

(d) Section 806(a)(2) of Pub. L. 102-190, as amended by Sections 2091 and 8105 of the Federal Acquisition Streamlining Act of 1994, Pub. L. 103-355, requires that the Federal Government provide subcontractors information on payment bonds under contracts for other than commercial items as defined in 48 CFR part 12. Upon the written or oral request of a subcontractor/supplier, or prospective subcontractor/supplier, under a contract with respect to which a payment bond has been furnished pursuant to the Miller Act, the contracting officer shall promptly provide to the requester, either orally or in writing, as appropriate, any of the following:—

(1) Name and address of the surety or sureties on the payment bond.—

(2) Penal amount of the payment bond.—

(3) Copy of the payment bond. The contracting officer may impose reasonable fees to cover the cost of copying and providing a copy of the payment bond.

PART 32—CONTRACT FINANCING—

4. Sections 32.112, 32.112-1 and 32.112-2 are added to read as follows:

32.112 Payment of subcontractors under contracts for non-commercial items.

32.112-1 Subcontractor assertions of nonpayment.—

(a) In accordance with Pub. L. 102-190, title VIII, section 806(a)(4) as amended by Sections 2091 and 8105 of the Federal Acquisition Streamlining Act of 1994, Pub. L. 103-355, upon the assertion by a subcontractor or supplier of a Federal contractor that the subcontractor or supplier has not been paid in accordance with the payment terms of the subcontract, purchase order, or other agreement with the prime contractor, the contracting officer may determine—

(1) For a construction contract, whether the contractor has made—

(i) Progress payments to the subcontractor or supplier in compliance

with chapter 39 of title 31, United States Code (Prompt Payment Act);—

(ii) Final payment to the subcontractor of supplier in compliance with the terms of the subcontract, purchase order, or other agreement with the prime contractor;—

(2) For a contract other than construction, whether the contractor has made progress payments, final payments, or other payments to the subcontractor or supplier in compliance with the terms of the subcontract, purchase order, or other agreement with the prime contractor;—

(3) For any contract, whether the contractor's certification of payment of a subcontractor or supplier accompanying its payment request to the Government is accurate.—

(b) If, in making the determination in subparagraphs (a)(1) and (3) of this section, the contracting officer finds the prime contractor is not in compliance, the contracting officer may—

(1) Encourage the contractor to make timely payment to the subcontractor or supplier; or

(2) If authorized by the applicable payment clauses, reduce or suspend progress payments to the contractor.—

(c) If the contracting officer determines that a certification referred to in paragraph (a)(4) of this section is inaccurate in any material respect, the contracting officer shall initiate administrative or other remedial action.

32.112-2 Subcontractor requests for information.—

(a) In accordance with Pub. L. 102-190, title VIII, section 806(a)(1) as amended by Sections 2091 and 8105 of the Federal Acquisition Streamlining Act of 1994, Pub. L. 103-355, upon the request of a subcontractor or supplier under a Federal contract for a non-commercial purchase, the contracting officer shall promptly advise the subcontractor or supplier as to—

(1) Whether the prime contractor has submitted requests for progress payments or other payments under the contract to the Federal Government; and—

(2) Whether final payment under the contract has been made by the Federal Government to the prime contractor.—

(b) This subsection does not apply to matters that are—

(1) Specifically authorized under criteria established by an Executive order to be kept classified in the interest of national defense or foreign policy; and—

(2) Property classified pursuant to such Executive order (see 5 U.S.C. 552(b)(1)).