

S.A. 1197: Prompt Payments to Small Business Suppliers

Senators Franken and Landrieu

Small business suppliers who work on government contracts are paid for their work through the prime contractor—often a large corporation. Receiving payments promptly is critical for small business' success; managing their cash flow enables them to make more accurate decisions to expand and hire more workers. Unfortunately, too often prime contractors do not promptly pay their small business subcontractors. A number of recent news stories have detailed this problem: http://www.usatoday.com/money/smallbusiness/2011-07-12-small-business-late-payments_n.htm; <http://www.businessweek.com/printer/magazine/apples-supplychain-secret-hoard-lasers-11032011.html>

Existing Law and Policy: There is no general requirement that prime contractors pay their subcontractors in a timely manner. Under existing law, the Prompt Payment Act requires that construction contractors pay their subcontractors within seven days of receiving payment from the federal government, but this does not extend beyond construction contracts. In addition, the Prompt Payment Act requires a government agency to pay its prime contractors within 30 days of receiving the invoice. The Office of Management and Budget (OMB) issued a policy memo in September that requires federal government agencies to accelerate payments to their small business contractors. OMB specifically requires agencies to make payments to small business contractors as soon as practicable, with the goal of payment within 15 days of receiving an invoice. At the time it issued this memo, OMB noted this action “will improve cash flow for small businesses and provide them a more predictable stream of resources.” See: <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2011/m11-32.pdf>

Summary of Amendment: While the federal government has committed to paying its prime contractors within 30 days and its small business suppliers within 15 days, S.A. 1197 goes one step further to ensure that the government's prime contractors are, in turn, promptly paying their small business suppliers. S.A. 1197 requires OMB, in consultation with the Administrator of the Small Business Administration (SBA), to issue regulations within one year to require that prime contractors pay their small business subcontractors in a timely manner.

The amendment gives OMB sufficient latitude to determine the best way to ensure prompt payment, and it directs OMB to consider:

- (1) requiring prime contractors to pay their small business contractors not later than 30 days after it receives a payment from the federal government;
- (2) developing an incentive or penalty system for prime contractors to comply with regulations; and
- (3) requiring prime contractors to detail how and when small business subcontractors will be paid in their subcontracting plans.

By ensuring that small business contractors receive prompt payment from their prime contractors, S.A. 1197 will provide greater certainty and predictability for small businesses, enabling them to thrive, expand, and hire more workers.