

OMB guidance on application of PPA requirements for invoices received during shutdown

Subject: Application of Prompt Payment Act Requirements to Vendor Invoices Submitted Prior to and During the Recent Lapse in Appropriations

A number of agency acquisition and financial management officials have asked questions regarding whether the timeframes for review and payment set forth in the Prompt Payment Act (PPA) were tolled during the lapse in appropriations. This note briefly explains the impact of the lapse on agency responsibilities under the PPA.

Most agency questions fall into one of the following three scenarios:

- (1) A proper invoice was received prior to the lapse but payment had not yet been made at the time of the lapse;
- (2) An invoice was received prior to the lapse but the agency had not yet determined whether it was proper,
- (3) A vendor submitted an invoice to the agency during the period of the lapse.

As explained in greater detail below, the timeframes are not tolled in any of these cases - i.e., review and payment must be made in the same timeframes as would be required if there were no funding lapse. Other requirements are also applicable - e.g., payment cannot be made unless the products or services have been accepted and the invoice is proper.

1. Submission of invoice prior to the funding lapse (in a situation in which the agency, prior to the funding lapse, had accepted the goods or services in accordance with the contract)
 - a) If an invoice was received by the agency prior to the shutdown and the invoice was determined (or deemed) to be a proper invoice prior to the shutdown, does the time clock continue to run during the period of the shutdown for purposes of calculating any interest that may be owed by the agency under the PPA?

Response: Yes. Under the PPA, receipt of a proper invoice starts the clock for determining the payment of interest. The fact that an intervening lapse of appropriations requires the furloughing of personnel who would otherwise make payment does not stop the running of the clock for purposes of interest payment owed by the agency. The PPA states at 31 U.S.C. 3902(d) that "the temporary unavailability of funds to make a timely payment due for property or services does not relieve the head of an agency from the obligation to pay interest penalties."

- b) If an invoice was received by the agency prior to the shutdown but the invoice was not yet determined (or deemed) to be a proper invoice prior to the shutdown (and the agency personnel who would have reviewed the invoice and associated documentation were furloughed), does the time clock run during the period of the shutdown for purposes of determining whether an invoice is proper and calculating any interest that may be owed by the agency under the PPA?

Response: Yes. The agency generally has seven calendar days to determine whether the invoice is proper and to return the invoice to the vendor if it is improper. The shutdown does not stop the running of this seven-day period.

(In this regard, as noted above, the PPA states at 31 U.S.C. 3902(d) that "the temporary unavailability of funds to make a timely payment due for property or services does not

relieve the head of an agency from the obligation to pay interest penalties.”)

2. Vendor submissions of invoices during the funding lapse (in a situation in which the agency, prior to the funding lapse, had accepted the goods or services in accordance with the contract)

If a vendor sent an invoice to an agency during the shutdown and the personnel in the designated billing office were furloughed, can the submissions of the invoice by the vendor (e.g., on October 3) start any of the required PPA time periods for taking action?

Response: Yes. For invoices electronically transmitted, the invoice is generally deemed to be received on the date a readable transmission is received by the designated billing office, or the next business day if received after normal working hours (e.g., if the invoice was transmitted after normal working hours on October 3rd, the invoice would be considered to be received on October 4th). For invoices that are mailed, receipt is generally the date placed on the invoice by the contractor because the agency was unable to annotate the invoice with the date of receipt of the invoice at the time of receipt.

(In this regard, as noted above, the PPA states at 31 U.S.C. 3902(d) that “the temporary unavailability of funds to make a timely payment due for property or services does not relieve the head of an agency from the obligation to pay interest penalties.”)

If the invoice is proper, the government must pay the invoice by the later of the 30th day after receipt or the 30th day after the agency has accepted the property or services. If the invoice is improper, the agency must return it to the contractor within the seven days explaining why it is not proper. If that notice is not given within seven days, the agency must adjust the due date for purposes of determining any interest penalty

If there are further questions, please consult with your agency counsel.