# MEMORANDUM

TO: Legislative and Political Affairs Committee

FROM: Jared Karbowsky, Director of Government and Political Affairs

DATE: March 3, 2026

RE: Prompt Pay and Reverse Auction

## I. Purpose

This memorandum summarizes all significant federal legislative enactments, regulatory final rules, and proposed rulemaking actions over the last five years pertaining to (1) prompt payment obligations in federal construction contracting and (2) the use and restriction of reverse auctions in federal construction procurement. These developments materially affect the rights and obligations of federal construction contractors, subcontractors, and contracting officers.

## II. Prompt Pay — Federal Construction Actions

### A. Governing Law: The Prompt Payment Act (31 U.S.C. Chapter 39)

**Overview:** The Prompt Payment Act remains the foundational federal statute governing payment timelines in all federal contracting, including construction. It requires federal agencies to pay contractors within 30 days of a proper invoice or acceptance of work. Late payments automatically trigger interest penalties at a rate set bi-annually by the Treasury Department.

**Construction-Specific Note:** For construction contracts, the payment clock typically begins upon government acceptance of completed work or receipt of a proper invoice, whichever is later. Interest penalties accrue automatically without the contractor needing to request them.

### B. Current Prompt Payment Interest Rates (Treasury, Bureau of Fiscal Service)

The following rates apply to interest penalties owed on late federal construction payments under 31 U.S.C. §3902:

| Period | Rate (per annum) | Authority |
|---|---|---|
| Jan 1 – Jun 30, 2023 | **4 5/8%** | 88 FR 6812 |
| Jul 1 – Dec 31, 2023 | **4 7/8%** | 88 FR 55501 |
| Jan 1 – Jun 30, 2024 | **4 7/8%** | 89 FR 16616 |
| Jul 1 – Dec 31, 2024 | **4 7/8%** | 89 FR 58467 |
| Jan 1 – Jun 30, 2025 | **4 5/8%** | 90 FR 10678 |
| Jul 1 – Dec 31, 2025 | **4 5/8%** | 90 FR 36094 |
| Jan 1 – Jun 30, 2026 | **4 1/8%** | 91 FR 5035 |

### C. FAR Clause 52.232-27 — Prompt Payment for Construction Contracts

**Status:** Active. Current version: January 2017. Prescribed at FAR 32.908(b) — mandatory in all solicitations and contracts for construction (FAR Part 36). Note: FAC 2025-05 (effective Aug. 7, 2025) made technical amendments to related FAR Part 32 provisions but did not revise the 52.232-27 clause text itself.

This is the mandatory clause inserted in all federal construction contracts. It establishes:

- Invoice payment due date: 30 days after receipt of a proper invoice OR government acceptance of work, whichever is later.
- Automatic interest penalties: Accrue from day 31 if payment is not made, at the Treasury-published rate in effect at the time of obligation.
- Payments are deemed made on the date a check is dated or an EFT transfer is made.
- Special early payment rules apply to perishable materials delivered to construction sites.

## III. Reverse Auctions — Federal Construction Actions

### A. Construction Consensus Procurement Improvement Act of 2020

| ACT 1 Construction Consensus Procurement Improvement Act of 2020 | |
|---|---|
| **Citation** | Pub. L. 116-260, §402, Title IV, Division U (Consolidated Appropriations Act, 2021) |
| **Enacted** | December 27, 2020 |
| **Sponsor** | Rep. James Comer (R-KY) / Rep. Ro Khanna (D-CA) — Bipartisan (Note: Earlier 2020 House version H.R. 5644 was introduced by Rep. Mark Meadows (R-NC) and Rep. Khanna; the enacted bill H.R. 8955 was introduced by Rep. Comer and Rep. Khanna) |
| **Authority** | Amends Federal Acquisition Regulation (FAR) |
| **Key Action** | Established the initial statutory prohibition framework restricting reverse auctions for complex, specialized, or substantial design and construction services and mandated formal FAR rulemaking to define prohibited service categories. |
| **Practical Effect** | Triggered the regulatory process that led to the 2024 FAR final rule and the 2021 follow-on statute. Prior to this law, no governmentwide rule addressed reverse auctions in construction procurement. |
| **Status** | Enacted. Superseded/clarified by Pub. L. 117-28 (2021). |

### B. Construction Consensus Procurement Improvement Act of 2021

| ACT 2 Construction Consensus Procurement Improvement Act of 2021 | |
|---|---|
| **Citation** | Pub. L. 117-28 |
| **Enacted** | July 26, 2021 |
| **Sponsors** | Rep. James Comer (R-KY) / Rep. Ro Khanna (D-CA) — House; Sen. Rob Portman (R-OH) / Sen. Mazie Hirono (D-HI) — Senate |
| **Legislative Path** | Introduced January 2021; passed House unanimously; signed into law July 26, 2021 — unusually fast for procurement legislation |

| | |
|---|---|
| **Dollar Threshold** | Applies to contracts exceeding the Simplified Acquisition Threshold (SAT). Note: The SAT was $250,000 when the statute was enacted; it increased to $350,000 effective October 1, 2025 (FAC 2025-06, 90 FR 41872). The prohibition tracks the current SAT. |
| **Prohibited Services** | Site planning and landscape design; Architectural and Engineering (A&E) services (40 U.S.C. §1102); Interior design; Substantial construction work for facility, infrastructure, and environmental restoration projects; Construction or substantial alteration of public buildings or public works |
| **Congressional Finding** | Congress formally found that reverse auctions, 'while providing value for the vast majority of Federal acquisitions, including certain construction-related acquisitions, are limited in value for complex, specialized, or substantial design and construction services.' |
| **Key Requirement** | Required the FAR Council to promulgate a regulatory definition of 'complex, specialized, or substantial design and construction services' through formal rulemaking. |
| **Status** | Enacted. FAR implementation rulemaking initiated as FAR Case 2023-003. |

## C. FAR Final Rule — Reverse Auction Guidance (Governmentwide)

| **RULE 1 FAR Final Rule: Reverse Auction Guidance — FAR Subpart 17.8** | |
|---|---|
| **Citation** | 89 FR 61327; FAC 2024-06; FAR Case 2015-038 |
| **Effective Date** | August 29, 2024 |
| **Issuing Agencies** | DoD, GSA, and NASA (FAR Council) |
| **Background** | Proposed rule published December 7, 2020 (85 FR 78815); took nearly 4 years from proposal to final rule — the first-ever governmentwide rule on reverse auctions. |
| **What It Does** | Codifies FAR Subpart 17.8 — Reverse Auctions. Establishes when reverse auctions may be used (market research required), rules for reverse auction service providers, data ownership and protection requirements, fee structure transparency obligations, and mandatory use of competitive procedures when hiring a commercial auction platform. |
| **Construction Impact** | Excludes A&E professional services subject to the Brooks Act (40 U.S.C. Chapter 11) from eligible reverse auction use. Prohibits reverse auctions for two-phase design-build procurements regardless of dollar value. |
| **New FAR Clauses** | FAR 52.217-10 (Reverse Auction), FAR 52.217-11, FAR 52.217-12 — mandatory in all solicitations using a reverse auction. |
| **Status** | Final Rule — In Effect. |

## D. FAR Proposed Rule — Prohibition on Reverse Auctions for Complex Construction

**RULE 2 FAR Proposed Rule: Prohibition on Reverse Auctions for Complex Construction Services**

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|---|---|
| **Citation** | 89 FR 70157; FAR Case 2023-003 |
| **Published** | August 29, 2024 |
| **Issuing Agencies** | DoD, GSA, and NASA (FAR Council) |
| **Comment Period** | Closed October 28, 2024 |
| **Authority** | Implements §2 of the Construction Consensus Procurement Improvement Act of 2021 (Pub. L. 117-28) |
| **Codification Location** | Proposed at FAR 36.103, Methods of Contracting (construction-specific subpart) |
| **Prohibited Threshold** | Contracts exceeding the Simplified Acquisition Threshold (SAT). The SAT was $250,000 at time of the proposed rule (Aug. 2024); increased to $350,000 effective Oct. 1, 2025 (FAC 2025-06). The prohibition will apply at the then-current SAT. |
| **Prohibited Services** | Site planning and landscape design; A&E services (Brooks Act); Interior design; Substantial construction work — facility, infrastructure, environmental restoration; Construction or substantial alteration of public buildings/public works |
| **Brooks Act Extension** | Expressly excludes A&E services subject to qualifications-based selection under 40 U.S.C. Chapter 11 from reverse auction eligibility — closing a prior gap. |
| **Data Used in Rulemaking** | FPDS data FY2020–2022: avg. 1,318 unique small entities awarded ~2,644 construction contracts above SAT annually; ~1,277 small entities awarded ~3,064 contracts at or below SAT annually. |
| **Status** | Proposed Rule — Final Rule Pending (as of February 2026). |

## IV. Chronological Timeline of Federal Actions

| Year | Action | Category |
|---|---|---|
| **2020** | Construction Consensus Procurement Improvement Act of 2020 enacted (Pub. L. 116-260) — established statutory framework restricting reverse auctions for construction. | **Reverse Auction** |
| **2021** | Construction Consensus Procurement Improvement Act of 2021 enacted (Pub. L. 117-28) — prohibits reverse auctions for complex construction services above the SAT threshold (then $250,000; raised to $350,000 in Oct. 2025). | **Reverse Auction** |
| **2021** | FAR proposed rule published for accelerated payments to small businesses (86 FR 53923, Sep. 29) — construction subcontractors included. | **Prompt Pay** |
| **2023** | FAR Final Rule on accelerated payments effective March 16, 2023 — governmentwide 15-day payment goal for small business primes and subs, including construction. | **Prompt Pay** |
| **2024** | FAR Final Rule: Reverse Auction Guidance (FAR Subpart 17.8) effective Aug. 29, 2024 — first-ever governmentwide reverse auction rule; excludes A&E/Brooks Act services. | **Reverse Auction** |
| **2024** | FAR Proposed Rule: Prohibition on reverse auctions for complex construction (FAR Case 2023-003) published Aug. 29, 2024; comment period closed Oct. 28, 2024. | **Reverse Auction** |

| | | |
|---|---|---|
| **2025** | SAT increased from $250,000 to $350,000 effective Oct. 1, 2025 (FAC 2025-06, 90 FR 41872) — raises the dollar threshold at which the Pub. L. 117-28 reverse auction prohibition applies. | **Reverse Auction** |
| **2025** | Prompt Payment interest rate: 4 5/8% per annum for both Jan–Jun and Jul–Dec 2025. Applies to all late federal construction payments. | **Prompt Pay** |
| **2026** | Prompt Payment interest rate: 4 1/8% per annum (Jan 1 – Jun 30, 2026) — 91 FR 5035. FAR Case 2023-003 reverse auction construction prohibition final rule still pending. | **Prompt Pay** |

## V. Key Takeaways for Federal Construction Contractors

**1. Interest Penalties Are Automatic.** Under FAR 52.232-27 (Prompt Payment for Construction Contracts) and the Prompt Payment Act (31 U.S.C. Chapter 39), interest accrues on any late payment without requiring a formal claim. Contractors should track invoice submission dates and acceptance dates carefully and assert interest rights proactively when agencies reopen after shutdowns or continuing resolutions.

**2. Reverse Auctions Are Now Restricted for Most Federal Construction Work.** Pub. L. 117-28 (2021) prohibits reverse auctions for complex, specialized, or substantial design and construction services above the Simplified Acquisition Threshold (SAT). The SAT was $250,000 at enactment but increased to $350,000 effective October 1, 2025 (FAC 2025-06). The prohibition tracks the current SAT, so it now applies to contracts above $350,000. Contractors receiving a reverse auction solicitation for covered work should raise the statutory prohibition with the contracting officer.

**3. A&E Services Are Doubly Protected.** Both the 2021 statute and the 2024 FAR final rule exclude architectural and engineering services subject to Brooks Act qualifications-based selection (40 U.S.C. Chapter 11) from reverse auction use. This applies regardless of dollar value.

**4. Small Business Construction Subcontractors Benefit from Accelerated Pay.** Since March 2023, the FAR requires prime contractors to pass down accelerated payments (goal: 15 days) to small business subcontractors — without charging fees or extracting consideration — when the agency has accelerated payments to the prime.

**5. FAR Case 2023-003 Is Still Pending.** The final rule codifying the reverse auction prohibition at FAR 36.103 has not yet been issued as of February 2026. The statutory prohibition (Pub. L. 117-28) is already in effect; the FAR rule will formalize the regulatory mechanism and definitions.

## VI. Disclaimer

This memorandum is prepared for informational purposes only and does not constitute legal advice. Federal procurement law is subject to ongoing regulatory development. Contractors should consult qualified legal counsel for advice specific to their contracts and circumstances. Citation to specific Federal Register documents, Public Laws, and FAR provisions is provided for reference and should be independently verified.

**END OF MEMORANDUM**