



March 17, 2021

The Honorable Nydia Velazquez  
Chairman  
Committee on Small Business  
2361 Rayburn Office Building  
Washington, DC 20515

The Honorable Blaine Luetkemeyer  
Ranking Member  
Committee on Small Business  
2069 Rayburn Office Building  
Washington, DC 20515

Dear Chairman Velazquez and Ranking Member Luetkemeyer:

The American Cultural Resources Association (ACRA) urges you to address an interpretation of federal procurement rules that threatens to hurt small businesses as they struggle to recover from the pandemic.

ACRA is the national trade association supporting the common interests of cultural resource management (CRM) firms of all sizes, types, and specialties. ACRA member firms undertake much of the legally mandated cultural resource studies and investigations in the United States and employ thousands of professionals, including archaeologists, architectural historians, historians, ethnographers, and an increasingly diverse group of other specialists in the museum and non-profit sectors. CRM firms are predominantly small businesses that have faced unprecedented struggles during the pandemic.

The Paycheck Protection Program (PPP) has helped millions of small businesses across the country, including the firms and other businesses and organizations in the historic preservation field, maintain payroll and operations, helping to reduce job losses during the pandemic and enabling these firms to continue their vital work supporting infrastructure and other projects.

One of the most important features of the PPP is the availability of loan forgiveness if certain conditions are met. Millions of businesses, including our member firms, have been able to keep their doors open, keep staff on payroll, and even expand during this difficult time with the ability to have their PPP loans forgiven.

However, federal agencies are interpreting a provision in federal contracting rules in a way that will end up hurting many of the companies the PPP program was intended to help. Agencies have interpreted a provision in the Federal Acquisition Regulation (FAR) to mean that PPP recipients whose loans are forgiven must credit the value of the loan back to the government when they contract with federal agencies. In addition, state departments of transportation follow FAR cost principles in determining overhead rates for many CRM contractors.

FAR 31.201-5 requires that “[t]he applicable portion of any income, rebate, allowance, or other credit relating to any allowable cost and received by or accruing to the contractor shall be credited to the Government either as a cost reduction or by cash refund.”

The FAR provision is intended to make sure that agencies benefit from any discounts or credits that the contractor receives in the course of performing a contract. However, federal agencies are interpreting this clause to mean that any forgiven PPP loan amount allocatable to contract costs must also be credited back to the agency.

As a result of this interpretation, many small firms may have to choose between accepting PPP loans and seeking government contracts. In addition, the application of the credit provision to forgiven PPP loans could end up costing companies far more than they received in PPP loans if they receive multi-year contracts with the lower billing rate locked in.

Although each contractor has a unique financial profile, many CRM firms work under an approved FAR overhead rate. The individual overhead rate, determined through a cognizant audit and approved by an applicable agency, sets the overhead a firm is allowed to charge over the course of a year. Should federal agencies and state DOTs require a forgiven PPP loan be credited back per FAR 31.201-5, CRM firms will see a marked decrease in their overhead rate for the coming year. In many instances, the projected overhead will fall below that required for firms to break even on contracts. As an example, one member firm that received a PPP loan reports that they typically need an overhead between 1.30 and 1.50 in order to just break even. Should their forgiven PPP loan be credited back, their overhead rate could fall to just above 1.0. At that rate, this firm would literally lose money by contracting with the government.

Worse, this interpretation of the FAR was not disseminated until months after many companies applied for PPP loans, essentially “changing the rules” for how forgiven loans would be treated.

At a time when millions of small businesses are struggling to make payroll and keep employees on the job, the requirement to credit forgiving PPP loans back to the government will not only create a disincentive for businesses to seek government contracts, which will deprive many agencies of talent and even slow down projects; it will also disproportionately impact minority- and women-owned firms.

That is why ACRA supports the enactment of language clarifying that principal amounts of qualifying loans forgiven pursuant to the provisions of Section 1106 of the Coronavirus Aid, Relief, and Economic Security Act (Pub. L. 116-136) shall not be considered income, a rebate, allowance, or other credit received by or accruing to a contractor under 48 CFR 31.201-5.

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Thank you for your attention to this urgent issue, and for your commitment to helping small businesses recover and thrive.

Sincerely,

A handwritten signature in black ink, appearing to read 'N. Boyless', with a long horizontal flourish extending to the right.

Nathan Boyless  
President  
American Cultural Resources Association