

ISSUE BRIEF

Supporting Small Business Contractors

ACRA Position

Congress should clarify that principal amounts of forgiven PPP loans are not considered a credit to be returned to the government by companies that seek federal contracts.

Background

The pandemic has created enormous challenges for millions of small businesses, including those in the cultural resource management (CRM) industry. The Paycheck Protection Program (PPP) and its loan forgiveness provisions have enabled many CRM firms to avoid laying off staff and in many cases hire new employees. But a provision tucked in federal contracting rules could end up hurting firms that had their loans forgiven.

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. 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 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, many small firms may have to choose between accepting PPP loans and seeking government contracts. 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 forgiven PPP loans back to the government will not only create a disincentive for businesses to seek government contracts, which will deprive many agencies of experienced consultants and even slow down projects; it will also disproportionately impact minority- and women-owned firms.

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.

About the American Cultural Resources Association

ACRA is the national trade association supporting and promoting the common interests of cultural resource management (CRM) firms of all sizes, types and specialties. Member firms undertake much of the legally mandated CRM studies and investigations in the United States.

For more information, contact ACRA at info@acra-crm.org.