



May 12, 2023

CAAC Letter 2020-03
Supplement 1

MEMORANDUM FOR CIVILIAN AGENCIES

FROM: WILLIAM CLARK
CHAIR
CIVILIAN AGENCY ACQUISITION COUNCIL (CAAC)

SUBJECT: Supplement to CAAC Consultation to Issue a Class Deviation from the Federal Acquisition Regulation (FAR) Regarding Customary Progress Payment Rates Based on Costs

This supplement updates the rationale for CAAC letter 2020-03 in light of the end of the Novel Coronavirus 2019 (COVID-19) pandemic national emergency. This CAAC letter remains in effect until rescinded or incorporated into the FAR.

CAAC letter 2020-03 was issued to serve as consultation in accordance with FAR 1.404 allowing agencies to authorize a class deviation in response to the COVID-19 national emergency. On Monday, April 10, 2023, the President signed into law Public Law 118-3, which had been House Joint Resolution 7, which terminates the national emergency related to the COVID-19 pandemic.

However, agencies are still encouraged to issue or utilize existing FAR deviations for the customary progress payment rates based on costs at FAR 32.501-1 to increase the progress payment rate to 90 percent for large business concerns, and 95 percent for small business concerns. Contracting officers shall use the attached deviation FAR text as follows:

- Use the deviated language for 32.501-1(a), in lieu of the current language at 32.501-1(a)
- Use 52.232-16, Progress Payments (Nov 2021)(Deviation May 2023), in lieu of the clause at FAR 52.232-16, Progress Payments (Nov 2021). NOTE: Remember to include FAR text unchanged in the clause shown as asterisks *** or *****
- Use Alternate I (Mar 2000)(Deviation Apr 2020), in lieu of Alternate I of FAR clause 52.232-16 (Mar 2000)

Agencies are advised to review any relevant clauses in their supplement and take any action that is appropriate, noting that there is no change to the FAR deviation text Attachment other than the updated FAR text baseline citation. Adjustments on liquidations are not required for previously delivered items; financing limitations will be accomplished through Section III of the Standard Form 1443.

Agencies are reminded that FAR 1.404 requires agencies to furnish a copy of each approved class deviation to the GSA Regulatory Secretariat. Agencies must email the deviation to GSARegSec@gsa.gov. Please include whether or not the document can be posted on acquisition.gov.

If you have any questions or require additional information about this letter, please contact Michael O. Jackson at (202) 208-4949 or at michaelo.jackson@gsa.gov.

Attachment

Attachment

FAR Deviation Text

Baseline is FAC 2023-03, effective on May 26, 2023.

Deviations are shown by **[bracketed bold additions]** and ~~strikeouts~~.

FAR text unchanged shown as asterisks *** or *****

PART 32-CONTRACT FINANCING

* * * * *

Subpart 32.5-Progress Payments Based on Costs

* * * * *

32.501-1 Customary progress payment rates.

(a) The customary progress payment rate is ~~80~~ **[90]** percent, applicable to the total costs of performing the contract. The customary rate for contracts with small business concerns is ~~85~~ **[95]** percent.

* * * * *

PART 52-SOLICITATION PROVISIONS AND CONTRACT CLAUSES

* * * * *

Subpart 52.2-Text of Provisions and Clauses

* * * * *

52.232-16 Progress Payments.

As prescribed in 32.502-4(a), insert the following clause:

PROGRESS PAYMENTS (NOV 2021) **[DEVIATION (MAY 2023)]**

The Government will make progress payments to the Contractor when requested as work progresses, but not more

frequently than monthly, in amounts of \$2,500 or more approved by the Contracting Officer, under the following conditions:

(a) *Computation of amounts.* (1) Unless the Contractor requests a smaller amount, the Government will compute each progress payment as ~~80~~ [90] percent of the Contractor's total costs incurred under this contract whether or not actually paid, plus financing payments to subcontractors (see paragraph (j) of this clause), less the sum of all previous progress payments made by the Government under this contract. The Contracting Officer will consider cost of money that would be allowable under Federal Acquisition Regulation (FAR) 31.205-10 as an incurred cost for progress payment purposes.

* * *

(6) The total amount of progress payments shall not exceed ~~80~~ [90] percent of the total contract price.

* * * * *

(b) *Liquidation.* Except as provided in the Termination of Convenience of the Government clause, all progress payments shall be liquidated by deducting from any payment under this contract, other than advance or progress payments, the unliquidated progress payments, or ~~80~~ [90] percent of the amount invoiced, whichever is less. The Contractor shall repay to the Government any amounts required by a retroactive price reduction, after computing liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly. The Government reserves the right to unilaterally change from the ordinary liquidation rate to an alternate rate when deemed appropriate for proper contract financing.

* * * * *

Alternate I (Mar 2000) [DEVIATION (MAY 2023)]. If the contract is with a small business concern, change each mention of the progress payment and liquidation rates excepting paragraph (k) to the customary rate of ~~85~~ [95] percent for small business concerns (see FAR 32.501-1).

* * * * *