



UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer
Assistant Secretary for Administration
Washington, D.C. 20230

PROCUREMENT MEMORANDUM 2020-05

ACTION

MEMORANDUM FOR: Senior Bureau Procurement Officials

FROM: Barry E. Berkowitz
Senior Procurement Executive and
Director for Acquisition Management

SUBJECT: FAR Class Deviation: Accelerated Payments to Small
Business Contractors and Subcontractors

Purpose.

This class deviation is issued in accordance with Federal Acquisition Regulation (FAR) 1.404 to implement Civilian Agency Acquisition Council (CAAC) Letter 2020-02 and Section 873 of the National Defense Authorization Act (NDAA) for Fiscal Year 2020 to provide for accelerated payments to contractors that are small businesses, and to small business subcontractors by accelerating payments to their prime contractors.

Background.

On April 6, 2019, CAAC Letter 2020-02, Class Deviation from the FAR for Accelerated Payments to Small Business contractors and subcontractors, was issued and served as consultation to agencies in accordance with FAR 1.404. The objective of this deviation is to implement section 873 of the NDAA for Fiscal Year 2020 (Pub. L. 116-92), which amended 31 U.S.C. 3903. This deviation revises FAR parts 12.3, 32.009, and 32.9 which allows for accelerated payments, to the fullest extent permitted by law, with a goal of 15 days after receipt of a proper invoice and all other required documentation to contractors that are small businesses and to small business subcontractors by accelerating payments to their contractors. The FAR Council has undertaken rulemaking to formally incorporate this change. The attached FAR text (Attachment A) identifies the additions and deletions anticipated to implement the FAR changes. Pending publication of the amendment to the FAR, Commerce authorizes this class deviation to provide for accelerated payments to contractors that are small businesses, and to small business subcontractors by accelerating payments to their prime contractors.

Applicability.

This class deviation is applicable to: (1) all solicitations and contracts awarded on or after the issuance date of this class deviation; and (2) contracts awarded prior to the issuance date of this class deviation, if new orders are placed against them.

Deviation.

The deviated clauses and changes in the FAR text as revised by this deviation is provided in Attachment A.

Required Actions

Contracting officers shall insert the clauses as outlined in Attachment A in all solicitations and contracts as follows:

- Solicitations issued on or after the effective date of this class deviation shall include the modified clauses.
- Contracts awarded on or after the issuance date of this class deviation shall be include these modified clauses.
- Contracts awarded prior to the issuance date of this class deviation shall be modified to include these revised clauses if new orders are placed against them.

1. Effective Date.

This deviation is effective immediately and remains in effect until rescinded or incorporated into the FAR.

2. Point of Contact.

Questions regarding this class deviation may be directed to OAM_mailbox@doc.gov.

Attachment A – FAR Deviation Text

ATTACHMENT A
FAR DEVIATION TEXT
FOR CLASS DEVIATION
Procurement Memorandum 2020-05

FAR Baseline: FAC 2020-05 effective 03/30/2020

- Additions to baseline made by deviation are indicated by **[bold text in brackets]**
- Deletions to baseline made by deviation are indicated by ~~strikethroughs~~
- Five asterisks (* * * * *) indicate that there are no revisions between the preceding and following parts or sections
- Three asterisks (* * *) indicate that there are no revisions between the material shown within a section and subsection or subsection

PART 12—ACQUISITION OF COMMERCIAL ITEMS

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Subpart 12.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

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12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

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(d) * * *

~~(12) Insert the clause at 52.232-40, Providing Accelerated Payments to Small Business Subcontractors, as prescribed in 32.009-2.~~

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PART 32—CONTRACT FINANCING

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32.9 Providing accelerated payments to small business **[contractors and to prime contractors that subcontract with a small business concern]**
~~subcontractors.~~

32.009-1 General.

[(a) Pursuant to 31 U.S.C. 3903(a) and 10 U.S.C. 2307(a), agencies shall provide accelerated payments, to the fullest extent permitted by law, with a goal of 15 days after receipt of a proper invoice and all other required documentation, if a specific payment date is not established by contract, to—

1) Small business contractors, and

2) Prime contractors that subcontract with a small business concern, if the prime contractor agrees to make payments to the small business subcontractor in accordance with the accelerated payment date, to the maximum extent practicable, without any further consideration from or fees charged to the subcontractor.]

~~Pursuant to the policy provided by OMB Memorandum M-12-16, Providing Prompt Payment to Small Business Subcontractors (and as extended by OMB Memoranda M-13-15 and M-14-10, both titled Extension of Policy to Provide Accelerated Payment to Small Business Subcontractors), agencies shall take measures to ensure that prime contractors pay small business subcontractors on an accelerated timetable to the maximum extent practicable, and upon receipt of accelerated payments from the Government. This acceleration does not provide any new rights under the Prompt Payment Act and does not affect the application of the Prompt Payment Act late payment interest provisions.~~

[(b)] This acceleration does not provide any new rights under the Prompt Payment Act and does not affect the application of the Prompt Payment Act late payment interest provisions.

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SUBPART 32.9—PROMPT PAYMENT

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32.903 Responsibilities.

(a) * * *

(5) May authorize the use of the accelerated payment methods specified at 5 CFR 1315.5 [(but see 32.009-1(a))].

* * * * *

32.906 Making payments.

(a) * * *

(2) That the use of accelerated payment methods are necessary (see 32.903(a)(5)) [(but see 32.009-1(a))].

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PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEM [(DEVIATION APR 2020)]

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(b) * * *

__ (60) **[52.232-40, Providing Accelerated Payments to Small Business Subcontractors (DEVIATION APR 2020) (31 U.S.C. 3903 and 10 U.S.C. 2307).**

__ (61) 52.239-1, Privacy or Security Safeguards (AUG 1996) (5 U.S.C. 552a).

__ ([62]64) 52.242-5, Payments to Small Business Subcontractors (JAN 2017)(15 U.S.C. 637(d)(13)).

__ ([63]62)(i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631).

__ (ii) Alternate I (Apr 2003) of 52.247-64.

__ (iii) Alternate II (Feb 2006) of 52.247-64.

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52.213-4 TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL ITEMS [(DEVIATION APR 2020)]

(a) * * *

(2) * * *

(vi) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors **[(DEVIATION APR 2020) (31 U.S.C. 3903 and 10 U.S.C. 2307)].**

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(viii) 52.244-6, Subcontracts for Commercial Items **[(DEVIATION APR 2020)].**

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52.232-40 PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS [(DEVIATION APR 2020)]

(a) **[(1) In accordance with 31 U.S.C. 3903 and 10 U.S.C. 2307, u]** Upon receipt of accelerated payments from the Government, the Contractor shall make accelerated payments to its small business subcontractors under this contract **[in accordance with the accelerated payment date established]**, to the maximum extent practicable and prior to when such payment is otherwise required under the applicable contract or

subcontract, **[with a goal of 15 days]** after receipt of a proper invoice and all other required documentation from the small business subcontractor **[if a specific payment date is not established by contract.**

(2) The Contractor agrees to make such payments to its small business subcontractors without any further consideration from or fees charged to the subcontractor].

(b) The acceleration of payments under this clause does not provide any new rights under the Prompt Payment Act.

(c) Include the substance of this clause, including this paragraph (c), in all subcontracts with

small business concerns, including subcontracts with small business concerns for the acquisition of commercial items.

(End of clause)

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52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS [(DEVIATION APR 2020)]

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(c)(1) * * *

(xix) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors **[(DEVIATION APR 2020)]**, if flow down is required in accordance with paragraph (c) of FAR clause 52.232-40.

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