



Homeland
Security

MEMORANDUM FOR: Heads of the Contracting Activities

FROM: Soraya Correa
Chief Procurement Officer

SUBJECT: Revision 1 to Federal Acquisition Regulation Class Deviation
(Number 20-04, Rev 1) – Accelerated Payments to Small Business
Contractors and Subcontractors

Purpose: This class deviation was issued on April 11, 2020 in accordance with Federal Acquisition Regulation (FAR) 1.404 to implement CAAC letter 2020-02 and Section 873 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 to provide for accelerated payments to contractors that are small businesses, and to small business subcontractors by accelerating payments to their prime contractors. This revision amends the clauses in the Attachment applicable to this deviation.

Effective Date: Immediately.

Background: The initial deviation included FAR Clauses 52.212-5, 52.213-4 and 52.244-6. This revision removes these clauses from the FAR Class Deviation for efficiency when maintaining clauses within the respective Component Contract Writing Systems (CWS) in DHS.

Requirement: DHS contracting officers shall insert 52.232-40, attached, in all solicitations and contracts that are issued and awarded on or after the issuance date of this class deviation. Contracts awarded prior to the issuance date of this class deviation shall be modified to include this revised clause if new orders are placed against them.

When using commercial omnibus clauses 52.212-5, 52.213-4 and 52.244-6 the contracting officer shall insert 52.232.40 in full text.

Applicability: This class deviation is applicable to: (1) all solicitations and contracts, as defined in FAR 2.101 and consistent with FAR 4.2004 and 4.2105(b), 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.

Expiration Date: This class deviation will remain in effect until it is incorporated into the FAR or is otherwise rescinded.

Additional Information: In order to provide access to clauses in Component Contract Writing Systems (CWS), Component Acquisition Policy Chiefs should coordinate with the appropriate Component CWS personnel to determine if the addition of the updated clauses to their CWS is possible.

Attachment:

Conformed FAR Deviation Text and Full Text Clause 52.232-40.

Questions or comments about this class deviation may be directed to Joanne Battaglia at (202) 893-0607 or Joanne.Battaglia@hq.dhs.gov.

Attachment

Conformed FAR Deviation Text and Updated Full Text Clauses

PART 32—CONTRACT FINANCING

32.09 Providing accelerated payments to small business contractors and to prime contractors that subcontract with a small business concern.

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.

(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.

32.009-2 Contract clause.

Insert clause 52.232-40, Providing Accelerated Payments to Small Business Subcontractors, in all solicitations and contracts.

SUBPART 32.9—PROMPT PAYMENT

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)).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.232-40 Providing Accelerated Payments to Small Business Subcontractors.

As prescribed in 32.009-2, insert the following clause:

PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (DEC 2013) (DEVIATION APR 2020)

(a)(1) In accordance with 31 U.S.C. 3903 and 10 U.S.C. 2307, 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)