



April 10, 2020

Class Deviation CD-2020-08

MEMORANDUM FOR GSA CONTRACTING ACTIVITIES

FROM: JEFFREY A. KOSES
SENIOR PROCUREMENT EXECUTIVE
OFFICE OF ACQUISITION POLICY (MV)

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

1. Purpose.

This memorandum approves a class deviation from the Federal Acquisition Regulation (FAR) to allow GSA to provide accelerated payments to small business contractors, with a goal of 15 days after receipt of a proper invoice. This deviation is intended to implement section 873 of the National Defense Authorization Act (NDAA) for fiscal year (FY) 2020 (Pub. L. 116-92).

2. Background.

FAR 32.009 prescribes requirements and procedures for agencies to encourage accelerated payments to subcontractors. FAR 32.903(a)(5) allows agency heads to authorize the use of accelerated payment methods specified in 5 CFR 1315.5.

The FAR requires contracting officers to insert the clause at FAR 52.232-40, Providing Accelerated Payments to Small Business Subcontractors, in solicitations and contracts. This clause requires prime contractors to provide accelerated payments to their small business subcontractors when the Government provides accelerated payments to the prime contractor.

Currently, the FAR provides for accelerated payments to small business subcontractors only. Section 873 of the NDAA for FY 2020 amended 31 U.S.C. 3903 to provide for accelerated payments to prime contractors that subcontract with small business concerns and to prime contractors that are small businesses.

This class deviation will –

- 1) provide accelerated payments to prime contractors that are small businesses;
- 2) establish a goal of 15 days after receipt of a proper invoice for payments to prime contractors that are small business and prime contractors that subcontract with a small business concern; and
- 3) prohibit prime contractors from charging consideration or a fee to subcontractors when issuing accelerated payments.

3. Authority.

This class deviation is issued under the authority of FAR 1.404. Civilian Agency Acquisition Council ([CAAC Letter 2020-02](#)), Class Deviation from the Federal Acquisition Regulation (FAR) to provide for accelerated payments to small business contractors and subcontractors, issued April 6, 2020 serves at the consultation with the CAAC Chair.

4. Applicability.

This class deviation applies to all contracts and orders where GSA is the only agency making payments. The deviation does not apply to Federal Supply Schedule contracts or Multi-agency Contracts.

5. Deviation.

This deviation implements statutory law that encourages accelerated payments to prime contractors that are small businesses in addition to accelerated payments to prime contractors that subcontract with small business concerns addressed in FAR Part 32, Contract Financing.

When buying commercial items under FAR part 12, contracting officers shall use:

- 52.212-5, Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (DEVIATION APR 2020), in place of 52.212-5, Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (MAR 2020); and
- 52.244-6, Subcontracts for Commercial Items (DEVIATION APR 2020) in place of 52.244-6, Subcontracts for Commercial Items (AUG 2019).

When buying non commercial items using simplified approval procedures in FAR part 13, contracting officers shall use:

- 52.213-4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (DEVIATION APR 2020) in place of 52.213-4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (JAN 2020).

When buying non commercial items without FAR part 13, contracting officers shall use:

- 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (DEVIATION APR 2020) in place of 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (DEC 2013).

See Attachment A for the deviated clauses and changes in the FAR text as revised by this deviation.

6. Effective Date.

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

7. Point of Contact.

Questions regarding this class deviation may be directed to GSARPolicy@gsa.gov.

Attachment

Attachment A – Line-In/Line-Out: FAR Text

ATTACHMENT A

FAR DEVIATION LINE-IN/LINE-OUT TEXT
FOR CLASS DEVIATION CD-2020-08

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

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

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

(d) ***

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

PART 32—CONTRACT FINANCING

32.009 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.

* * * * *

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

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

* * * * *

(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.

* * * * *

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)].**

* * * * *

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

* * * * *

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)

* * * * *

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

* * * * *

(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.

* * * * *