Date: 11/5/2012

From: Director, Procurement Policy and Warrant Management Service (003A2A)

Subj: Class Deviation – Providing Accelerated Payment to Small Business Subcontractors (VAIQ #7280493)

To: Associate Deputy Assistant Secretary for Procurement Policy, Systems, and Oversight (003A2) and Deputy Senior Procurement Executive,

1. **Purpose:** To request your approval, in accordance with Federal Acquisition Regulation (FAR) subpart 1.404, Class Deviations, and Department of Veterans Affairs Acquisition Regulation (VAAR) subpart 801.404, Class Deviations, to issue a Class Deviation to Implement Office of Management and Budget (OMB) Policy Memorandum M-12-16, Providing Prompt Payment to Small Business Subcontractors using a Civilian Agency Council (CAAC) developed clause.

2. **FAR Sections Impacted:** FAR Subpart 32.9 – Prompt Payment and FAR 32.904 – Determining Payment Due Dates.

3. **Effective Date:** Immediately.

4. **Expiration Date:** July 11, 2013 or until Rescinded.

5. **Background:**

   A. **OMB Guidance:**

   OMB Memorandum M-12-16, issued July 11, 2012, establishes the Executive Branch policy that, to the full extent permitted by law, agencies shall take the steps outlined within the Memo to ensure that prime contractors are able to pay their small business subcontractors in a prompt fashion. In particular, agencies should, to the full extent permitted by the law, temporarily accelerate payments to all prime contractors, in order to allow them to provide prompt payments to small business subcontractors.

   Agencies are encouraged to make payments to all prime contractors as soon as practicable, with a goal of paying all prime contractors within 15 days of receiving proper documentation.

   The policy of automatically accelerating all payments to prime contractors shall terminate on 13 July 2013, one year from the date of OMB Memorandum M-12-16.
B. Current Policy:

The general policy, except as prescribed in FAR 32.904 (b)(c) through (f), or as authorized in 32.908(a)(2) or (c)(2), provides that the due date for making an invoice payment is the 30\(^{th}\) day after receipt of a proper invoice or 30\(^{th}\) day after acceptance of supplies delivered or services performed, whichever is later.

C. Need for Deviation:

OMB coordinated with the FAR Council to develop the attached clause (FAR 52.232-99, Providing Accelerated Payment to Small Business Subcontractors (DEVIAION)) to require prime contractors to pay small business subcontractors on an accelerated timetable to the maximum extent practicable.

D. New Policy:

Effective immediately, contracting officers shall insert the attached clause in all new solicitations and resultant contracts and, to the extent feasible, modify existing solicitations to insert the attached clause. Contracting officers may amend existing contracts to insert this clause in accordance with FAR 1.108(d).

6. Attachment:

A. FAR Class Deviation, FAR 52.232-99, Providing Accelerated Payment to Small Business Subcontractors (DEVIAION) (AUGUST 2012)

7. Additional Information: Questions or comments regarding this class deviation may be directed to Ms. Eyvonne Mallett, Senior Procurement Analyst, at (202) 461-5101 or VA.Procurement.Policy@va.gov.

/s/ Sheila P. Darrell  
for Marilyn Harris

Attachment

Approved/Disapproved

/s/C. Ford Heard III  
ADAS for Procurement, Policy, Systems and Oversight  
11/5/2012  
Date
Attachment

Class Deviation

FAR 52.232-99, Providing Accelerated Payment to Small Business Subcontractors (DEVIATION)

52.232-99, Providing Accelerated Payment to Small Business Subcontractors (DEVIATION)

The contracting officer shall insert the following clause in all solicitations and resultant contracts.

PROVIDING ACCELERATED PAYMENT TO SMALL BUSINESS SUBCONTRACTORS (DEVIATION 2012) (AUGUST 2012)

This clause implements the temporary policy provided by OMB Policy Memorandum M-12-16, Providing Prompt Payment to Small Business Subcontractors, dated July 11, 2012.

(a) Upon receipt of accelerated payments from the Government, the contractor is required to make accelerated payments to small business subcontractors to the maximum extent practicable after receipt of a proper invoice and all proper documentation from the small business subcontractor.

(b) Include the substance of this clause, including this paragraph (b), in all subcontracts with small business concerns.

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

END