

Department of
Veterans Affairs

Memorandum

Date: August 07, 2020


From: Executive Director, Office of Acquisition and Logistics (003A), and Senior Procurement Executive

Subj: Class Deviation from the Federal Acquisition Regulation and VA Acquisition Regulation to Provide for Accelerated Payments to Small Business Contractors and Subcontractors (VIEWS 02792534)

To: Heads of the Contracting Activities

- 1. Purpose.** To issue a class deviation in accordance with Federal Acquisition Regulation (FAR) 1.404, to provide for accelerated payments to contractors that are small businesses, and to small business subcontractors by accelerating payments to their prime contractors. Federal agencies are authorized by the Civilian Agency Acquisition Council (CAAC) letter [2020-02](#), dated April 6, 2020 to issue a class deviation in advance of a final FAR rule.
- 2. FAR and VAAR Parts Impacted.** FAR parts 12, 32, and 52; VAAR part 832.
- 3. Effective Date.** Immediately.
- 4. Expiration Date.** This deviation expires when incorporated into the FAR and VAAR.
- 5. Applicability.** This class deviation applies to all VA contracting activities.
- 6. Current FAR and VAAR Policy.** The FAR currently provides for accelerated payments to small business subcontractors but does not allow accelerated payments to either small business contractors (*i.e.*, small business prime contractors) or prime contractors who contract with small business subcontractors.
- 7. Need for Deviation.** The FAR class deviation allows for accelerated payments to both small business contractors and to prime contractors that subcontract with a small business concern, and, in turn, requires the prime to accelerate payments to small business subcontractors. The VAAR class deviation removes VAAR 832.904-70 as redundant.
- 8. Required Action.** Contracting officers shall comply with the requirements of this class deviation.
- 9. Additional information.** Send questions to va.procurement.policy@va.gov.

Angela Billups
1724054

 Digitally signed by Angela
Billups 1724054
Date: 2020.08.07 12:56:44 -04'00'

Angela Billups, Ph.D.

Attachment

Attachment

FAR Deviation Text

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

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

FEDERAL ACQUISITION REGULATION

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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32.09 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.

32.009-2 Contract clause.

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

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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))]**.

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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

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Subpart 52.2—Text of Provisions and Clauses

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52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

As prescribed in 12.301(b)(4), insert the following clause:

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEM (MAR 2020) [(DEVIATION AUG 2020)]

*** * * * ***

(b) *** * ***

___ (60) [52.232-40, Providing Accelerated Payments to Small Business Subcontractors (DEC 2013) (DEVIATION AUG 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]61) 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).

As prescribed in 13.302-5(d), insert the following clause:

TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL ITEMS (JAN 2020) [(DEVIATION AUG 2020)]

(a) ***

(2) ***

(vi) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (DEC 2013) [(DEVIATION AUG 2020) (31 U.S.C. 3903 and 10 U.S.C. 2307)].

(viii) 52.244-6, Subcontracts for Commercial Items (AUG 2019) [**(DEVIATION AUG 2020)**].

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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 AUG 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 smallbusiness 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.

As prescribed in 44.403, insert the following clause:

SUBCONTRACTS FOR COMMERCIAL ITEMS (AUG 2019) [**(DEVIATION AUG 2020)**]

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(c) (1) * * *

(xix) 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (DEC 2013) [**(DEVIATION AUG 2020)**], if flow down is required in accordance with paragraph (c) of FAR clause 52.232-40.

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CLASS DEVIATION

VETERANS AFFAIRS ACQUISITION REGULATION (VAAR)

PART 832—Contract Financing

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Subpart 832.9—Prompt Payment [[Reserved]]

~~832.904-70~~ Determining payment due dates for small businesses.

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Subpart 832.9—Prompt Payment

~~832.904-70~~ Determining payment due dates for small businesses.

~~Pursuant to Office of Management and Budget Memorandum M-11-32, Accelerating Payments to Small Business for Goods and Services, contracting officers shall, to the full extent permitted by law, make payments to small business contractors as soon as practicable, with the goal of making payments within 15 days of receipt of a proper invoice and confirmation that the goods and services have been received and accepted by the Federal Government.~~

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