



**U.S. Department  
of Transportation**

1200 New Jersey Ave., S.E.  
Washington, DC 20590

Office of the Secretary  
of Transportation

---

September 4, 2020

**SUBJECT:** Class Deviation (CD) No. 2020-02 from the Federal Acquisition Regulation (FAR) to provide for accelerated payments to small business contractors and subcontractors (FAR Case 2020-007).

**FROM:** Dr. Willie H. Smith  
Senior Procurement Executive

**TO:** Department of Transportation Chiefs of the Contracting Offices

- I. Purpose:** This class deviation (CD) is issued in accordance with Federal Acquisition Regulation (FAR) 1.404 to allow for a deviation from requirements in FAR 12.301, FAR 32.009, FAR 32.903, FAR 32.906, FAR 52.215-5, FAR 52.213-4, FAR 52.232-40, and FAR 52.244-6 as outlined herein.

This CD provides for accelerated payments to small business contractors, and to small business subcontractors by accelerating payments to their prime contractors, and is issued to implement statutory changes associated with the Section 873 of the Fiscal Year (FY) 2020 National Defense Authorization Act (NDAA) (Pub. L. 116-92) while the FAR is updated via the rulemaking process. The statutory changes reflected in this deviation were effective when enacted, and are not contingent on rulemaking. This deviation is needed because DOT cannot predict when the statutory changes will be fully implemented in the FAR.

- II. Effective Date:** Immediately

- III. Background:** The objective of this CD is to implement Section 873 of the FY 2020 NDAA (Pub. L. 116-92), which amended 31 U.S.C. 3903. The attached FAR text identifies the additions and deletions anticipated to implement section 873 of the FY 2020 NDAA in the FAR. This CD provides flexibilities for providing accelerated payments to the fullest extent permitted by law to small business contractors and 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.

- IV. Applicability:** This CD applies to, and shall be inserted in all solicitations and contracts. See Attachment A for the changes in the FAR text as revised by this deviation.

- V. Expiration Date:** This CD will remain in effect until it is incorporated into the FAR or is otherwise rescinded.

## **VI. Point of Contact.**

Questions or comments regarding this class deviation may be directed to [M61AcquisitionPolicy@dot.gov](mailto:M61AcquisitionPolicy@dot.gov).

### **Attachments:**

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

## ATTACHMENT A

### FAR DEVIATION TEXT

Additions are **[bolded and bracketed]**, deletions are indicated by ~~strikethroughs~~.

#### **12.301 Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items.**

\* \* \* \* \*

(d) \* \* \*

~~(13) Insert the clause at 52.232-40, Providing Accelerated Payments to Small Business Subcontractors, as prescribed in 32.009-2.~~

#### **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.**

##### **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))**].

**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 APR 2020)**]

(b)

\_ (60) [**52.232-40, Providing Accelerated Payments to Small Business Subcontractors (DEC 2013) (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]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.

**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 APR 2020)**]

(a) \* \* \*

(2) \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

**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 JULY 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.

\* \* \* \* \*

**52.244-6 Subcontracts for Commercial Items.**

As prescribed in 44.403, insert the following clause:

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

\* \* \* \* \*

(c)(1) \* \* \*

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

\* \* \* \* \*