



Date: April 22, 2020

MEMORANDUM FOR TREASURY ACQUISITION PERSONNEL

FROM: MICHELE D. SHARPE,
ACTING SENIOR PROCUREMENT EXECUTIVE
OFFICE OF THE PROCUREMENT EXECUTIVE

SUBJECT: Class Deviation – Section 873, National Defense Authorization Act (NDAA) FY 2020 (Pub. L. 116-92) Accelerated Payments Applicable to Contracts with Certain Small Business Concerns

- A. PURPOSE.** The objective of this deviation is to implement section 873 of the NDAA for FY 2020 (Pub. L. 116-92), which amended 31 U.S.C. 3903.
- B. OVERVIEW.** The Acting Senior Procurement Executive has approved a class deviation, pending publication of the amendment to the FAR via FAR Case 2020-007, providing for accelerated payments to contractors that are small businesses, and to small business subcontractors by accelerating payments to their prime contractors. All Treasury bureaus shall apply the guidance set forth in Attachment 2, and shall include the associated clauses, as applicable, in solicitations issued on or after the date of this memorandum.
- C. ACTION,** Attachment 1 identifies the additions and deletions anticipated to implement section 873 of the FY 2020 NDAA in the FAR. These rulemaking changes will be published in the Federal Register. (See Attachment 1). The updated FAR subparts are also attached at Attachment 2.
- D. EFFECTIVE.** Immediately

Questions related to this deviation can be directed to Mr. Steven Kvalevog who can be reached at Steven.Kvalevog@treasury.gov or officeoftheprocurementexecutive@treasury.gov

FAR Deviation Text

Baseline is FAC 2020-05, published in the Federal Register on February 27, 2020.

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

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

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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32.009 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.

32.009-2 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

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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 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.

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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 APR 2020)]**

(a)***

(2) ***

(vi) 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)]. *****

(viii) 52.244-6, Subcontracts for Commercial Items (AUG 2019)[(DEVIATION APR 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 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)

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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 APR 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.

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PART 32—CONTRACT FINANCING

32.009 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).

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PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 52.2—Text of Provisions and Clauses

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) 52.242-5, Payments to Small Business Subcontractors (JAN 2017)(15 U.S.C. 637(d)(13)).

___ ([63)(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 APR 2020)(31 U.S.C. 3903 and 10 U.S.C. 2307).

(viii) 52.244-6, Subcontracts for Commercial Items (AUG 2019)(DEVIATION APR 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 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)

* * * * *

52.244-6 Subcontracts for Commercial Items. As prescribed in 44.403, insert the following clause: SUBCONTRACTS FOR COMMERCIAL ITEMS (AUG 2019)(DEVIATION APR 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.