



GSA Office of Governmentwide Policy

4/27/2023

Class Deviation CD-2020-09
Supplement 1

MEMORANDUM FOR GSA CONTRACTING ACTIVITIES

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

SUBJECT: Supplement to Clarify Class Deviation CD-2020-09; FAR Class Deviation -
Progress Payment Rates Based on Costs

On April 27, 2020, I approved the subject class deviation to increase the customary progress payment rates from 80 percent to 90 percent for large businesses and 85 percent to 95 percent for small business concerns.

While this class deviation is focused on supporting COVID response efforts and references CAAC Letter 2020-03¹, there is a continued need for a deviation in the absence of a declared COVID emergency.

Specifically, by maintaining the aforementioned percentage increases, GSA can continue its focus on encouraging small business concerns, including new and recent entrants, in federal acquisition. Therefore, though the Administration has announced that the COVID National Emergency declaration and Public Health Emergency declaration will end on May 11, 2023, this class deviation continues to remain in effect until rescinded or incorporated into the FAR or GSAR in accordance with Section 6 of the class deviation.

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

¹This CAAC letter provides agencies the ability to determine whether or not to cancel an agency's class deviation as a result of the expiration of the COVID emergency declaration.



April 24, 2020

MEMORANDUM FOR GSA CONTRACTING ACTIVITIES

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

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Date: 2020.04.27 17:41:11
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SUBJECT: FAR Class Deviation - Progress Payment Rates Based on Costs

- 1. Purpose.** This memorandum approves a class deviation from the Federal Acquisition Regulation (FAR) to allow GSA to increase the customary progress payment rates from 80 percent to 90 percent for large businesses and 85 percent to 95 percent for small businesses.
- 2. Background.** The Novel Coronavirus Disease 2019 (COVID-19) has been declared a national emergency and pandemic. The fluid nature of the situation is reflected in the mandatory closure of nonessential businesses, quarantines, travel restrictions, and other public safety limitations. Businesses are experiencing unprecedented negative effects as a result.

Through this class deviation GSA will allow contractors to receive more cash for work performed to keep their business and the supply chain going during the pandemic, by increasing the progress payment percentages paid to contractors. This effort is especially important to our small business partners that are more vulnerable to the economic disturbances caused by COVID-19. Specifically, this deviation will:

- Increase the customary progress payment rate from 80 percent to 90 percent for large businesses, applicable to the total costs of performing the contract.
- Increase the customary progress payment rate from 85 percent to 95 percent for contracts with small business concerns.

This deviation does not change the progress payment rate allowed for undefinitized contract actions, which remains limited at 80 percent¹.

This deviation does not change the progress payment rate allowed for fixed price construction contracts, which provides contracting officer discretion for retainage up to 10 percent².

¹ See FAR Clause 52.232-16 (k).

² See FAR Clause 52.232-5 (e).

This deviation does not apply to performance based payments.³

3. **Authority.** This class deviation is issued under the authority of FAR 1.404. Civilian Agency Acquisition Council ([CAAC Letter 2020-03](#)), Class Deviation from the Federal Acquisition Regulation (FAR) to increase progress payments to 90 percent for large businesses and 95 percent for small businesses, issued April 15, 2020 serves as 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.
5. **Deviation.** For fixed-price contracts with progress payments based on cost, GSA contracting officers may modify existing solicitations and contracts to:
 - Follow the deviated guidance at FAR 32.501-1;
 - Use FAR 52.232-16, Progress Payments (Apr 2012)(Deviation Apr 2020), in lieu of the clause at FAR 52.232-16, Progress Payments (Apr 2012); or,
 - If the contractor is a small business concern, use Alternate I (Mar 2000)(Deviation Apr 2020), in lieu of Alternate I of FAR clause 52.232-16 (Mar 2000).

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

6. **Effective Date.** This class deviation is effective immediately and remains in effect until rescinded or incorporated into the FAR or GSAR.
7. **Point of Contact.** Questions regarding this class deviation may be directed to GSARPolicy@gsa.gov.

Attachments

- Attachment A - Line-In/Line-Out: FAR Text
- Attachment B - Frequently Asked Questions

³ See FAR 52.232-32.

**ATTACHMENT A
FAR DEVIATION LINE-IN/LINE-OUT TEXT
FOR CLASS DEVIATION CD-2020-09**

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 32-CONTRACT FINANCING

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Subpart 32.5—Progress Payments Based on Costs

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32.501-1 Customary progress payment rates.

(a) The customary progress payment rate is ~~80~~ **[90]** percent, applicable to the total costs of performing the contract. The customary rate for contracts with small business concerns is ~~85~~ **[95]** percent.

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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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52.232-16 Progress Payments.

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PROGRESS PAYMENTS (APR 2012) [DEVIATION (APR 2020)]

* * *

(a) *Computation of amounts.* (1) Unless the Contractor requests a smaller amount, the Government will compute each progress payment as ~~80~~ **[90]** percent of the Contractor's total

costs incurred under this contract whether or not actually paid, plus financing payments to subcontractors (see paragraph (j) of this clause), less the sum of all previous progress payments made by the Government under this contract. The Contracting Officer will consider cost of money that would be allowable under FAR 31.205-10 as an incurred cost for progress payment purposes.

* * * * *

(6) The total amount of progress payments shall not exceed ~~80~~ **[90]** percent of the total contract price.

* * * * *

(b) Liquidation. Except as provided in the Termination of Convenience of the Government clause, all progress payments shall be liquidated by deducting from any payment under this contract, other than advance or progress payments, the unliquidated progress payments, or ~~80~~ **[90]** percent of the amount invoiced, whichever is less. The Contractor shall repay to the Government any amounts required by a retroactive price reduction, after computing liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly. The Government reserves the right to unilaterally change from the ordinary liquidation rate to an alternate rate when deemed appropriate for proper contract financing.

* * * * *

Alternate I (Mar 2000) [DEVIATION (APR 2020)]. If the contract is with a small business concern, change each mention of the progress payment and liquidation rates excepting paragraph (k) to the customary rate of ~~85~~ **[95]** percent for small business concerns (see FAR 32.501-1).

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**ATTACHMENT B
FREQUENTLY ASKED QUESTIONS
FOR CLASS DEVIATION CD-2020-09**

1. When is the deviation effective and does it apply to new contracts?

The deviation may be used for new contracts that include the deviation clause and to existing contracts that have been modified to include the deviation clause.

Answer:

Contractors must wait until their contracts are modified or contact the contracting officer before submitting requests for progress payments at the higher rate.

2. When should Standard Form (SF) 1443 be completed?

Answer:

The Deviation for the increased progress payment rate applies to prospective Progress Payment Requests (PPRs) only and not to prior requests. Therefore, there is no need to resubmit adjustments to previous PPRs.

The SF1443 date should be the date through which costs have been accumulated from inception for inclusion in this request. This date is applicable to item entries in Sections II and III. As a result, the first post-modification PPR will result in the application of the higher progress payment rate against all qualified costs, including costs that have been incurred prior to the issuance of the deviation.

3. If progress payments turn negative (i.e., the progress payment requested is offset by a liquidation), is the contractor expected to issue a check back to the Government or just stop progress billing until the progress payment calculation turns positive?

Answer:

The contractor should stop progress billing until the progress payment calculation turns positive.

4. Can a small business with a GSA contract that doesn't have the progress payment clause formally ask the contracting officer for progress payments?

Answer:

Yes.

5. How does the recent progress payment deviation impact currently reduced/suspended progress payments? Does the deviation alleviate the contractor from performing/proving progress or lessen the authority the

contracting officer has to approve progress payments, based on the accountabilities of both parties?

Answer:

The deviation provides a temporary substitute for the current progress payment clause. Any withholds from the previous rate, would now be applied against the higher rate, at the Contracting Officer's discretion. Even with a mass modification, the contracting officer still retains the authority to adjust rates in accordance with FAR 52.232-16(c), *Reduction or Suspension*. That paragraph was not eliminated from the deviation language.

6. Is it possible to request advance payments using this clause?

Answer:

No.

7. Does the deviation apply to progress payments for construction?

Answer:

No. Only to contracts or orders that include the Progress Payment clause, FAR 52.232-16.

8. Does the deviation apply to performance-based payments?

Answer:

No. Only to contracts or orders that include the Progress Payment clause, FAR 52.232-16.