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GSA Office of Governmentwide Policy
CIVILIAN AGENCY ACQUISITION LETTER 2012-03

August 16, 2012

MEMORANDUM FOR CIVILIAN AGENCIES OTHER THAN NASA

FROM: LAURA AULETTA
CHAIR
CIVILIAN AGENCY ACQUISITION COUNCIL (CAAC)

SUBJECT: Class Deviation from the Federal Acquisition Regulation (FAR) to Implement Office of Management and Budget (OMB) Policy Memorandum M-12-16, Providing Prompt Payment to Small Business Subcontractors

On July 11, 2012, OMB issued Policy Memorandum M-12-16, Providing Prompt Payment to Small Business Subcontractors. The memorandum directs that agencies should, to the full extent permitted by law, temporarily accelerate payments to all prime contractors, in order to allow them to provide prompt payments to small business subcontractors. While this temporary one year policy is in effect, agencies shall encourage prime contractors to pay small business subcontractors on an accelerated timetable to the maximum extent practicable.

OMB also worked with the FAR Council to develop the attached clause to require prime contractors to pay small business subcontractors on an accelerated timetable to the maximum extent practicable.

Effective immediately, agencies may authorize a class deviation, in accordance with FAR 1.404, for contracting officers to 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).

This CAAC letter constitutes consultation with the Chair of the CAAC required by FAR 1.404(a)(1) when the agency uses the attached clause. If an agency modifies the attached clause, the agency shall consult with the CAAC Chair, so that any agency modified clause can be coordinated with OMB to ensure consistency with the policy memorandum. The class deviation with the modified clause shall be emailed to Edward

U.S. General Services Administration
1275 First Street, NE
Washington, DC 20417
www.gsa.gov

Chambers at edward.chambers@gsa.gov, with a copy emailed to william.clark@gsa.gov.

A sample transmittal is also attached, which agencies may use at their discretion to explain the deviation to the acquisition workforce. Agencies need not notify the CAAC if they modify the language in the sample transmittal.

If you have questions or require additional information, please contact Edward N. Chambers at (202) 501-3221, or by email.

ATTACHMENTS

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) (AUG 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.

SAMPLE TRANSMITTAL TEMPLATE

MEMORANDUM FOR [***Insert addressees***]

SUBJECT: Class Deviation—Providing Accelerated Payment to Small Business Subcontractors

Effective immediately, contracting officers shall use the attached clause to require prime contractors to pay small business subcontractors on an accelerated timetable to the maximum extent practicable. Accordingly, contracting officers shall insert the clause at 52.232-99 (DEVIATION)(AUG 2012) in all new solicitations and resultant contracts after the date this deviation is signed and, to the extent feasible, modify existing solicitations to insert the clause at 52.232-99 (DEVIATION)(AUG 2012). Contracting officers may amend existing contracts to insert this clause in accordance with FAR 1.108(d).

This deviation implements the temporary one-year policy provided by OMB Policy Memorandum M-12-16, Providing Prompt Payment to Small Business Subcontractors, dated July 11, 2012, which is designed to accelerate payment from federal prime contractors to their small business subcontractors. To assist in expediting contractor payments to small business subcontractors, [***Agency Name***] will provide accelerated payments to all prime contractors after receipt of a proper invoice and all proper documentation while also maintaining necessary [***insert agency***] internal controls.

This deviation remains in effect until it is incorporated into the FAR or [Agency FAR Supplement] or is otherwise rescinded. My point of contact is Mr/Ms [***insert name***], who may be reached at ***xxx-xxx-xxxx***, or ***somebody@xxx.xxx***.

[***Insert name***]
[***Insert title***]