Subpart 232.9 - PROMPT PAYMENT

Parent topic: Part 232 - CONTRACT FINANCING

232.901 Applicability.

(1) Except for FAR 32.908, FAR subpart 32.9, Prompt Payment, does not apply when-

(i) There is-

(A) An emergency, as defined in the Disaster Relief Act of 1974;

(B) A contingency operation (see FAR 2.101(b)); or

(C) The release or threatened release of hazardous substances (as defined in 4 U.S.C. 9606, section 106);

(ii) The head of the contracting activity has made a determination, after consultation with the cognizant comptroller, that conditions exist that limit normal business operations; and

(iii) Payments will be made in the operational area or made contingent upon receiving supporting documentation (i.e., contract, invoice, and receiving report) from the operational area.

(2) Criteria limiting normal business operations during emergencies and contingency operations that restrict the use of FAR 32.9 may include such conditions as—

(i) Support infrastructure, hardware, communications capabilities, and bandwidth are not consistently available such that normal business operations can be carried out;

(ii) Support resources, facilities, and banking needs are not consistently available for use as necessary in carrying out normal business operations;

(iii) Military mission priorities override the availability of appropriately skilled personnel in support of back-office operations;

(iv) Mobility impairments and security concerns restrict free movement of personnel and documents necessary for timely processing;

(v) Foreign vendors are not familiar with or do not understand DoD contract requirements (i.e., proper invoice, receiving documentation, and contracting terms); or

(vi) Documents received in support of payment requests and shipments require language translations that cannot be performed and documented within normal business processing times.

(3) Subsequent Determinations. The head of the contracting activity shall make subsequent determinations, after consultation with the cognizant comptroller, as the operational area evolves into either a more stable or less stable environment.

(i) If the head of the contracting activity determines that the operational area has evolved into a more stable environment, the contracting officer shall notify, by issuance of a contract modification, each contractor performing in the operational area under review. The modification deactivates this

clause 252.232-7011 and activates the applicable FAR Prompt Payment clause in the contract.

(ii) If after deactivation of this clause, the head of the contracting activity subsequently determines that the operational area has evolved into a less stable environment, the head of the contracting activity will make a determination that conditions exist that limit normal business operations. The contracting officer will then reactivate this clause 252.232-7011 by issuance of a contract modification.

232.903 Responsibilities.

In accordance with 10 U.S.C. 3801(b), DoD shall assist small business concerns by providing payment as quickly as possible, to the fullest extent permitted by law, with a goal of 15 days after receipt of proper invoices and all required documentation, including acceptance, and before normal payment due dates established in the contract (see 232.906 (a)).

See DoD Class Deviation 2014-O0015-Update to Accelerated Payments to Small Businesses, dated April 15, 2014. This deviation is effective until modification of all DoD entitlement and payment systems to accommodate accelerated payments is completed, or until superseded or rescinded.

232.904 Determining payment due dates.

(d) In most cases, Government acceptance or approval can occur within the 7-day constructive acceptance period specified in the FAR Prompt Payment clauses. Government payment of construction progress payments can, in most cases, be made within the 14-day period allowed by the Prompt Payment for Construction Contracts clause. While the contracting officer may specify a longer period because the period specified in the contract is not reasonable or practical, such change should be coordinated with the Government offices responsible for acceptance or approval and for payment. Reasons for specifying a longer period include but are not limited to: the nature of the work or supplies or services, inspection or testing requirements, shipping and acceptance terms, and resources available at the acceptance activity. A constructive acceptance period of less than the cited 7 or 14 days is not authorized.

232.905 Payment documentation and process.

(b)(1)(iii) For task and delivery orders numbered in accordance with FAR 4.1603 and 204.1603 , the 13-character order number may serve as the contract number on invoices and receiving reports. The contract or agreement number under which the order was placed may be omitted from invoices and receiving reports. The contractor may choose to identify both the contract number and the 13-character order number on invoices and receiving reports. Task and delivery orders numbered with a four-position alpha-numeric call or order serial number shall include both the 13-position basic contract Procurement Instrument Identifier and the four-position order number.

232.906 Making payments.

(a)(i) Generally, the contracting officer shall insert the standard due date of 14 days for interim payments on cost-reimbursement contracts for services in the clause at FAR 52.232-25, Prompt Payment, when using the clause with its Alternate I.

(ii) The restrictions of FAR 32.906 prohibiting early payment do not apply to invoice payments made to small business concerns. However, contractors shall not be entitled to interest penalties if the Government fails to make early payment.

232.908 Contract clauses.

Use the clause at 252.232-7011, Payments in Support of Emergencies and Contingency Operations, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, in acquisitions that meet the applicability criteria at 232.901 (1). Use of this clause is in addition to use of either the approved Payment clause prescribed in FAR 32.908 or the clause at FAR 52.212-4, Contract Terms and Conditions—Commercial Products and Commercial Services.