

**CLASS DEVIATION  
FINDINGS AND DETERMINATION  
USE OF CLAUSES TO IMPLEMENT REGULATORY CHANGES FOR  
ACCELERATED PAYMENTS TO SMALL BUSINESS  
CONTRACTORS AND SUBCONTRACTORS**

**Findings**

1. The objective of this class deviation is to implement section 873 of the National Defense Authorization Act (NDAA) for Fiscal Year 2020. Section 873 (Pub. L. 116-92), amended 31 U.S.C. 3903 to provide for accelerated payments to contractors that are small businesses, and to small business subcontractors by accelerating payments to their prime contractors.
2. Section 873 requires all agencies, including the Department of Defense (DoD), to establish an accelerated payment date for small business prime contractors, with a goal of 15 days after a proper invoice is received if a specific payment date is not established by contract. The statute also requires agencies to establish a similar accelerated payment schedule for small business subcontractors, assuming a specific payment date is not established by contract and the prime contractor agrees to the payment schedule.
3. The Civilian Agency Acquisition Council (CAAC) issued CAAC Letter 2020-02 on April 6, 2020 authorizing agencies to authorize a class deviation to implement section 873, pending publication of the formal amendment to the Federal Acquisition Regulation (FAR) via FAR case 2020-007, Accelerated Payments Applicable to Contracts with Certain Small Business Concerns. The CAAC letter includes FAR text identifying additions and deletions anticipated to implement section 873 of the FY 2020 NDAA in the FAR. Revisions to FAR section 32.009 and FAR clause 52.232-40 are among the changes included.
4. CAAC Letter 2020-02 constitutes required consultation in accordance with FAR 1.404 with the Chair of the CAAC.

**Determination**

It is hereby determined that a class deviation (using the FAR Deviation Text included in CAAC Letter 2020-02, Attachment) is appropriate to implement section 873 of the National Defense Authorization Act for Fiscal Year 2020. Once processed, the Department of Energy will share the deviation widely among its workforce to ensure full awareness of and compliance with the revisions to regulations on accelerated payments to small business contractors and subcontractors. This class deviation is effective upon the date of signature and will remain effective until cancelled or until the FAR is amended by the FAR case.

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John R. Bashista,  
Director  
Office of Acquisition Management,  
Department of Energy

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S. Keith Hamilton, P.E.,  
Deputy Associate Administrator  
Acquisition and Project Management  
and Senior Procurement Executive  
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Effective Date:\_\_\_\_\_

Attachment: CAAC Letter 2020-02 with FAR Deviation text (Attachment)