



ACQUISITION
AND SUSTAINMENT

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

In reply refer to
DARS Tracking Number: 2020-O0012, Revision 1

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING)
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation—Undefinitized Contract Actions During the National Emergency
for the Coronavirus Disease 2019

Effective immediately, this class deviation revises and supersedes the class deviation issued on April 3, 2020. Contracting officers shall follow the policies and procedures in this class deviation in lieu of those at Defense Federal Acquisition Regulation Supplement (DFARS) 217.7404(a) and (a)(1)(i), 217.7404-3(a), and 217.7404-4(a) for undefinitized contract actions (UCAs) related to the national emergency for the Coronavirus Disease 2019 (COVID-19), as determined by the head of the contracting activity (HCA).

- The requirement at DFARS 217.7404-4(a) to limit obligations, after receipt of a qualifying proposal, to 75 percent of the not-to-exceed price before definitization (10 U.S.C. 2326(b)(3)) does not apply to UCAs related to the national emergency for COVID-19.
- The HCA may waive the limitations (10 U.S.C. 2326(b)) in DFARS 217.7404(a)(1)(i), 217.7404-3(a), and the first sentence of DFARS 217.7404-4(a) for a UCA, if the HCA determines that the waiver is necessary due to the national emergency for COVID-19. The HCA may delegate the authority to make the determination at DFARS 217.7404-3(a)(1).
- The HCA may conditionally waive the 80 percent progress-payment limit (10 U.S.C. 2307(e)(2)) for a UCA, if the HCA determines that the waiver is necessary due to the national emergency for COVID-19. Upon approval of this waiver, notwithstanding Federal Acquisition Regulation (FAR) 52.232-16(k), contracting officers may apply, as

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appropriate for the business size, the progress-payment limit stated either at DFARS 252.232-7004, DoD Progress Payment Rates (DEVIATION 2020-O0010, Revision 1), or at paragraph (a)(1) of FAR 52.232-16, Progress Payments (DEVIATION 2020-O0010, Revision 1), including Alternates II and III of FAR clause 52.232-16.

- The HCA may issue the 80 percent progress-payment limit waiver if—
 - The contractor performing the contract for which a UCA is entered into has not already received increased progress payments from DoD on contractual actions other than UCAs; or
 - The contractor that is performing the contract for which a UCA is entered into and has received increased progress payments from DoD on contractual actions other than UCAs, can demonstrate that the contractor has promptly provided the amount of the increase to its subcontractors at any tier, its suppliers, or small business concerns (as defined at 15 U.S.C. 632).
- For a UCA that has not been definitized for a period of 180 days beginning on the date the UCA was entered into, the HCA may only issue the 80 percent progress-payment limit waiver if the HCA provides a certification to the congressional defense committees that the UCA will be definitized within 60 days after the waiver is issued.
- For each instance in which the 80 percent progress-payment limit is waived, the HCA shall submit an estimate of the amounts to be provided to subcontractors at any tier, small business concerns, and suppliers, including an identification of the specific entities receiving an amount from an increased progress payment issued under this deviation, to—
 - The congressional defense committees; and
 - Price, Cost and Finance, Defense Pricing and Contracting, at *osd.pentagon.ousd-a-s.mbx.dpc-pcf@mail.mil*.

This class deviation implements sections 13004 and 13005 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. 116-136) and section 891 of the William M. (Mac) Thornberry National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116-283). Sections 13004 and 13005 of the CARES Act remove certain statutory limitations on obligation of funds (10 U.S.C. 2326(b)(3)) and allow the other restrictions on obligation of funds (10 U.S.C. 2326(b)) to be waived for UCAs of the Department of Defense during the national emergency for COVID-19. Section 891 of the NDAA for FY 2021 permits conditional waiver of the requirements of 10 U.S.C. 2307(e)(2) for any UCA as necessary in response to the national emergency for COVID-19.

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This class deviation remains in effect until rescinded. My point of contact is Lt Col Bryan Lamb, who is available by email at Bryan.D.Lamb.mil@mail.mil.

John M. Tenaglia
Principal Director,
Defense Pricing and Contracting