



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

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AUG 19 2009

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MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT), ASA (ALT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION & LOGISTICS MANAGEMENT),  
ASN (RDA)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING), SAF/AQC  
EXECUTIVE DIRECTOR, LOGISTIC POLICY AND  
ACQUISITION MANAGEMENT (DLA)  
DIRECTORS, DEFENSE AGENCIES  
DIRECTORS, DOD FIELD ACTIVITIES

SUBJECT: Class Deviation – Federal Acquisition Regulation (FAR) 32.9 Prompt  
Payment for Emergencies and Contingency Operations

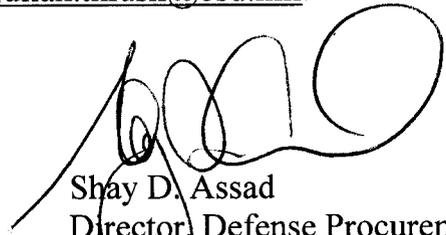
Effective immediately, all Department of Defense contracting activities supporting payments covered by 5 CFR 1315.1(b)(2), related to emergencies as defined in the Disaster Relief Act of 1974, Public Law 93–288, as amended (42 U.S.C. 5121 *et seq.*); military contingency operations (as defined in 10 U.S.C. 101 (a)(13)); and the release or threatened release of hazardous substances (as defined in 4 U.S.C. 9606, Section 106) may deviate from the requirements of FAR 32.9, Prompt Payment. This deviation, however, is applicable only when payments covered by 5 CFR 1315.1(b)(2) are either certified for payment in an operational area, or are contingent upon the receipt of necessary supporting documentation (i.e., contract, invoice, receiving report) emanating from an operational area.

It is clear that, during these types of emergencies and contingency operations, the operational area can be so fluid and dynamic that carrying out normal business practices can be extremely challenging. As such, the Head of the Contracting Activity (HCA) is granted the authority, after consultation with the cognizant Comptroller, to incorporate the payment provision at Attachment 1 into contracts, in lieu of the clauses prescribed in

FAR 32.908, when an unstable business environment exists. Attachment 2 contains general guidelines the HCA should consider in making the determination.

This deviation will provide the Department needed flexibility in limited circumstances. The HCA shall make subsequent determinations as the operational area evolves into a more stable business environment to enable the provisions of the Prompt Payment Act to apply.

This class deviation is effective upon signature, and remains in effect until incorporated in the DFARS or until otherwise rescinded. My point of contact is Julian Thrash, who may be reached at 703-602-0310, or [julian.thrash@osd.mil](mailto:julian.thrash@osd.mil).

A handwritten signature in black ink, appearing to read 'Shay D. Assad', written over the printed name.

Shay D. Assad  
Director, Defense Procurement  
and Acquisition Policy

Attachments:  
As stated

## Emergency and Contingency Operations

Insert the following clause in lieu of the clauses prescribed in FAR 32.9 in contracts when an emergency, as defined in the Disaster Relief Act of 1974; contingency operation (see FAR 2.101(b)); or the release or threatened release of hazardous substances (as defined in 4 U.S.C. 9606, Section 106) occurs, and the Head of the Contracting Activity has made a determination that the provisions of FAR 32.9 do not apply —

### PAYMENTS IN SUPPORT OF EMERGENCY AND CONTINGENCY OPERATIONS (DEVIATION 2009-O0011)

(a) Notwithstanding any other payment clause in this contract, the Government will make invoice payments under the terms and conditions specified in this clause. The Government considers payment as being made on the day a check is dated or the date of an electronic funds transfer (EFT). Definitions of pertinent terms are set forth in sections 2.101, 32.001, and 32.902 of the Federal Acquisition Regulation.

(b) *Invoice payments—*

(1) *Due date.*

(i) Payment will be made as soon as possible once a proper invoice is received and matched with the contract and the receiving/acceptance report.

(ii) If the contract does not require submission of an invoice for payment (*e.g.*, periodic lease payments), the due date will be as specified in the contract.

(2) *Contractor's invoice.* The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice should include the items listed in paragraphs (a)(2)(i) through (a)(2)(x) of this clause.

(i) Name and address of the Contractor.

(ii) Invoice date and invoice number. (The Contractor should date invoices as close as possible to the date of the mailing or transmission.)

(iii) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).

(iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.

(v) Shipping and payment terms (*e.g.*, shipment number and date of shipment, discount for prompt payment terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.

(viii) Taxpayer Identification Number (TIN) - (when required). The TIN is required for all payees subject to the U.S. Internal Revenue Code.

(ix) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision (*e.g.*, 52.232-38, Submission of Electronic Funds Transfer Information with Offer), contract clause (*e.g.*, 52.232-33, Payment by Electronic Funds Transfer— Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer-Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(x) Any other information or documentation required by the contract (*e.g.*, evidence of shipment).

(3) *Discounts for prompt payment.* The designated payment office will take cost-effective discounts, if the payment is made within the discount terms of the contract.

(4) *Contract financing payment.* If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.

(5) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment, including the—

(A) Circumstances of the overpayment (*e.g.*, duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number if applicable;

(C) Affected contract line item or subline item, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) *Periodic Review.* The Head of the Contracting Activity shall make subsequent determinations as the operational area evolves into a more stable environment to enable the provisions of the Prompt Payment Act to apply.

(End of clause)

## **HCA Criteria for Determining the Application of Class Deviation 2009-O0011 to FAR 32.9, Prompt Payment for Emergencies and Contingency Operations**

The following criteria may be utilized by the HCA to determine whether normal business operations do not exist in an operational area to utilize the deviation from FAR 32.9 provisions:

- Infrastructure, hardware, communications capabilities, and bandwidth are not consistently available such that normal business operations can be carried out.
- Support resources, facilities, and banking needs are not consistently available for use as necessary in carrying out normal business operations.
- Military mission priorities override the availability of appropriately skilled personnel in support of back-office operations.
- Mobility impairments and security concerns restrict free movement of personnel and documents necessary for timely processing.
- Foreign vendors are not familiar with or do not understand DoD requirements (i.e. proper invoice, receiving documentation, and contracting terms).
- Documents received in support of payment requests and shipments require language translations that can not be performed and documented within normal business processing times.