Implementation Guidance for Class Deviation 2020-O0010, Progress Payment Rates

Frequently Asked Questions

There have been a number of inquiries by Government and Industry regarding implementation of Class Deviation 2020-O0010 (hereinafter referred to as "the Deviation"). Listed below are responses to the most frequently asked questions.

The questions are listed in the order they were issued.

FAQ Q12 through Q10
(Issued 4/16/2021)

Q12: When will the Class Deviation be rescinded?

A12: At this juncture, the Department cannot project when the Class Deviation will be rescinded, as the economic impact of the COVID-19 crisis continues to impact the Defense Industrial Base.

Q11: How has the DoD ensured prime contractors who received higher rates of progress payments in turn provided those funds, as appropriate, to their subcontractors and lower tier suppliers?

A11: Acquisition regulations stipulate that the progress payment rate in the subcontract is the customary rate used by the contracting agency (FAR 52.232-16(j)(6)).

Even though there is no privity of contract between DoD and its prime contractor's lower tiered vendors, the Department conferred with major primes to encourage flow down of the increased progress payment rate throughout the supply chain. Upon issuance of the class deviation increasing the progress payment rate in March 2020, representatives from industry associations were briefed on the implementation procedures and the government's expectations that financing would be flowed down to suppliers.

Q10: Since the issuance of Class Deviation 2020-O0010 on April 3, 2020, how much has been paid to industry as a result?

A10: As of March 31, 2021, the estimated amount attributed to the progress payment rate increase is $4.6 billion.

FAQ Q9 through Q1
(Issued 4/3/2020)

Q9: Is it possible to request advance payments using this clause?

A9: No, the deviation does not apply to advance payments.

Q8: How was the mass mod prepared and to whom was it issued?

A8: DCMA issued a mass administrative modification to implement the Deviation efficiently and expediently for contracts administered by DCMA. Excluded from the mass mod were contracts for which DCMA had not been delegated administration office authority, shipbuilding contacts issued by the Naval Sea Systems Command, contracts for which a “stop payment” had been issued, and any contract for which an alternate liquidation rates has already been established. DCMA provided the Services with a listing of all contracts containing the progress payment clause, but where DCMA has not been delegated contract administration authority. This will enable the Services to modify contracts individually or, potentially, delegate authority to DCMA. If there are any questions regarding eligibility to receive the higher progress payment rate, contact the contracting administration office listed on the face of your contract/order.

Q7: How does the recent progress payment deviation impact currently reduced/suspended progress payments? We want to confirm the Deviation does not just alleviate the contractor from performing/proving progress or lessen the authority the administrative contracting officer has to approve progress payments, based on the accountabilities of both parties.

A7: The deviation provides a temporary substitute for the current progress payment clause. Any withholds from the previous rate, would now be applied against the higher rate, at the Contracting Officer’s discretion. Even with a mass modification, the contracting officer still retains the authority to adjust rates in accordance with 252.232-16(c), Reduction or Suspension. That subparagraph was not eliminated from the deviation language.

Q6: Can a small business with a DoD contract that doesn’t have the progress payment clause formally ask the contracting officer for progress payments?

A6: Yes

Q5: Does the Deviation apply to performance-based payments?

A5: No. Only to contracts or orders that include the Progress Payment clause, FAR 52.232-16.

Q4: When is the Deviation effective? Does it apply only to new contracts?

A4: The Deviation applies to new contracts that include the Deviation clause and to existing contracts that have been modified to include the Deviation clause. Contractors must wait until their contracts are modified or contact the Administrative Contracting Office before submitting requests for progress payments at the higher rate.

Q3: If progress payments turn negative (i.e., the increase in financing requested is offset by the increase in required liquidations placing a limit on the PPR in Section III), is the contractor expected to issue a check back to the U.S. Government or just stop progress billing until the progress payment calculation turns positive?

A3: The contractor should stop progress billing until the progress payment calculation turns positive.

Q2: Please clarify that adjustments to liquidations taken on previously delivered items is not required. Rather, financing limitations will be accomplished through Section III of the SF1443.

A2: Financing limitations will be accomplished through Section III of the SF1443.

Q1: The Contract Note accompanying the modification implementing the Deviation states that "This deviation is not retroactive and is prospective only." Use of the term "prospective" has caused confusion throughout industry. Please clarify that the SF1443 should continue to be completed based on inception to date cost.

A1: The Deviation for the increased progress payment rate applies to prospective Progress Payment Requests (PPRs) only and not to prior requests. However, 52.232-16 (DEVIATION 2020-O0010), paragraph (a)(1), explicitly states, "Unless the Contractor requests a smaller amount, the Government will compute each progress payment at 90 percent of the **Contractor's total costs incurred under this contract** whether or not actually paid, plus financing payments to subcontractors (see paragraph (j) of this clause), less the sum of all previous progress payments made by the Government under this contract." Therefore, there is no need to resubmit adjustments to previous PPRs. The SF1443 should continue to be completed based upon inception to date cost. As a result, the first post-modification PPR will result in the application of the higher progress payment rate against all qualified costs, including costs that have been incurred prior to the issuance of the Deviation