



ACQUISITION
AND SUSTAINMENT

OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

AUG 20 2019

In reply refer to
DARS Tracking Number: 2019-O0011

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES CYBER
COMMAND (ATTN: ACQUISITION EXECUTIVE)
INSPECTOR GENERAL OF THE DEPARTMENT OF
DEFENSE
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(ACQUISITION & PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING)
DIRECTORS, DEFENSE AGENCIES
DIRECTORS, DEFENSE FIELD ACTIVITIES

SUBJECT: Class Deviation—Performance-Based Payments

Effective immediately, when issuing a solicitation that may result in a contract providing for performance-based payments or awarding a fixed-price contract under which the Government will provide performance-based payments, contracting officers shall deviate from the policy at Defense Federal Acquisition Regulation Supplement (DFARS) 232.1001(a) and the clause prescriptions at DFARS 232.1005-70 and use the clauses in the attachment to this class deviation, as prescribed in the attachment.

This class deviation remains in effect until it is incorporated in the DFARS, or until it is otherwise rescinded. My point of contact is Mr. Mark Gomersall, who is available at mark.r.gomersall.civ@mail.mil.

Kim Herrington
Acting Principal Director,
Defense Pricing and Contracting

Attachment:
As stated

The contracting officer shall use one of the following clauses with appropriate fill-ins in solicitations and contracts that include FAR clause 52.232-32, Performance-Based Payments:

**252.232-7012 Performance-Based Payments—Whole-Contract Basis.
(DEVIATION 2019-O0011)**

Use the following clause for performance-based payments made on a whole-contract basis:

**PERFORMANCE-BASED PAYMENTS—WHOLE-CONTRACT BASIS (AUG 2019)
(DEVIATION 2019-O0011)**

(a) *Basis for payment.* Performance-based payments shall form the basis for the contract financing payments provided under this contract, and shall apply to the whole contract. The performance-based payments schedule (Contract Attachment ____) describes the basis for payment, to include identification of the individual payment events, evidence of completion, and amount of payment due upon completion of each event.

(b) *Additional information required.*

(1) The Contractor shall, in addition to providing the information required by Federal Acquisition Regulation (FAR) 52.232-32, submit information for all payment requests using the following format:

Current performance-based payment(s) event(s) addressed by this request:		
Contractor shall identify—	Amount	Totals
(1a) Negotiated value of all previously completed performance-based payment(s) event(s);		
(1b) Negotiated value of the current performance-based payment(s) event(s);		
(1c) Cumulative negotiated value of performance-based payment(s) events completed to date (1a) + (1b); and		
(2) Total costs incurred to date.		

(2) Incurred cost is determined by the Contractor's accounting books and records, to which the Contractor shall provide access upon request of the Contracting Officer for the administration of the clause. An acceptable job order cost accounting system (per DFARS 252.242-7006) is not required for reporting of

incurred costs under this clause. If the Contractor's accounting system is not capable of tracking costs on a job order basis, the contractor shall provide a realistic approximation of the allocation of incurred costs attributable to this contract in accordance with Generally Accepted Accounting Principles (GAAP) and the Contractor's accounting system. FAR 52.232-32(m) does not require certification of incurred costs.

(c) *Security.*

(1) Title to the property described in paragraph (f) of the clause at FAR 52.232-32, Performance-Based Payments, is the preferred security for receipt of performance-based payments.

(2)(i) If the Contractor's accounting system is not capable of identifying and tracking through the build cycle the property that is allocable and properly chargeable to this contract, the Contracting Officer may consider acceptance of one or a combination of the following alternative forms of security sufficient to constitute adequate security for the performance-based payments and so specify in the contract, consistent with FAR 32.202-4:

(A) A paramount lien on assets.

(B) An irrevocable letter of credit from a federally insured financial institution.

(C) A bond from a surety, acceptable in accordance with FAR part 28.

(D) A guarantee of repayment from a person or corporation of demonstrated liquid net worth, connected by significant ownership interest to the Contractor.

(E) Title to identified Contractor assets of adequate worth.

(ii) Paragraph (f) of the clause at FAR 52.232-32 does not apply to the extent that the Contractor and the Contracting Officer agree on alternative forms of security. In the event the Contractor fails to provide adequate security, as required in this contract, no financing payment will be made under this contract. Upon receipt of adequate security, financing payments will be made, including all previous payments to which the Contractor is entitled, in accordance with the terms of the provisions for contract financing. If at any time the Contracting Officer determines that the security provided by the Contractor is insufficient, the Contractor shall promptly provide such additional security as the Contracting Officer determines necessary. In the event the Contractor fails to provide such additional security, the Contracting Officer may collect

or liquidate such security that has been provided and suspend further payments to the Contractor; and the Contractor shall repay to the Government the amount of unliquidated financing payments as the Contracting Officer at his sole discretion deems repayable.

(End of clause)

**252.232-7013 Performance-Based Payments—Deliverable-Item Basis.
(DEVIATION 2019-O0011)**

Use the following clause for performance-based payments made on a deliverable-item basis:

**PERFORMANCE-BASED PAYMENTS—DELIVERABLE-ITEM BASIS (AUG 2019)
(DEVIATION 2019-O0011)**

(a) *Basis for payment.* Performance-based payments shall form the basis for the contract financing payments provided under this contract and shall apply to Contract Line Item Numbers (CLIN(s)) [*Contracting Officer insert applicable CLIN(s)*]. The performance-based payments schedule (Contract Attachment ____) describes the basis for payment, to include identification of the individual payment events, CLINs to which each event applies, evidence of completion, and amount of payment due upon completion of each event.

(b) *Additional information required.*

(1) The Contractor shall, in addition to providing the information required by Federal Acquisition Regulation (FAR) 52.232-32, submit information for all payment requests using the following format:

Current performance-based payment(s) event(s) addressed by this request:		
Contractor shall identify—	Amount	Totals
(1a) Negotiated value of all previously completed performance-based payment(s) event(s);		
(1b) Negotiated value of the current performance-based payment(s) event(s);		
(1c) Cumulative negotiated value of performance-based payment(s) event(s) completed to date (1a) + (1b); and		
(2) Total costs incurred to date.		

(2) Incurred cost is determined by the Contractor's accounting books and records, to which the Contractor shall provide access upon request of the Contracting Officer for the administration of the clause. An acceptable job order cost accounting system (per DFARS 252.242-7006) is not required for reporting of incurred costs under this clause. If the Contractor's accounting system is not capable of tracking costs on a job order basis, the contractor shall provide a realistic approximation of the allocation of incurred costs attributable to this contract in accordance with Generally Accepted Accounting Principles (GAAP) and the Contractor's accounting system. FAR 52.232-32(m) does not require certification of incurred costs.

(c) *Security.*

(1) Title to the property described in paragraph (f) of the clause at FAR 52.232-32, Performance-Based Payments, is the preferred security for receipt of performance-based payments.

(2)(i) If the Contractor's accounting system is not capable of identifying and tracking through the build cycle the property that is allocable and properly chargeable to this contract, the Contracting Officer may consider acceptance of one or a combination of the following alternative forms of security sufficient to constitute adequate security for the performance-based payments and so specify in the contract, consistent with FAR 32.202-4:

(A) A paramount lien on assets.

(B) An irrevocable letter of credit from a federally insured financial institution.

(C) A bond from a surety, acceptable in accordance with FAR part 28.

(D) A guarantee of repayment from a person or corporation of demonstrated liquid net worth, connected by significant ownership interest to the Contractor.

(E) Title to identified Contractor assets of adequate worth.

(ii) Paragraph (f) of the clause at FAR 52.232-32 does not apply to the extent that the Contractor and the Contracting Officer agree on alternative forms of security. In the event the Contractor fails to provide adequate security, as required in this contract, no financing payment will be made under this contract. Upon receipt of adequate security, financing payments will be made, including all previous payments to which the Contractor is entitled, in accordance with the terms

of the provisions for contract financing. If at any time the Contracting Officer determines that the security provided by the Contractor is insufficient, the Contractor shall promptly provide such additional security as the Contracting Officer determines necessary. In the event the Contractor fails to provide such additional security, the Contracting Officer may collect or liquidate such security that has been provided and suspend further payments to the Contractor; and the Contractor shall repay to the Government the amount of unliquidated financing payments as the Contracting Officer at his sole discretion deems repayable.

(End of clause)