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Acquisition & Assistance Policy Directive (AAPD)

From the Director, Office of Acquisition & Assistance Issued: September 4, 2012

AAPD 12-05

FAR Class Deviation:

**FAR CLAUSE 52.232-99, PROVIDING ACCELERATED PAYMENT TO SMALL BUSINESS
SUBCONTRACTORS (Deviation) (Aug 2012)**

Subject Category: Acquisition Management

Type: POLICY

AAPDs provide information of significance to all agency personnel and partners involved in the Acquisition and Assistance process. Information includes (but is not limited to): advance notification of changes in acquisition or assistance regulations; reminders; procedures; and general information. Also, AAPDs may be used to implement new requirements on short-notice, pending formal amendment of acquisition or assistance regulations.

AAPDs are EFFECTIVE AS OF THE ISSUED DATE unless otherwise noted in the guidance below; the directives remain in effect until this office issues a notice of cancellation.

This AAPD: Is New Replaces/ Amends CIB/AAPD

<p>Applicable to:</p> <p><input checked="" type="checkbox"/> Existing awards; <input type="checkbox"/> Modification required</p> <p><input type="checkbox"/> No later than</p> <p><input checked="" type="checkbox"/> As noted in guidance below*</p> <p><input checked="" type="checkbox"/> RFPs/RFAs issued on or after the effective date of this AAPD; all other Pending Awards, i.e., 8(a), sole source, IQC</p> <p><input type="checkbox"/> Other</p>	<p>Precedes change to:</p> <p><input type="checkbox"/> AIDAR Part(s) Appendix</p> <p><input type="checkbox"/> USAID Automated Directives System (ADS) Chapter</p> <p><input type="checkbox"/> Code of Federal Regulations</p> <p><input checked="" type="checkbox"/> Federal Acquisition Regulations</p> <p><input type="checkbox"/> No change to regulations</p>
<p><input checked="" type="checkbox"/> New Provision/Clause Provided Herein: If checked, scheduled update to GLAAS:</p>	

/s/

Aman S. Djahanbani

Purpose:

The purpose of this AAPD is to issue a new FAR clause 52.232-99 titled “Providing Accelerated Payment to Small Business Subcontractors (Deviation) (Aug 2012)” and direct Contracting Officers to begin using this clause as discussed below.

Required Actions**(a) New Solicitations and Resultant Contracts**

- Effective immediately, Contracting Officers must insert the attached clause 52.232-99 (Deviation) (Aug 2012) in all new solicitations and resultant contracts issued or awarded on or after the date of this AAPD, in order to require contractors to pay small business subcontractors on an accelerated timetable to the maximum extent practicable.
- To the extent feasible, Contracting Officers are to modify existing solicitations to insert the FAR clause 52.232-99 (Deviation) (Aug 2012)

(b) Existing Contracts

- Contracting Officers may amend existing contracts to insert this FAR clause 52.232-99 (Deviation)(Aug 2012), in accordance with FAR 1.108(d)

Note: This AAPD does not apply to Personal Services Contracts.

Background:

On July 11, 2012, the Office of Management and Budget (OMB) issued Memorandum M-12-16, “*Providing Prompt Payment to Small Business Subcontractors*”. (See link <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2012/m-12-16.pdf>)

OMB’s memorandum directs that “agencies should, to the full extent permitted by law, temporarily accelerate payments to all prime contractors, in order to allow them to provide prompt payments to small business subcontractors.” OMB’s memorandum also states that, while this temporary policy is in effect, “agencies shall encourage prime contractors to pay small business subcontractors on an accelerated timetable to the maximum extent practicable.”

In order to more consistently implement the Memorandum across the USG, on August 16, 2012, the Chair of the Civilian Agency Acquisition Council (CAAC) issued Civilian Agency Acquisition letter 2012-03, titled “*Class Deviation from the Federal Acquisition Regulation (FAR) to Implement Office of Management and Budget (OMB) Policy Memorandum M-12-16, Providing Prompt Payment to Small Business Subcontractors*”. The letter encouraged agencies to process a class deviation to the FAR to have Contracting Officers use a new clause 52.232-99, “*Providing Accelerated Payments to Small Business Subcontractors (Deviation) (Aug 2012)*.”

A class deviation is necessary since the FAR currently does not contain language that would require prime contractors to make accelerated payments to their small business subcontractors. The M/OAA Director approved a FAR class deviation in accordance with FAR 1.4 and AIDAR 701.601(a) (2) (ii) to allow Contracting Officers to use the attached new accelerated payment clause.

Unless otherwise rescinded by M/OAA, the requirements under this AAPD, shall remain in effect until July 11, 2013, unless prior to that time, FAR deviation clause 52.232-99 has been incorporated into the FAR or AIDAR.

4. POINT OF CONTACT:

USAID Contracting Officers may direct their questions about this AAPD to Rosella Marshall, M/OAA/P, at (202) 567-4675 or email: romarshall@usaid.gov.

Attachment:

Attachment – FAR clause 52.232-99 titled “*Providing Accelerated Payment to Small Business Subcontractors (Deviation) (Aug 2012)*”

Attachment 1

**FAR Clause 52.232-99, Providing Accelerated Payment to Small Business Subcontractors
(DEVIATION)**

The contracting officer shall insert the following clause in all solicitations and resultant contracts.

**PROVIDING ACCELERATED PAYMENT TO SMALL BUSINESS SUBCONTRACTORS
(DEVIATION) (AUG 2012)**

This clause implements the temporary policy provided by OMB Policy Memorandum M- 12-16, Providing Prompt Payment to Small Business Subcontractors, dated July 11, 2012.

(a) Upon receipt of accelerated payments from the Government, the contractor is required to make accelerated payments to small business subcontractors to the maximum extent practicable after receipt of a proper invoice and all proper documentation from the small business subcontractor.

(b) Include the substance of this clause, including this paragraph (b), in all subcontracts with small business concerns.

(c) The acceleration of payments under this clause does not provide any new rights under the Prompt Payment Act.

End of AAPD