

ALERT

Pedal to the Metal: GSA Accelerates Accelerated Payments for Small Business Prime Contractors

April 17, 2020

WHAT: The General Services Administration (GSA) issued a class deviation to allow GSA to provide accelerated payments to small business contractors, with a goal of 15 days after receipt of a proper invoice. With this class deviation, GSA accelerated its own implementation of Section 873 of the National Defense Authorization Act for Fiscal Year 2020 (2020 NDAA), which expands the Federal Acquisition Regulation's (FAR) provisions for accelerated payments to prime contractors subcontracting with small business concerns to also include prime contractors that are small businesses.

According to GSA, this class deviation will 1) provide accelerated payments to prime contractors that are small businesses; 2) establish a goal of payment 15 days after receipt of a proper invoice; and 3) prohibit prime contractors from charging consideration or a fee to subcontractors when issuing accelerated payments.

WHEN: The GSA issued the class deviation on April 10, 2020.

WHAT DOES IT MEAN FOR INDUSTRY: The FAR currently provides for agencies to make accelerated payments only to benefit small business subcontractors. However, by implementing Section 873 through its new class deviation, the GSA is providing prime contractors—both large businesses that subcontract with small businesses and small business primes—with the opportunity to secure agreement with GSA for faster payment. As the latest open FAR cases report identifies that the broader implementation of Section 873 is still in the drafting stages, this opportunity is available much earlier than anticipated.

Practice Areas

Government Contracts
Small Businesses

This issuance continues a trend—by GSA and agencies more broadly—towards early adoption of significant, business-friendly provisions of recent National Defense Authorization Acts through class deviations. For example, in March 2020, the U.S. Department of Defense (DOD) issued a class deviation implementing immediately Section 823 of the 2020 NDAA, which loosens the justification and approval requirements for sole-source contracts awarded by the DOD under the U.S. Small Business Administration's (SBA) 8(a) program. Under Section 823 and the class deviation, contracting officers are not required to execute a justification and obtain approval for DOD-awarded sole-source 8(a) contracts under \$100,000,000. Again, implementation of Section 823 through the Defense Federal Acquisition Regulation Supplement (DFARS) is still in the drafting stages.

Industry should continue to monitor the latest developments in acquisition effected through class deviation and seek opportunities for new business-friendly provisions to be included in contracts or leveraged into new contract awards.