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FROM THE AMERICAN PEOPLE

Acquisition & Assistance Policy Directive (AAPD)

From the Director, Office of Acquisition & Assistance Issued: June 18, 2020

AAPD 20-05

COVID 19 Pandemic Flexibilities for Payments and Reduce Administrative Burden

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

Applicable to: Existing awards; Modification required

No later than

As noted in guidance below

All applicable RFPs and new awards issued after the effective date of this AAPD.

Other

Precedes change to:

AIDAR Part(s) Appendix

USAID Automated Directives System (ADS)

Code of Federal Regulations

Federal Acquisition Regulations

28, 32.501, 32.8, and 42

No change to regulations

New or Revised Provision/Clause Provided Herein: If checked, scheduled update to GLAAS: As noted in guidance below

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Senior Procurement Executive

I.PURPOSE:

The purpose of this AAPD is to inform Acquisition and Assistance professionals of the issuance of a class deviation (Deviation #: M/OAA-DEV-FAR-20-06c) from the Federal Acquisition Regulation (FAR) aimed at maintaining the resiliency of our contractors by providing better cash flow and reducing some administrative burdens. This deviation is effective through June 18, 2022 unless rescinded earlier.

This AAPD includes the following revisions to the FAR:

1. Customary Progress Payment Rates Based on Costs

FAR Section 32.501 and clause 52.232-16, Progress Payments are revised to allow for an increase to the progress payment rates to contractors who have cost reimbursement contracts.

2. Revisions to eliminate hard copy original documents, signatures, notarization, seals on bonds and other seals when:

- Obtaining financial protection against losses under contracts per FAR part 28;
- Processing assignment of claims per FAR subpart 32.8;
- Executing novation agreements and change-of-name agreements per FAR part 42

Note: These revisions and flexibilities will only be available during the COVID-19 pandemic and may be rescinded prior to the time specified above. **Unlike most other deviations, when this AAPD is rescinded and archived, deviated FAR clause(s) cannot remain in the awards. COs will have to modify the awards again to revert to the original FAR clause.** More detailed guidance will be provided when this AAPD is archived.

REQUIRED ACTION(s):

1. Customary Progress Payment Rates Based on Costs:

Modification of Existing Contracts:

The CO, at the request of the contractor, may modify the award to replace the existing FAR clause 52.232-16 Progress Payments (or Alternate 1), with the deviated version of the clause in Attachment 1, which allows the contractor to be reimbursed a higher percentage of costs.

If the CO modifies an award to replace the existing FAR clause with the deviated version, the CO must incorporate the following statement in the body of the modification (SF-30):

“FAR clause 52.232-16 Progress Payments [*or Alternate 1*] is being replaced with this deviated version to allow for temporary relief during the COVID-19 pandemic. USAID may rescind and replace this deviated clause with the standard FAR clause at a later date.”

New Awards:

The CO may use the deviated version of the clause in Attachment 1, FAR clause 52.232-16 Progress Payments (or Alternate 1), instead of existing FAR clause, which allows the contractor to be reimbursed a higher percentage of costs.

If the CO uses the deviated clause in a new award, the CO must include the following statement in Section F, special contract requirements:

“The deviated version of FAR clause 52.232-16 Progress Payments *[or Alternate 1]* is incorporated into this award to allow for temporary relief during the COVID-19 pandemic. USAID may rescind and replace this deviated clause with the standard FAR clause at a later date.”

2. Revisions to eliminate hard copy original documents, signatures, notarization, seals on bonds and other seals.

Solicitations and Resulting Contracts:

(1) When an RFP and the resulting contract contain requirements for bonds or other financial protections per FAR part 28, COs must include the deviated text (Attachment 1) from the following clauses: (i) 52.228-11, Pledges of Assets; (ii) 52.228-15, Performance and Payment Bonds—Construction; and (iii) 52.228-16, Performance and Payment Bonds—Other than Construction.

If the CO uses the deviated clause in the solicitation and award, the CO must include the following statement in Section F, special contract requirements:

“The deviated version of FAR clause *[insert appropriate clause (number and name) here]* is incorporated into this award to allow for temporary relief during the COVID-19 pandemic. USAID may rescind and replace this deviated clause with the standard FAR clause at a later date.”

(2) When processing assignment of claims per FAR subpart 32.8, COs are permitted to accept electronically signed documents and a copy of the assignment instrument as outlined in the FAR deviated text included in Attachment 2.

(3) When executing novation agreements and change-of-name agreements per FAR part 42, COs are permitted to accept copies of required documentation and contractors are not required to use a seal. Refer to FAR deviated text in Attachment 2 for additional information.

Modification of Existing Contracts:

If requested by the contractors, COs may modify contracts to include the applicable language in Attachment 1.

If the CO modifies an award to replace the existing FAR clause with the deviated version, the CO must incorporate the following statement in the body of the modification (SF-30):

“FAR clause *[insert appropriate clause (number and name) here]* is being replaced with this deviated version to allow for temporary relief during the COVID-19 pandemic. USAID may rescind and replace this deviated clause with the standard FAR clause at a later date.”

II.BACKGROUND:

1. Customary Progress Payment Rates Based on Costs:

Currently, FAR 32.501 allows progress payments to large businesses of up to 80 percent of total costs of performing a contract. The rate for small business concerns is 85 percent. This FAR class deviation authorizes USAID to increase the progress payment rate to 90 percent for work performed by large business concerns, and 95 percent for work performed by small business concerns. This will allow contractors to have better cash for work performed to keep their business sustainable during the COVID-19 pandemic. This effort is critical to those small businesses that contract with USAID as they are more vulnerable to economic disruptions.

Note: Adjustments on liquidations are not required for previously delivered items; financing limitations will be accomplished through Section III of the Standard Form 1443.

2. Revisions to eliminate hard copy original documents, signatures, notarization, seals on bonds and other seals.

During times of emergency or crisis such as COVID-19, it becomes difficult or impossible to obtain the services of notaries public. Equally difficult is for vendors and sureties to produce manual signatures and provide their seals on bonds. Additionally, the importance of original and notarized documents has dwindled in this electronic age.

These FAR revisions will allow greater flexibility by eliminating the requirement for hard copy original documents, original signatures, notarization, seals on bonds and other scenarios confronting the acquisition workforce in connection with the COVID-19 pandemic. These flexibilities are available for use:

When obtaining financial protection against losses under contracts per FAR part 28:

- 28.101-3(c) allowing the use of electronic means is moved to an added section at 28.002 to apply the same flexibilities to all of part 28;
- 28.106-1 adding an exception to stamping a corporate seal on bonds;
- 28.106-8 allowing a signed statement by the contractor that the payment is due and owed;
- 28.203(b) not requiring the Standard Form 28 to be sworn and notarized;
- 28.203-5 allowing a written authorization of the release signed by the surety saying that it approves of such release;
- 52.228-11, Pledges of Assets, not requiring the Standard Form 28 to be sworn and notarized;
- 52.228-15, Performance and Payment Bonds—Construction, not requiring the seal when executing the standard forms required by the clause; and
- 52.228-16, Performance and Payment Bonds—Other than Construction, not requiring the seal when executing the standard forms required by the clause.

When processing assignment of claims per FAR subpart 32.8:

- 32.802(e) allowing the use of a copy of the assignment instrument; and
- 32.805(a), (b), (c), and (e) allowing the use of electronically signed documents and a copy of the assignment instrument.

When executing novation agreements and change-of-name agreements per FAR part 42:

- 42.1204(f) allowing the use of a copy of the documents;
- 42.1204(i) not requiring a seal on the Novation Agreement; and
- 42.1205(b) not requiring a seal on the Change-of-Name Agreement.

III. GUIDANCE

1. Customary Progress Payment Rates Based on Costs:

The CO must consider if it is in the best interest of the Government and the contractor to modify the award to replace clause (52.232-16 Progress Payments) with this deviated version. Note that as this is a temporary flexibility authorized during the COVID-19 pandemic, if the deviated clause is incorporated into an award through a modification, the CO will have to modify the award again to revert to the original FAR clause, when this AAPD is rescinded.

If the CO modifies the award to use the deviated version of this clause in the award, the CO must select the deviated clause 52.232-16 from the AAPD Acquisition Clause database in GLAAS and not from the FAR Clause template.

2. Revisions to eliminate hard copy original documents, signatures, notarization, seals on bonds and other seals:

If the CO is using the deviated version of the clause(s) relating to the above (52.228-11, Pledges of Assets; 52.228-15, Performance and Payment Bonds—Construction; or 52.228-16, Performance and Payment Bonds—Other than Construction), the CO must select the clause(s) from the AAPD Acquisition Clause database in GLAAS and not from the FAR Clause template.

3. General:

The above payment relief and flexibilities are implemented to provide COVID-specific relief. With the issuance of this AAPD, the M/OAA Director will announce these flexibilities to the contractor community. COs are also encouraged to share the guidance in this AAPD with contractors, to make them aware of these flexibilities. Upon requests from the contractors, the COs may modify the award to incorporate the revised FAR language into the award. The CO should modify the award at the earliest convenience and may combine these revisions with other pending modifications for efficiency.

4. Reporting:

Use of the clauses in this class deviation will be tracked in GLASS. However, if the award/modification and clauses are not generated in GLAAS, the CO must track the use of these deviated clauses in accordance with the requirements of AIDAR 701-470(f) and submit a report to the A&A Mailbox at policymailbox@usaid.gov, with a copy to Jacqueline Lewis-Taylor at jltaylor@usaid.gov.

IV. POINT OF CONTACT:

USAID Contracting Officers may direct their questions about this AAPD to M/OAA/Policy at [“Ask-MOAA-Policy”](#).

V. ATTACHMENTS:

Attachment 1 – Text of Deviated Clauses

Attachment 2 – FAR Deviation Text

Attachment 1 –Text of Deviated Clauses:

1. Customary Progress Payment Rates Based on Costs

52.232-16 Progress Payments.

(Deviation #: M/OAA-DEV-FAR-20-06c)

As prescribed in 32.502-4(a), insert the following clause:

52.232-16 Progress Payments (Apr 2012) [(DEVIATION JUN 2020)]

The Government will make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts of \$2,500 or more approved by the Contracting Officer, under the following conditions:

(a) Computation of amounts.

(1) Unless the Contractor requests a smaller amount, the Government will compute each progress payment as **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. The Contracting Officer will consider cost of money that would be allowable under FAR 31.205-10 as an incurred cost for progress payment purposes.

(2) The amount of financing and other payments for supplies and services purchased directly for the contract are limited to the amounts that have been paid by cash, check, or other forms of payment, or that are determined due and will be paid to subcontractors-

(i) In accordance with the terms and conditions of a subcontract or invoice; and

(ii) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government.

(3) The Government will exclude accrued costs of Contractor contributions under employee pension plans until actually paid unless-

(i) The Contractor's practice is to make contributions to the retirement fund quarterly or more frequently; and

(ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor's total costs for progress payments until paid).

(4) The Contractor shall not include the following in total costs for progress payment purposes in paragraph (a)(1) of this clause:

(i) Costs that are not reasonable, allocable to this contract, and consistent with sound and generally accepted accounting principles and practices.

(ii) Costs incurred by subcontractors or suppliers.

(iii) Costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs.

(iv) Payments made or amounts payable to subcontractors or suppliers, except for-

(A) Completed work, including partial deliveries, to which the Contractor has acquired title; and

(B) Work under cost-reimbursement or time-and-material subcontracts to which the Contractor has acquired title.

(5) The amount of unliquidated progress payments may exceed neither (i) the progress payments made against incomplete work (including allowable unliquidated progress payments to subcontractors) nor (ii) the value, for progress payment purposes, of the incomplete work. Incomplete work shall be considered to be the supplies and services required by this contract, for which delivery and invoicing by the Contractor and acceptance by the Government are incomplete.

(6) The total amount of progress payments shall not exceed **90** percent of the total contract price.

(7) If a progress payment or the unliquidated progress payments exceed the amounts permitted by paragraphs (a)(4) or (a)(5) of this clause, the Contractor shall repay the amount of such excess to the Government on demand.

(8) Notwithstanding any other terms of the contract, the Contractor agrees not to request progress payments in dollar amounts of less than \$2,500. The Contracting Officer may make exceptions.

(9) The costs applicable to items delivered, invoiced, and accepted shall not include costs in excess of the contract price of the items.

(b) *Liquidation.* Except as provided in the Termination for Convenience of the Government clause, all progress payments shall be liquidated by deducting from any payment under this contract, other than advance or progress payments, the unliquidated progress payments, or **90** percent of the amount invoiced, whichever is less. The Contractor shall repay to the Government any amounts required by a retroactive price reduction, after computing liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly. The Government reserves the right to unilaterally change from the ordinary liquidation rate to an alternate rate when deemed appropriate for proper contract financing.

(c) *Reduction or suspension.* The Contracting Officer may reduce or suspend progress payments, increase the rate of liquidation, or take a combination of these actions, after finding on substantial evidence any of the following conditions:

(1) The Contractor failed to comply with any material requirement of this contract (which includes paragraphs (f) and (g) of this clause).

(2) Performance of this contract is endangered by the Contractor's—

(i) Failure to make progress; or

(ii) Unsatisfactory financial condition.

(3) Inventory allocated to this contract substantially exceeds reasonable requirements.

(4) The Contractor is delinquent in payment of the costs of performing this contract in the ordinary course of business.

(5) The fair value of the undelivered work is less than the amount of unliquidated progress payments for that work.

(6) The Contractor is realizing less profit than that reflected in the establishment of any alternate liquidation rate in paragraph (b) of this clause, and that rate is less than the progress payment rate stated in paragraph (a)(1) of this clause.

(d) Title. (1) Title to the property described in this paragraph (d) shall vest in the Government. Vestiture shall be immediately upon the date of this contract, for property acquired or produced

before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this contract.

(2) "Property," as used in this clause, includes all of the below-described items acquired or produced by the Contractor that are or should be allocable or properly chargeable to this contract under sound and generally accepted accounting principles and practices.

(i) Parts, materials, inventories, and work in process;

(ii) Special tooling and special test equipment to which the Government is to acquire title;

(iii) Nondurable (*i.e.*, noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids, title to which would not be obtained as special tooling under paragraph (d)(2)(ii) of this clause; and

(iv) Drawings and technical data, to the extent the Contractor or subcontractors are required to deliver them to the Government by other clauses of this contract.

(3) Although title to property is in the Government under this clause, other applicable clauses of this contract; *e.g.*, the termination clauses, shall determine the handling and disposition of the property.

(4) The Contractor may sell any scrap resulting from production under this contract without requesting the Contracting Officer's approval, but the proceeds shall be credited against the costs of performance.

(5) To acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Contractor must obtain the Contracting Officer's advance approval of the action and the terms. The Contractor shall (i) exclude the allocable costs of the property from the costs of contract performance, and (ii) repay to the Government any amount of unliquidated progress payments allocable to the property. Repayment may be by cash or credit memorandum.

(6) When the Contractor completes all of the obligations under this contract, including liquidation of all progress payments, title shall vest in the Contractor for all property (or the proceeds thereof) not-

(i) Delivered to, and accepted by, the Government under this contract; or

(ii) Incorporated in supplies delivered to, and accepted by, the Government under this contract and to which title is vested in the Government under this clause.

(7) The terms of this contract concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this clause.

(e) *Risk of loss.* Before delivery to and acceptance by the Government, the Contractor shall bear the risk of loss for property, the title to which vests in the Government under this clause, except to the extent the Government expressly assumes the risk. The Contractor shall repay the Government an amount equal to the unliquidated progress payments that are based on costs allocable to property that is lost (see 45.101).

(f) *Control of costs and property.* The Contractor shall maintain an accounting system and controls adequate for the proper administration of this clause.

(g) *Reports, forms, and access to records.* (1) The Contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information (including estimates to complete) reasonably requested by the Contracting Officer for the administration of this clause. Also, the

Contractor shall give the Government reasonable opportunity to examine and verify the Contractor's books, records, and accounts.

(2) The Contractor shall furnish estimates to complete that have been developed or updated within six months of the date of the progress payment request. The estimates to complete shall represent the Contractor's best estimate of total costs to complete all remaining contract work required under the contract. The estimates shall include sufficient detail to permit Government verification.

(3) Each Contractor request for progress payment shall:

(i) Be submitted on Standard Form 1443, Contractor's Request for Progress Payment, or the electronic equivalent as required by agency regulations, in accordance with the form instructions and the contract terms; and

(ii) Include any additional supporting documentation requested by the Contracting Officer.

(h) *Special terms regarding default.* If this contract is terminated under the Default clause, (i) the Contractor shall, on demand, repay to the Government the amount of unliquidated progress payments and (ii) title shall vest in the Contractor, on full liquidation of progress payments, for all property for which the Government elects not to require delivery under the Default clause. The Government shall be liable for no payment except as provided by the Default clause.

(i) Reservations of rights.

(1) No payment or vesting of title under this clause shall-

(i) Excuse the Contractor from performance of obligations under this contract; or

(ii) Constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government's rights and remedies under this clause-

(i) Shall not be exclusive but rather shall be in addition to any other rights and remedies provided by law or this contract; and

(ii) Shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(j) *Financing payments to subcontractors.* The financing payments to subcontractors mentioned in paragraphs (a)(1) and (a)(2) of this clause shall be all financing payments to subcontractors or divisions, if the following conditions are met:

(1) The amounts included are limited to-

(i) The unliquidated remainder of financing payments made; plus

(ii) Any unpaid subcontractor requests for financing payments.

(2) The subcontract or interdivisional order is expected to involve a minimum of approximately 6 months between the beginning of work and the first delivery; or, if the subcontractor is a small business concern, 4 months.

(3) If the financing payments are in the form of progress payments, the terms of the subcontract or interdivisional order concerning progress payments-

- (i) Are substantially similar to the terms of this clause for any subcontractor that is a large business concern, or this clause with its Alternate I for any subcontractor that is a small business concern;
 - (ii) Are at least as favorable to the Government as the terms of this clause;
 - (iii) Are not more favorable to the subcontractor or division than the terms of this clause are to the Contractor;
 - (iv) Are in conformance with the requirements of FAR 32.504(e); and
 - (v) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if-
 - (A) The Contractor defaults; or
 - (B) The subcontractor becomes bankrupt or insolvent.
- (4) If the financing payments are in the form of performance-based payments, the terms of the subcontract or interdivisional order concerning payments-
- (i) Are substantially similar to the Performance-Based Payments clause at FAR 52.232-32 and meet the criteria for, and definition of, performance-based payments in FAR part 32;
 - (ii) Are in conformance with the requirements of FAR 32.504(f); and
 - (iii) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if-
 - (A) The Contractor defaults; or
 - (B) The subcontractor becomes bankrupt or insolvent.
- (5) If the financing payments are in the form of commercial item financing payments, the terms of the subcontract or interdivisional order concerning payments-
- (i) Are constructed in accordance with FAR 32.206(c) and included in a subcontract for a commercial item purchase that meets the definition and standards for acquisition of commercial items in FAR parts 2 and 12;
 - (ii) Are in conformance with the requirements of FAR 32.504(g); and
 - (iii) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if-
 - (A) The Contractor defaults; or
 - (B) The subcontractor becomes bankrupt or insolvent.
- (6) If financing is in the form of progress payments, the progress payment rate in the subcontract is the customary rate used by the contracting agency, depending on whether the subcontractor is or is not a small business concern.
- (7) Concerning any proceeds received by the Government for property to which title has vested in the Government under the subcontract terms, the parties agree that the proceeds shall be applied to reducing any unliquidated financing payments by the Government to the Contractor under this contract.
- (8) If no unliquidated financing payments to the Contractor remain, but there are unliquidated financing payments that the Contractor has made to any subcontractor, the Contractor shall be subrogated to all the rights the Government obtained through the terms required by this clause to be in any subcontract, as if all such rights had been assigned and transferred to the Contractor.

(9) To facilitate small business participation in subcontracting under this contract, the Contractor shall provide financing payments to small business concerns, in conformity with the standards for customary contract financing payments stated in FAR 32.113. The Contractor shall not consider the need for such financing payments as a handicap or adverse factor in the award of subcontracts.

(k) *Limitations on undefinitized contract actions.* Notwithstanding any other progress payment provisions in this contract, progress payments may not exceed 80 percent of costs incurred on work accomplished under undefinitized contract actions. A “contract action” is any action resulting in a contract, as defined in subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes. This limitation shall apply to the costs incurred, as computed in accordance with paragraph (a) of this clause, and shall remain in effect until the contract action is definitized. Costs incurred which are subject to this limitation shall be segregated on Contractor progress payment requests and invoices from those costs eligible for higher progress payment rates. For purposes of progress payment liquidation, as described in paragraph (b) of this clause, progress payments for undefinitized contract actions shall be liquidated at 80 percent of the amount invoiced for work performed under the undefinitized contract action as long as the contract action remains undefinitized. The amount of unliquidated progress payments for undefinitized contract actions shall not exceed 80 percent of the maximum liability of the Government under the undefinitized contract action or such lower limit specified elsewhere in the contract. Separate limits may be specified for separate actions.

(l) *Due date.* The designated payment office will make progress payments on the _____ [Contracting Officer insert date as prescribed by agency head; if not prescribed, insert “30th”] day after the designated billing office receives a proper progress payment request. In the event that the Government requires an audit or other review of a specific progress payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date. Progress payments are considered contract financing and are not subject to the interest penalty provisions of the Prompt Payment Act.

(m) *Progress payments under indefinite-delivery contracts.* The Contractor shall account for and submit progress payment requests under individual orders as if the order constituted a separate contract, unless otherwise specified in this contract.

(End of clause)

Alternate I (Mar2000) (DEVIATION JUN 2020). If the contract is with a small business concern, change each mention of the progress payment and liquidation rates excepting paragraph (k) to the customary rate of **95** percent for small business concerns (see FAR 32.501-1).

2. Revisions to eliminate hard copy original documents, signatures, notarization, seals on bonds and other seals:

52.228-11 Pledges of Assets.

(Deviation #: M/OAA-DEV-FAR-20-06c)

As prescribed in 28.203-6 , insert the following clause:

52.228-11 Pledges of Assets (Aug 2018) [(DEVIATION JUN 2020)]

(a) Offerors shall obtain from each person acting as an individual surety on a bid guarantee, a performance bond, or a payment bond-

(1) Pledge of assets; and

(2) Standard Form 28, Affidavit of Individual Surety, **except that the words “being duly sworn, depose and say” on the Standard Form 28 are being replaced with the word “affirm” and the Standard Form 28 is not required to be sworn and notarized in block 12.**

(b) Pledges of assets from each person acting as an individual surety shall be in the form of-

(1) Evidence of an escrow account containing cash, certificates of deposit, commercial or Government securities, or other assets described in FAR 28.203-2(except see 28.203-2(b)(2) with respect to Government securities held in book entry form); and/or

(2) A recorded lien on real estate. The offeror will be required to provide-

(i) A mortgagee title insurance policy, in an insurance amount equal to the amount of the lien, or other evidence of title that is consistent with the requirements of Section 2 of the United States Department of Justice Title Standards at hd. This title evidence must show fee simple title vested in the surety along with any concurrent owners; whether any real estate taxes are due and payable; and any recorded encumbrances against the property, including the lien filed in favor of the Government as required by FAR 28.203-3(d);

(ii) Evidence of the amount due under any encumbrance shown in the evidence of title;

(iii) A copy of the current real estate tax assessment of the property or a current appraisal dated no earlier than 6 months prior to the date of the bond, prepared by a professional appraiser who certifies that the appraisal has been conducted in accordance with the generally accepted appraisal standards as reflected in the Uniform Standards of Professional Appraisal Practice, as promulgated by the Appraisal Foundation.

(End of clause)

52.228-15 Performance and Payment Bonds-Construction.

(Deviation #: M/OAA-DEV-FAR-20-06c)

As prescribed in 28.102-3(a), insert a clause substantially as follows:

52.228-15 Performance and Payment Bonds-Construction (Oct 2010) [(DEVIATION JUN 2020)]

(a) *Definitions.* As used in this clause-

Original contract price means the award price of the contract; or, for requirements contracts, the price payable for the estimated total quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

(b) *Amount of required bonds.* Unless the resulting contract price is \$150,000 or less, the successful offeror shall furnish performance and payment bonds to the Contracting Officer as follows:

(1) *Performance bonds (Standard Form 25, except that a seal is not required).* The penal amount of performance bonds at the time of contract award shall be 100 percent of the original contract price.

(2) *Payment Bonds (Standard Form 25A, except that a seal is not required).* The penal amount of payment bonds at the time of contract award shall be 100 percent of the original contract price.

(3) Additional bond protection.

(i) The Government may require additional performance and payment bond protection if the contract price is increased. The increase in protection generally will equal 100 percent of the increase in contract price.

(ii) The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) *Furnishing executed bonds.* The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within the time period specified in the Bid Guarantee provision of the solicitation, or otherwise specified by the Contracting Officer, but in any event, before starting work.

(d) *Surety or other security for bonds.* The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the *Federal Register* or may be obtained from the:

U.S. Department of the Treasury,
Financial Management,
Service Surety Bond Branch,
3700 East West Highway,
Room 6 F01,
Hyattsville, MD 20782.
Or via the internet at <http://www.fms.treas.gov/c570/>.

(e) *Notice of subcontractor waiver of protection* (40 U.S.C. 3133(c)). Any waiver of the right to sue on the payment bond is void unless it is in writing, signed by the person whose right is waived, and executed after such person has first furnished labor or material for use in the performance of the contract.

(End of clause)

52.228-16 Performance and Payment Bonds-Other Than Construction.

(Deviation #: M/OAA-DEV-FAR-20-06c)

As prescribed in 28.103-4 , insert a clause substantially as follows:

**52.228-16 Performance and Payment Bonds-Other Than Construction (Nov 2006)
[(DEVIATION JUN 2020)]**

(a) *Definitions.* As used in this clause-

“Original contract price” means the award price of the contract or, for requirements contracts, the price payable for the estimated quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

(b) The Contractor shall furnish a performance bond (Standard Form 1418, **except that a seal is not required**) for the protection of the Government in an amount equal to _____ percent of the original contract price and a payment bond Standard Form 1416, **except that a seal is not required**) in an amount equal to _____ percent of the original contract price.

(c) The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within _____ days, but in any event, before starting work.

(d) The Government may require additional performance and payment bond protection if the contract price is increased. The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bonds or to obtain additional bonds.

(e) The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the *Federal Register*, or may be obtained from the:

U.S. Department of the Treasury,
Financial Management Service,
Surety Bond Branch,
3700 East West Highway,
Room 6 F01
Hyattsville, MD 20782.
Or via the internet at <http://www.fms.treas.gov/c570/>.

(End of clause)

Alternate 1 (July 2000) (Deviation JUN 2020). As prescribed in 28.103-4, substitute the following paragraphs (b) and (d) for paragraphs (b) (d) of the basic clause:

(b) The Contractor shall furnish a performance bond (Standard Form 1418, **except that a seal is**

not required) for the protection of the Government in an amount equal to _____ percent of the original contract price.

(d) The Government may require additional performance bond protection if the contract price is increased. The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

Attachment 2 – FAR Deviation Text:

1. “Customary Progress Payment Rates Based on Costs”

(Deviation #: M/OAA-DEV-FAR-20-06c)

PART 32-CONTRACT FINANCING

* * * * *

Subpart 32.5—Progress Payments Based on Costs

* * * * *

32.501-1 Customary progress payment rates.

(a) The customary progress payment rate is ~~80~~ [90] percent, applicable to the total costs of performing the contract. The customary rate for contracts with small business concerns is ~~85~~ [95] percent.

* * * * *

(Deviation #: M/OAA-DEV-FAR-20-06c)

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

* * * * *

Subpart 52.2—Text of Provisions and Clauses

* * * * *

52.232-16 Progress Payments.

As prescribed in 32.502-4(a), insert the following clause: PROGRESS PAYMENTS (APR 2012) [DEVIATION (JUN 2020)]

The Government will make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts of \$2,500 or more approved by the Contracting Officer, under the following conditions:

(a) *Computation of amounts.* (1) Unless the Contractor requests a smaller amount, the Government will compute each progress payment as ~~80~~ [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. The Contracting Officer will consider cost of money that would be allowable under FAR 31.205-10 as an incurred cost for progress payment purposes.

* * *

(6) The total amount of progress payments shall not exceed ~~80~~ [90] percent of the total contract price.

* * * * *

(b) *Liquidation.* Except as provided in the Termination of Convenience of the Government clause, all progress payments shall be liquidated by deducting from any payment under this contract, other than

advance or progress payments, the unliquidated progress payments, or ~~80~~ [90] percent of the amount invoiced, whichever is less. The Contractor shall repay to the Government any amounts required by a retroactive price reduction, after computing liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly. The Government reserves the right to unilaterally change from the ordinary liquidation rate to an alternate rate when deemed appropriate for proper contract financing.

* * * * *

Alternate I (Mar 2000) [DEVIATION (JUN 2020)]. If the contract is with a small business concern, change each mention of the progress payment and liquidation rates excepting paragraph(k) to the customary rate of ~~85~~ [95] percent for small business concerns (see FAR 32.501-1).

* * * * *

Attachment 2 – FAR Deviation Text continued:

2. “Revisions to eliminate hard copy original documents, signatures, notarization, seals on bonds and other seals”

Additions are **[bolded and bracketed]**, deletions are ~~struck through~~.
FAR text unchanged shown as asterisks *** or *****

(Deviation #: M/OAA-DEV-FAR-20-06c)

* * * * *

Part 28 – Bonds and Insurance

* * * * *

[28.002 Policy.

For purposes of this part, electronic, mechanically-applied and printed signatures, seals and dates may be used and shall be considered original signatures, seals and dates, without regard to the order in which they were affixed.]

* * * * *

Subpart 28.1 – Bonds and Other Financial Protections

* * * * *

28.101-3 Authority of an attorney-in-fact for a bid bond.

* * *

~~(c) For purposes of this section, electronic, mechanically applied and printed signatures, seals and dates on the power of attorney shall be considered original signatures, seals and dates, without regard to the order in which they were affixed.~~

[(c)] ~~(d)~~ * * *

[(d)] ~~(e)~~ * * *

[(e)] ~~(f)~~ * * *

* * * * *

28.106 Administration.

* * * * *

28.106-1 Bonds and bond-related forms.

The following Standard Forms (SF’s) and Optional Forms (OF’s), shall be used, except in foreign countries, when a bid bond, performance or payment bond, or an individual surety is required. The bond forms shall be used as indicated in the instruction portion of each form[, **except that a seal is not required. For SF 28 also see 28.203(b).**]

* * * * *

28.106-8 Payment to subcontractors or suppliers.

The contracting officer will only authorize payment to subcontractors or suppliers from an ILC (or any other cash equivalent security) upon a judicial determination of the rights of the parties, a signed ~~notarized~~ statement by the contractor that the payment is due and owed, or a signed agreement between the parties as to amount due and owed.

* * * * *

Subpart 28.2 – Sureties and Other Security for Bonds

* * * * *

28.203 Acceptability of individual sureties.

* * * (b) An individual surety must execute the bond, and the unencumbered value of the assets (exclusive of all outstanding pledges for other bond obligations) pledged by the individual surety, must equal or exceed the penal amount of each bond. The individual surety shall execute the Standard Form 28[**except that the words “being duly sworn, depose and say” on the Standard Form 28 are replaced with the word “affirm” and such Standard Form 28 is not required to be sworn and notarized,**]and provide a security interest in accordance with 28.203-1. One individual surety is adequate support for a bond, provided the unencumbered value of the assets pledged by that individual surety equal or exceed the amount of the bond. An offeror may submit up to three individual sureties for each bond, in which case the pledged assets, when combined, must equal or exceed the penal amount of the bond. Each individual must accept both joint and several liability to the extent of the penal amount of the bond.* * *

* * * * *

28.203-5 Release of lien.

(a) After consultation with legal counsel, the contracting officer shall release the security interest on the individual surety’s assets using the Optional Form 90, Release of Lien on Real Property, or Optional Form 91, Release of Personal Property from Escrow, or a similar release as soon as possible consistent with the conditions in subparagraphs (a)(1) and (2) of this subsection. A surety’s assets pledged in support of a payment bond may be released to a subcontractor or supplier upon Government receipt of a Federal district court judgment, or a sworn statement by the subcontractor or supplier that the claim is correct along with a ~~notarized~~ **[written]** authorization of the release **[signed]** by the surety saying that it approves of such release.* * *

* * * * *

(Deviation #: M/OAA-DEV-FAR-20-06c)

Part 32 – Contract Financing

* * * * *

Subpart 32.8 – Assignment of Claims

* * * * *

32.802 Conditions.

* * *(e) The assignee sends a written notice of assignment together with a ~~true~~ copy of the assignment instrument to the-

- (1) Contracting officer or the agency head;
- (2) Surety on any bond applicable to the contract; and
- (3) Disbursing officer designated in the contract to make payment.

* * * * *

32.805 Procedure.

(a) Assignments.

(1) Assignments by corporations shall be-

- (i) ~~Executed~~ **[Signed]** by an authorized representative;
- (ii) ~~Attested~~ **[Signed]** by the secretary or the assistant secretary of the corporation; and
- (iii) ~~Impressed with the corporate seal or accompanied~~ **[Accompanied]** by a ~~true~~ copy of the resolution of the corporation’s board of directors authorizing the signing representative to ~~[sign]execute~~ the assignment.

* * * (3) Assignments by an individual shall be signed by that individual ~~[.]and the signature acknowledged before a notary public or other person authorized to administer oaths.~~

(b) *Filing.* The assignee shall forward **[by email or other electronic means the notice of assignment and a copy of the instrument of assignment]** to each party specified in 32.802(e) ~~[.] an original and three copies of the notice of assignment, together with one true copy of the instrument of assignment. The true copy shall be a certified duplicate or photostat copy of the original assignment.~~

(c) *Format for notice of assignment.* The following is a suggested format for use by an assignee in providing the notice of assignment required by 32.802(e).

Notice of Assignment

To: _____ [[Name, address and email address for]
~~Address to one of the parties specified in 32.802(e)].~~

This has reference to Contract No. _____ dated
_____, entered into between _____ [Contractor's name and
address] and _____ [Government agency, name of office, and
address], for _____ [Describe nature of the contract].

Monies due or to become due under the contract described above have been assigned to
the undersigned under the provisions of the Assignment of Claims Act of 1940, as amended, (31
U.S.C.3727, 41 U.S.C.6305).

A ~~true~~ copy of the instrument of assignment executed by
the Contractor on _____ [Date], is attached to ~~the~~
original [this] notice.

Payments due or to become due under this contract should be made to the
undersigned assignee.

Please ~~return to the undersigned the three enclosed copies of this notice with~~
~~appropriate notations showing the date and hour of receipt, and signed by the person~~
~~acknowledging~~ [acknowledge] receipt on behalf of the addressee [by return email or other
electronic means to the undersigned].

Very truly yours,

_____ [Name of
Assignee]

By _____ [Signature of
Signing Officer]

_____ [Title of
Signing Officer]

_____ [Address of
Assignee]

[_____ [Email Address of
Assignee]]

_____ Acknowledgement

Receipt is acknowledged of the above notice and of a copy of the instrument of assignment. They were received __ (a.m.) (p.m.) on _____, 20____.

[Signature]

[Title]

n behalf of

of Addressee of this Notice]

[Name]

* * *

(e) Release of assignment.

* * * (2) The assignee, under a further assignment or reassignment, in order to establish a right to receive payment from the Government, must ~~file with~~ [send to] the addressees listed in 32.802(e) a-

(i) Written notice of release of the contractor by the assigning financing institution;

(ii) Copy of the release instrument;

(iii) Written notice of the further assignment or reassignment; and

(iv) Copy of the further assignment or reassignment instrument.

(3) If the assignee releases the contractor from an assignment of claims under a contract, the contractor, in order to establish a right to receive payment of the balance due under the contract, must [send] ~~file~~ a written notice of release together with a ~~true~~ copy of the release of assignment instrument with [to] the addressees noted in 32.802(e).

* * * * *

(Deviation #: M/OAA-DEV-FAR-20-06c)

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

* * * * *

Subpart 42.12—Novation and Change-of-Name Agreements

* * * * *

42.1204 Applicability of novation agreements.

* * * * *

(f) Except as provided in paragraph (g) of this section, the contractor shall submit to the responsible contracting officer one copy of each of the following documents, as applicable, as the documents become available:

(1) ~~An authenticated~~ copy of the instrument effecting the transfer of assets; *e.g.*, bill of sale, certificate of merger, contract, deed, agreement, or court decree.

(2) A ~~certified~~ copy of each resolution of the corporate parties' boards of directors authorizing the transfer of assets.

(3) A ~~certified~~ copy of the minutes of each corporate party's stockholder meeting necessary to approve the transfer of assets.

(4) ~~An authenticated~~ copy of the transferee's certificate and articles of incorporation, if a corporation was formed for the purpose of receiving the assets involved in performing the Government contracts.

* * *

(i)

* * *

NOVATION
AGREEMENT

* * *

(b)* * *

* * *

(9) The contracts shall remain in full force and effect, except as modified by this Agreement. Each party has executed this Agreement as of the day and year first above written.

United States of America,

By _____

Title _____

ABC Corporation,

By _____

Title _____

— [Corporate Seal]

XYZ Corporation,

By _____

Title _____

— [Corporate Seal]

Certificate

I, _____, certify that I am the Secretary of ABC Corporation, that _____, who signed this Agreement for this corporation, was then _____ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers. Witness my hand and the seal of this corporation this day of _____ 20____.

By _____

— [Corporate Seal]

Certificate

I, _____, certify that I am the Secretary of XYZ Corporation, that _____, who signed this Agreement for this corporation, was then _____ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers. Witness my hand

~~and the seal of this corporation~~ this day of _____ 20____.

By _____

_____ [*Corporate Seal*]

* * *

42.1205 Agreement to recognize contractor’s change of name.

* * *

(b) * * *

CHANGE-OF-NAME AGREEMENT

* * *

(b) In consideration of these facts, the parties agree that-

(1) The contracts covered by this Agreement are amended by substituting the name “ABC Corporation” for the name “XYZ Corporation” wherever it appears in the contracts; and

(2) Each party has executed this Agreement as of the day and year first above written.

United States of America,

By _____

Title _____

ABC Corporation,

By _____

Title _____

_____ [*Corporate Seal*]

Certificate

I, _____, certify that I am the Secretary of ABC Corporation; that _____, who signed this Agreement for this corporation, was then _____ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers. Witness my hand ~~and the seal of this corporation~~ this ____ day of ____ 20____.

By _____ -

[Corporate Seal]

* * * * *

(Deviation #: M/OAA-DEV-FAR-20-06c)

Part 52 – Solicitation Provisions and Contract Clauses

* * * * *

52.228 [Reserved].

* * * * *

52.228-11 Pledges of Assets.

As prescribed in 28.203-6, insert the following clause: Pledges of Assets (Aug 2018)[(DEVIATION JUN 2020)]

(a) Offerors shall obtain from each person acting as an individual surety on a bid guarantee, a performance bond, or a payment bond -

(1) Pledge of assets; and

(2) Standard Form 28, Affidavit of Individual Surety[, **except that the words “being duly sworn, depose and say” on the Standard Form 28 are replaced with the word “affirm” and the Standard Form 28 is not required to be sworn and notarized in block 12.**]

(b) Pledges of assets from each person acting as an individual surety shall be in the form of - * * *

* * * * *

52.228-15 Performance and Payment Bonds-Construction.

As prescribed in 28.102-3(a), insert a clause substantially as follows:

PERFORMANCE AND PAYMENT BONDS-CONSTRUCTION (OCT2010)[(DEVIATION JUN 2020)]

* * * * *

(b) *Amount of required bonds.* Unless the resulting contract price is \$150,000 or less, the successful offeror shall furnish performance and payment bonds to the Contracting Officer as follows:

(1) *Performance bonds* (Standard Form 25[, **except that a seal is not required**]). The penal amount of performance bonds at the time of contract award shall be 100 percent of the original contract price.

(2) *Payment bonds* (Standard Form 25A[, **except that a seal is not required**]). The penal amount of payment bonds at the time of contract award shall be 100 percent of the original contract price.

(3) *Additional bond protection.*

(i) The Government may require additional performance and payment bond protection if the contract price is increased. The increase in protection generally will equal 100 percent of the increase in contract price.

(i i) The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

* * * * *

52.228-16 Performance and Payment Bonds-Other Than Construction. As prescribed in 28.103-4 , insert a clause substantially as follows:

PERFORMANCE AND PAYMENT BONDS-OTHER THAN CONSTRUCTION (NOV 2006)
[(DEVIATION JUN 2020)]

* * * * *

(b) The Contractor shall furnish a performance bond (Standard Form 1418[, **except that a seal is not required**]) for the protection of the Government in an amount equal to _____ percent of the original contract price and a payment bond Standard Form 1416[, **except that a seal is not required**]) in an amount equal to _____ percent of the original contract price.

* * * * *

Alternate I (JUL 2000)[(DEVIATION JUN 2020)]. As prescribed in 28.103-4 , substitute the following paragraphs (b) and (d) for paragraphs (b) and (d) of the basic clause:

(b) The Contractor shall furnish a performance bond (Standard Form 1418[, **except that a seal is not required**]) for the protection of the Government in an amount equal to _____ percent of the original contract price.

* * * * *