

Appendix G

PROGRESS PAYMENTS

GENERAL INSTRUCTIONS

This standard progress payments clause ("Standard Clause") is incorporated in Purchase Orders ("PO") when progress payments are authorized on the face of the PO.

When progress payments are authorized: (A) the Alternate I clause modifies the Standard Clause when the PO face identifies Supplier as a Small Business Concern; (B) The Alternate Clause II supplements the Standard Clause where flexible progress payments are authorized on the face of the order.

The progress payment rate shall be as specified on the face of the PO.

The liquidation rate shall be the same as the progress payment rate unless the PO specifies an alternate liquidation rate.

Progress payments shall be made to the Supplier when requested as work progresses, but not more frequently than monthly in amounts approved by Buyer under the following conditions:

(a) COMPUTATION OF AMOUNTS

- (1) Unless the Supplier requests a smaller amount, each progress payment shall be computed as (i) the percentage indicated, per the General Instructions, of Supplier's cumulative total costs under this Order, as shown by records maintained by the Supplier for the purpose of obtaining payment under Government Contract, plus (ii) progress payments to Supplier's subcontracts (see paragraph (j) below), all less the sum of all previous progress payments made by Buyer under this contract. Cost of money that would be allowable under 31.205-10 of the Federal Acquisition Regulation shall be deemed an incurred cost for progress payment purposes.
- (2) The following conditions apply to the timing of including costs in progress payment requests:
 - (i) The costs of supplies and services purchased by the Supplier directly for this Order may be included only after payment by cash, check, or other form of actual payment.
 - (ii) Costs for the following may be included when incurred, even if before payment, when the Supplier is not delinquent in payment of the costs of contract performance in the ordinary course of business:
 - (A) Materials used from the Supplier's stores inventory and placed in the production process for use on this contract.
 - (B) Direct labor, direct travel, and other direct in-house costs.
 - (C) Properly allocable and allowable indirect costs.
 - (iii) Accrued costs of Supplier contributions under employee pension, profit sharing, and stock ownership plans shall be excluded until actually paid unless-

- (A) The Supplier's practice is to contribute to the plans quarterly or more frequently; and
 - (B) The contribution does not remain unpaid thirty (30) days after the end of the applicable quarter or shorter payment period (any contributions remaining unpaid shall be excluded from the Supplier's total costs for progress payments until paid).
- (iv) If the contract is subject to the special transition method authorized in Cost Accounting Standard (CAS) 410, Allocation of Business Unit General and Administrative Expense to Final Cost Objective, General and Administrative expenses (G&A) shall not be included in progress payment requests until the suspense account prescribed in CAS 410 is less than -
- (A) Five million dollars (\$5 million); or
 - (B) The value of the work-in-progress inventories under contracts entered into after the suspense account was established (only a pro rata share of the G&A allocable to the excess of the inventory over the suspense account value is includable in progress payment requests under this contract).
- (3) The Supplier shall not include the following in total costs for progress payment purposes in paragraph (a)(1)(i) above:
- (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 Supplier has acquired title; and
 - (B) Work under cost-reimbursement or time-and-material subcontracts to which the Supplier has acquired title.
- (4) 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 Supplier and acceptance by Buyer are incomplete.
- (5) The total amount of progress payments shall not exceed the percentage indicated, per the General Instructions, of the total contract price.
- (6) If a progress payment or the unliquidated progress payments exceed the amounts permitted by paragraphs (a)(4) or (5) above, the Supplier shall repay the amount of such excess to Buyer on demand.

(b) LIQUIDATION

Except as provided in the Termination for Convenience 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 the percentage indicated, per the General

Instructions, of the amount invoiced, whichever is less. The Supplier shall repay to Buyer 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. Buyer 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

Buyer 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 Supplier failed to comply with any material requirement of this contract (which includes paragraphs (f) and (g) below).
- (2) Performance of this contract is endangered by the Supplier's (i) Failure to make progress or (ii) unsatisfactory financial condition.
- (3) Inventory allocated to this contract substantially exceeds reasonable requirements.
- (4) The Supplier is delinquent in payment of the costs of performing this contract in the ordinary course of business.
- (5) The unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this contract.
- (6) The Supplier is realizing less profit than that reflected in the establishment of any alternate liquidation rate in paragraph (b) above, and that rate is less than the progress payment rate stated in subparagraph (a)(1) above.

(d) TITLE

- (1) Title to the property described in this paragraph (d) shall vest in the Government. Investiture shall be immediately upon the date of this contract, for property acquired or produced before that date.
- (2) "Property," as used in this clause, includes all of the below-described items acquired or produced by the Supplier 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 under any other clause of this contract;
 - (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) above, and
 - (iv) Drawings and technical data, to the extent the Supplier or subcontractors are required to deliver them to the Government or Buyer 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 or special tooling clauses, shall determine the handling and disposition of the property.

- (4) The Supplier may sell any scrap resulting from production under this contract without requesting Buyer'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 Supplier must obtain Buyer's advance approval of the action and the terms. The Supplier shall (i) Exclude the allocable costs of the property from the costs of contract performance, and (ii) repay to Buyer any amount of unliquidated progress payments allocable to the property. Repayment may be by cash or credit memorandum.
- (6) When the Supplier completes all of the obligations under this contract, including liquidation of all progress payments, title shall vest in the Supplier or Buyer (in accordance with the terms of this contract) for all property (or the proceeds thereof) not -
 - (i) Delivered to, and accepted by, Buyer under this contract or
 - (ii) Incorporated in supplies delivered to, and accepted by, Buyer 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 Buyer, the Supplier 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 Supplier shall repay Buyer an amount equal to the unliquidated progress payments that are based on costs allocable to property that is damaged, lost, stolen, or destroyed.

(f) CONTROL OF COSTS AND PROPERTY

The Supplier shall maintain an accounting system and controls adequate for the proper administration of this clause.

(g) REPORTS AND ACCESS TO RECORDS

The Supplier shall promptly furnish reports, certificates, financial statements, and other pertinent information reasonably requested by Buyer for the administration of this clause. Also, the Supplier shall give the Government and Buyer reasonable opportunity to examine and verify the Supplier's books, records, and accounts.

(h) SPECIAL TERMS REGARDING DEFAULT

If this contract is terminated under the Default clause: (i) The Supplier shall, on demand, repay to Buyer the amount of unliquidated progress payments and (ii) title shall vest in the Supplier or Buyer (in accordance with the terms of this contract) on full liquidation of progress payments for all property for which Buyer elects not to require delivery under the Default clause. Buyer shall be liable for no payment except as provided by the Default clause.

(i) RESERVATION OF RIGHTS

(1) No payment or vesting of title under this clause shall: (i) Excuse the Supplier from performance of obligations under this contract or (ii) constitute a waiver of any of the rights to remedies of the parties under the contract.

- (2) The Government's and Buyer'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 or Buyer.

(j) PROGRESS PAYMENTS TO SUBCONTRACTORS

The amounts mentioned in (a)(1)(ii) above shall be all progress payments to subcontractors of divisions, if the following conditions are met:

- (1) The amounts included are limited to (i) The unliquidated remainder of progress payments made plus (ii) for small business concerns any unpaid subcontractor requests for progress payments that the Supplier has approved for current payment in the ordinary course of business.
- (2) The subcontract or interdivisional order is expected to involve a minimum of approximately six (6) months between the beginning of work and the first delivery, or, if the subcontractor is a small business concern, four (4) months.
- (3) The terms of the subcontractor or interdivisional order concerning progress payments -
 - (i) Are substantially similar to the terms of the Standard clause for any subcontractor that is a large business concern, or that clause with its Alternate I for any subcontractor that is a small business concern;
 - (ii) Are at least as favorable to the Government and Buyer 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 Supplier.
 - (iv) Are in conformance with the requirements of section 32.504(e) of the Federal Acquisition Regulation; 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 or Buyer if (A) the Supplier defaults or (B) the subcontractor becomes bankrupt or insolvent.
- (4) 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.
- (5) The parties agree concerning any proceeds received by Buyer for property to which title has vested in the Government under the subcontract terms, that the proceeds shall be applied to reducing any unliquidated progress payments by Buyer to the Supplier under this contract.
- (6) If no unliquidated progress payments to the Supplier remain, but there are unliquidated progress payments that the Supplier has made to any subcontractor the Supplier shall be subrogated to all the rights the Government or Buyer obtained through the terms required by this clause to be any subcontract, as if all such rights had been assigned and transferred to the Supplier.
- (7) The Supplier shall pay the subcontractor's progress payment request under subparagraph (j)(1)(ii) above, within a reasonable time after receiving the Buyer progress payment covering those amounts.

- (8) To facilitate small business participation in subcontracting under this contract, the Supplier agrees to provide progress payments to small business concerns, in conformity with the standards for customary progress payments stated in Subpart 32.5 of the Federal Acquisition Regulation. The Supplier further agrees that the need for such progress payments shall not be considered as a handicap or adverse factor in the award of subcontracts.

(k) LIMITATIONS ON UNDEFINITIZED CONTRACT ACTIONS

Notwithstanding any other progress payment provision in this contract, progress payments may not exceed eighty percent (80%) of costs incurred on work accomplished under undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in FAR 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 clauses, or funding other administrative changes. This limitation shall apply to the costs incurred, as computed in accordance with paragraph (a), and shall remain in effect until the contract action is definitized. Costs incurred which are subject to this limitation shall be segregated on Supplier 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), progress payments for undefinitized contract actions shall be liquidated at eighty percent (80%) 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 eighty percent (80%) of the maximum liability of Buyer under the undefinitized contract action or such lower limit specified elsewhere in the contract. Separate limits may be specified for separate actions.

ALTERNATE I

If the contract is with a small business concern, change each mention of the progress payment and liquidation rates excepting paragraph (k) to the percentage indicated, per the General Instructions, for small business concerns, delete paragraphs (a)(1) and (a)(2) from the Standard Clause, and substitute the following paragraphs (a)(1) and (a)(2):

(a) COMPUTATION OF AMOUNTS

- (1) Unless the Supplier requests a smaller amount, each progress payment shall be computed as: (i) the percentage indicated, per the General Instructions, of the Supplier's total costs incurred under this contract whether or not actually paid, plus (ii) progress payments to subcontractors (see paragraph (j) below), all less the sum of previous progress payments made by Buyer under the contract. Cost of money that would be allowable under 31.205-10 of the Federal Acquisition Regulation shall be deemed an incurred cost for progress payment purposes.
- (2) Accrued costs of Supplier contributions under employee pension plans shall be excluded until actually paid unless -
 - (i) The Supplier's practice is to make contributions to the retirement fund quarterly or more frequently; and
 - (ii) The contribution does not remain unpaid thirty (30) days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Supplier's total costs for progress payments until paid).

ALTERNATE II
FLEXIBLE PROGRESS PAYMENTS

This contract is subject to flexible progress payment procedures. The progress payment rate of this contract is the percentage indicated, per the General Instructions, and this percentage applies in lieu of the uniform, standard progress payment rate and liquidation rate of the Standard Clause. The progress payment rate of this contract was determined by the DoD Cash Flow Computer Model, dated (See P.O.), in accordance with the percentages specified in the Prime Contract as the targeted rate for the Supplier's investment (as a weighted average of costs) in its work in process inventory over the life of the contract. If actual and projected case flow data generated during performances of this contract reveal that the progress payment rate will result in an investment in work in process inventory by the Supplier in excess of different than the percentages specified in the Prime Contract, the progress payment rate shall be redetermined by using the DoD Cash Flow Computer Model. Unless it contained an error, the version of the DoD Cash Flow Computer Model that was used initially in this contract will be used for any redetermination permitted by this clause. In no event will the progress payment rate be less than the uniform, standard progress payment rate that would have applied to this contract absent flexible progress payment procedures, and in no event will the progress payment rate be greater than one hundred percent (100%).