

## PROGRESS PAYMENTS (JULY 2014)

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

(a) Computation of amounts. (1) Unless the Seller requests a smaller amount, the Company will compute each progress payment as 95% for Small Business Concerns or 90% for Large Businesses of the Seller's total costs incurred under this subcontract 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 Company under this subcontract. The Company 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 this subcontract 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 Seller's payment request to the Company.

(3) The Company will exclude accrued costs of Seller contributions under employee pension plans until actually paid unless—

(i) The Seller'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 Seller's total costs for progress payments until paid).

(4) The Seller 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 subcontract, 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 Seller has acquired title; and

(B) Work under cost-reimbursement or time-and-material subcontracts to which the Seller 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 subcontract, for which delivery and invoicing by the Seller and acceptance by the Company are incomplete.

(6) The total amount of progress payments shall not exceed 95% for Small Business Concerns or 90% for Large Businesses of the total subcontract 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 Seller shall repay the amount of such excess to the Company 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 subcontract, other than advance or progress payments, the unliquidated progress payments, or 95% for Small Business Concerns or 90% for Large Business, of the amount invoiced, whichever is less. The Seller shall repay to the Company 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 Company reserves the right to unilaterally change to an alternate liquidation rate when deemed appropriate for proper subcontract financing.

(c) Reduction or suspension. The Company 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 Seller failed to comply with any material requirement of this subcontract (which includes paragraphs (f) and (g) of this clause).

(2) Performance of this subcontract is endangered by the Seller's—

(i) Failure to make progress; or

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(ii) Unsatisfactory financial condition.

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

(4) The Seller is delinquent in payment of the costs of performing this subcontract 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 subcontract.

(6) The Seller 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 subcontract, 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 subcontract.

(2) "Property," as used in this clause, includes all of the below-described items acquired or produced by the Seller that are or should be allocable or properly chargeable to this subcontract 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 subcontract;

(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 Seller or subcontractors are required to deliver them to the Company by other clauses of this subcontract.

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

(4) The Seller may sell any scrap resulting from production under this contract without requesting the Company'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 Seller must obtain the Subcontract Administrator's advance approval of the action and the terms. The Seller shall (i) exclude the

Company amount of unliquidated progress payments allocable to the property. Repayment may be by cash or credit memorandum.

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

(i) Delivered to, and accepted by, the Company under this subcontract; or

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

(7) The terms of this subcontract 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 Company, the Seller shall bear the risk of loss for property, the title to which vests in the Government under this clause, except to the extent the Company expressly assumes the risk. The Seller shall repay the Company 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 Seller shall maintain an accounting system and controls adequate for the proper administration of this clause.

(g) Reports and access to records. The Seller shall promptly furnish reports, certificates, financial statements, and other pertinent information reasonably requested by the Subcontract Administrator for the administration of this clause. Also, the Seller shall give the Company reasonable opportunity to examine and verify the Seller's books, records, and accounts.

(h) Special terms regarding default. If this subcontract is terminated under the Default clause, (i) the Seller shall, on demand, repay to the Company the amount of unliquidated progress payments and (ii) title shall vest in the Seller, on full liquidation of progress payments, for all property for which the Company elects not to require delivery under the Default clause. The Company 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 Seller from performance of obligations under this subcontract; or

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

(2) The Company'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 subcontract; and

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(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 Company.

(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 six months between the beginning of work and the first delivery; or, if the subcontractor is a small business concern, four 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 the clause at FAR 52.232-16, Progress Payments, 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 Company 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 Seller;

(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 Company's right to require delivery of the property to the Company if—

(A) The Seller 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 Company's right to require delivery of the property to the Company if—

(A) The Seller 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 Company's right to require delivery of the property to the Company if—

(A) The Seller 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 rate in this subcontract, or 90% if the subcontractor is not a small business concern.

(7) Concerning any proceeds received by the Company 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 Company to the Seller under this subcontract.

(8) If no unliquidated financing payments to the Seller remain, but there are unliquidated financing payments that the Seller has made to any subcontractor, the Seller shall be subrogated to all the rights the Company 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 Seller.

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

(k) Limitations on undefinitized subcontract actions. Notwithstanding any other progress payment provisions in this subcontract, progress payments may not exceed 95 % for Small Business Concerns or 90% for Large Businesses of costs incurred on work accomplished under undefinitized subcontract actions. A "subcontract action" is any action resulting in a subcontract, including subcontract modifications for additional supplies or services, but not including subcontract modifications that are within the scope and under the terms of the subcontract, such as

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subcontract 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 subcontract action is definitized. Costs incurred which are subject to this limitation shall be segregated on Seller 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 subcontract actions shall be liquidated at 95% for Small Business Concerns and 90% for large Businesses, of the amount invoiced for work performed under the undefinitized subcontract action as long as the subcontract action remains undefinitized. The amount of unliquidated progress payments for undefinitized subcontract actions shall not exceed 95% for Small Business Concerns, or 90% for Large Businesses, of the maximum liability of the Company under the undefinitized subcontract action or such lower limit specified elsewhere in the subcontract. Separate limits may be specified for separate actions.

(l) Progress payments under indefinite-delivery subcontracts. The Seller shall account for and submit progress payment requests under individual orders as if the order constituted a separate subcontract, unless otherwise specified in this subcontract.

(End of clause)