

## **PROGRESS PAYMENTS FOR OTHER THAN SMALL BUSINESS CONCERNS - TOTAL COSTS (1-97)**

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

(a) Computation of amounts. (1) Unless the subcontractor requests a smaller amount, each progress payment shall be computed as (i) 90 percent of the subcontractor's cumulative total costs under this subcontract, as shown by records maintained by the subcontractor for the purpose of obtaining payment under Government contracts or subcontracts, plus (ii) progress payments to subcontractors (see paragraph (j) below), all less the sum of all previous progress payments made by the Company under this subcontract. 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 subcontractor directly for this subcontract 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 subcontractor is not delinquent in payment of the costs of subcontract performance in the ordinary course of business: (A) Materials issued from the subcontractor's stores inventory and placed in the production process for use on this subcontract; (B) Direct labor, direct travel, and other direct in-house costs; and (C) Properly allocable and allowable indirect costs. (iii) Accrued costs of subcontractor contributions under employee pension or other postretirement benefit, profit sharing, and stock ownership plans shall be excluded until actually paid unless: (A) The subcontractor's practice is to contribute to the plans quarterly or more frequently; and (B) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contributions remaining unpaid shall be excluded from the subcontractor's total costs for progress payments until paid). (iv) If the subcontract 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; or (B) The value of the work-in-process inventories under subcontracts 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 subcontract). (3) The subcontractor shall not include the following in total costs for progress payment purposes in subparagraph (a)(1)(i) above: (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; and (iv) Payments made or amounts payable to subcontractors or suppliers, except for: (A) Completed work, including partial deliveries, to which the subcontractor has acquired title; and (B) Work under cost-reimbursement or time-and-material subcontracts to which the subcontractor 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 subcontract, for which delivery and invoicing by the subcontractor and acceptance by the Company are incomplete. (5) The total amount of progress payments shall not exceed 90 percent of the total subcontract price. (6) If a progress payment or the unliquidated progress payments exceed the amounts permitted by subparagraphs (a)(4) or (a)(5) above, the subcontractor shall repay the amount of such excess to the Company on demand.

(b) Liquidation. Except as provided in any termination 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 90 percent of the amount invoiced, whichever is less. The subcontractor shall repay to the Company 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 Company reserves the right to unilaterally change from the ordinary liquidation rate to an alternate 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 subcontractor failed to comply with any material requirement of this subcontract (which includes paragraphs (f) and (g) below); (2) Performance of this subcontract is endangered by the subcontractor's (i) failure to make progress or (ii) unsatisfactory financial condition; (3) Inventory allocated to this subcontract substantially exceeds reasonable requirements; (4) The subcontractor 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; and (6) The subcontractor 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. 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 subcontractor 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 subparagraph (ii) above; and (iv) Drawings and technical data, to the extent the subcontractor or lower-tier 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 subcontractor may sell any scrap resulting from production under this subcontract 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 subcontractor must obtain the Company's advance approval of the action and the terms. The subcontractor shall (i) exclude the allocable costs of the property from the costs of contract performance, and (ii) repay to the Company any amount of unliquidated progress payments allocable to the property. Repayment may be by cash or credit memorandum. (6) When the subcontractor completes all of the obligations under this subcontract, including liquidation of all progress payments, title shall vest in the subcontractor 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 subcontractor 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 subcontractor 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 subcontractor shall maintain an accounting system and controls adequate for the proper administration of this clause.

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

(h) Special terms regarding default. If this subcontract is terminated under the Default clause, (i) the subcontractor shall, on demand, repay to the Company the amount of unliquidated progress payments and (ii) title shall vest in the subcontractor, 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) Reservations of rights. (1) No payment or vesting of title under this clause shall (i) excuse the subcontractor 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 (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) Progress payments to subcontractors. The amounts mentioned in (a)(1)(ii) above shall be all progress payments to subcontractors or 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 subcontractor 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 6 months between the beginning of work and the first delivery, or, if the subcontractor is a small business concern, 4 months; (3) The terms of the subcontract or interdivisional order concerning progress payments--(i) Are substantially similar to the terms of the clause at 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 and 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 subcontractor; (iv) Are in conformance with the requirements of paragraph 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 Company's right to require delivery of the property to the Company if (A) the subcontractor defaults or (B) the subcontractor becomes bankrupt or insolvent; (4) The progress payment rate in the subcontract is the customary rate used by the Company, depending on whether the subcontractor is or is not a small business concern; (5) The parties agree concerning any proceeds received by the Company 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 the Company to the subcontractor under this subcontract; (6) If no unliquidated progress payments to the subcontractor remain, but there are unliquidated progress payments that the subcontractor has made to any subcontractor, the subcontractor 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 subcontractor; (7) The subcontractor shall pay the subcontractor's progress payment request under subdivision (j)(1)(ii) above, within a reasonable time after receiving the Company progress payment covering those amounts; and (8) To facilitate small business participation in subcontracting under this subcontract, the subcontractor 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 subcontractor 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 Undefined Subcontract Actions. Notwithstanding any other progress payment provisions in this subcontract, progress payments may not exceed 90 percent of costs incurred on work accomplished under undefined subcontract actions. A "subcontract action" is any action resulting in a subcontract, as defined in Subpart 2.1, 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 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 defined. Costs incurred which are subject to this limitation shall be segregated on subcontractor 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 undefined subcontract actions shall be liquidated at 90 percent of the amount invoiced for work performed under the undefined subcontract action as long as the subcontract action remains undefined. The amount of unliquidated progress payments for undefined subcontract actions shall not exceed 90 percent of the maximum liability of the Company under the undefined subcontract action or such lower limit specified elsewhere in the subcontract. Separate limits may be specified for separate actions.