

**PROGRESS PAYMENT FOR OTHER THAN SMALL
BUSINESS CONCERNS - TOTAL COSTS (12-82)**

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

(a) Computation of amounts. (1) Unless a smaller amount is requested, each progress payment shall be (i) 90 percent of the amount of the Seller's total costs which, except as provided in (a)(2) below, shall include only those recorded costs which result, at the time of the request, from payment made by cash, check, or other form of actual payment for items or services purchased directly for the contract, together with (when the Seller is not delinquent in payment of costs of contract performance in the ordinary course of business) cost incurred, but not necessarily paid, for materials which have been issued from the Seller's stores inventory and placed in the production process for use on the subcontract, for direct labor, for direct travel, for other direct inhouse costs, and for properly allocable and allowable indirect costs, all as shown by records maintained by the Seller for purposes of obtaining payment under Government contracts plus (ii) the amount of progress payments which have been paid to Seller's subcontractors and other divisions as provided in (j) below; all less the sum of previous progress payments.

(2) (i) With respect to costs of pension, profit sharing, and employee stock ownership plan contributions, when these contributions are paid by the Seller to the pension, profit sharing, or employee stock ownership plan funds less frequently than quarterly, accruals of the costs of these contributions shall be excluded from the Seller's total costs for progress payment purposes until such costs are paid. If pension, profit sharing, and employee stock ownership plan contributions are paid on a quarterly or more frequent basis, accruals of costs of these contributions may be included in the Seller's total costs for progress payment purposes provided these contributions are paid to the pension, profit sharing, and employee stock ownership plan funds within 30 days after the close of the period covered by the payment. If payments are not made to the pension, profit sharing, and employee stock ownership plan funds within such 30 day period, these costs shall be excluded from the Seller's total costs for progress payment purposes until payment therefor has been made.

(ii) For those Sellers who elected to use the special transition method provided in Cost Accounting Standard (CAS) 410, "Allocation of Business Unit General and Administrative Expenses to Final Cost Objectives," general and administrative expenses (G&A) shall not be included in incurred costs eligible for progress payments until the work-in-process inventories of those contracts entered into after the applicability date of CAS 410, exceed the amounts contained in the CAS 410 suspense account and then limited to this subcontract's pro rata share of the G&A allocable to such excess. This limitation shall not apply where the CAS 410 suspense account is less than 5 million dollars.

(3) The Seller's total costs [(a)(1)(i)] shall be reasonable, allocable to this subcontract, and consistent with sound and generally accepted accounting principles and practices. However, such costs shall not include (i) any costs incurred by subcontractors or suppliers, or (ii) any payments or amounts payable to subcontractors or suppliers, except for completed work (including partial deliveries) to which the Seller has acquired title and except for amounts paid or payable under cost-reimbursement or time and material subcontracts for work to which the Seller has acquired title, or (iii) costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs.

(4) The amount of unliquidated progress payments shall not exceed the lesser of (i) 90 percent of the costs mentioned in (a)(1)(i) above, plus any unliquidated progress payments mentioned in item (a)(1)(ii) above, both of which are applicable only to the supplies and services not yet delivered and invoiced to and accepted by the Company, or (ii) 90 percent of the total subcontract price of supplies and services not yet delivered and invoiced to and accepted by the Company, less unliquidated advance payments.

(5) The aggregate amount of progress payments made shall not exceed 90 percent of the total subcontract price.

(6) If at any time a progress payment or the unliquidated progress payments exceed the amount permitted by this paragraph (a), the Seller shall pay the amount of such excess to the Company upon demand.

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(b) Liquidation. Except as provided in the clause entitled "Termination for Convenience of the Government," all progress payments shall be liquidated by deducting from any payment under this subcontract, other than advance or progress, the amount of unliquidated progress payments, or 90 percent, or the applicable percentage (calculated in accordance with references in the *footnote at the end of the clause) of the gross amount invoiced, whichever is less. Repayment to the Company required by a retroactive price reduction will be made after calculating 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 the alternate rate when deemed appropriate for proper contract financing.

(c) Reduction or suspension. The Company may reduce or suspend progress payments, or liquidate them on a rate higher than the percentage stated in (b) above, or both, whenever it finds upon substantial evidence that the Seller (1) has failed to comply with any material requirement of this subcontract, (2) has so failed to make progress, or is in such unsatisfactory financial condition, as to endanger performance of this subcontract, (3) has allocated inventory to this subcontract substantially exceeding reasonable requirements, (4) is delinquent in payment of the costs of performance of this subcontract in the ordinary course of business, (5) has so failed to make progress that the unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this subcontract, or (6) is realizing less profit than the estimated profit used for establishing a liquidation percentage in paragraph (b), if that liquidation percentage is less than the percentage stated in paragraph (a)(1).

(d) Title. Immediately, upon the date of this subcontract, title to all parts; materials; inventories; work in process; special tooling as defined in the clause of this subcontract entitled "Special Tooling"; special test equipment and other special tooling to which the Government is to acquire title pursuant to any other provision of this subcontract; nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids title to which is not obtained as special tooling pursuant to this paragraph; and drawings and technical data (to the extent delivery thereof to the Company is required by other provisions of this subcontract); theretofore acquired or produced by the Seller and allocable or properly chargeable to this subcontract under sound and generally accepted accounting principles and practices shall forthwith vest in the Government; and title to all like property thereafter acquired or produced by the Seller and allocable or properly chargeable to this subcontract as aforesaid shall forthwith vest in the Government upon said acquisition, production, or allocation. Notwithstanding that title to property is in the Government through the operation of this clause, the handling and disposition of such property shall be determined by the applicable provisions of this subcontract such as: the Default clause and paragraph (h) of this clause; Termination for Convenience of the Government clause; and the Special Tooling clause. Current production scrap may be sold by the Seller without approval of the Company and the proceeds shall be credited against the costs of contract performance. With the consent of the Company and on terms approved by it, the Seller may acquire or dispose of property to which title is vested in the Government pursuant to this clause, and in that event, the costs allocable to the property so transferred from this subcontract shall be eliminated from the costs of contract performance and the Seller shall repay to the Company (by cash or credit memorandum) an amount equal to the unliquidated progress payments allocable to the property so transferred. Upon completion of performance of all the obligations of the Seller under this subcontract, including liquidation of all progress payments hereunder, title to all property (or the proceeds thereof), which had not been delivered to and accepted by the Company under this subcontract or which had not been incorporated in supplies delivered to and accepted by the Company under this subcontract, and to which title has vested in the Government under this clause, shall vest in the Seller. The provisions of this subcontract referring to or defining liability for Government-furnished property shall not apply to property to which the Government shall have acquired title solely by virtue of the provisions of this clause.

(e) Risk of loss. Except to the extent that the Company shall have otherwise expressly assumed the risk of loss of property, title to which vests in the Government pursuant to this clause, in the event of the loss, theft or destruction of or damage to any such property before its delivery to and acceptance by the Company, the Seller shall bear the risk of loss and shall repay the Company an amount equal to the unliquidated progress payment based on costs allocable to such lost, stolen, destroyed or damaged property.

(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 information-access to records. Insofar as pertinent to the administration of this clause, the Seller will (1) furnish promptly such relevant reports, certificates, financial statements, and other information as may be reasonably requested by the Company, and (2) give the Government or the Company reasonable opportunity to examine and verify its books, records, and accounts.

(h) Special provisions regarding default. If this subcontract is terminated pursuant to the clause entitled "Default," (1) the Seller shall, upon demand, pay the Company the amount of unliquidated progress payments, and (2) with respect to all property as to which the Company elects not to require delivery under the clause entitled "Default," title shall vest in the Seller upon full liquidation of progress payments, and the Company shall be liable for no payment except as provided by the "Default" clause.

(i) Reservations of rights. The rights and remedies of the Company provided in this clause shall not be exclusive, and are in addition to any other rights and remedies provided by law or under this subcontract. No payment, or vesting of title pursuant to this clause, shall excuse the Seller from performance of its obligations under this subcontract, nor constitute a waiver of any of the rights and remedies of the parties under this subcontract. No delay or failure of the Company in exercising any right, power or privilege under this clause shall affect any such right, power or privilege, nor shall any single or partial exercise thereof preclude or impair any further exercise thereof or the exercise of any other right, power or privilege of the Company.

(j) Progress payments to subcontractors. (1) The amounts mentioned in item (a)(1)(ii) of this clause shall be all progress payments paid by the Seller to its subcontractors or other divisions and remaining unliquidated when under subcontracts or interdivisional orders which conform to (2) below.

(2) Subcontracts or interdivisional orders on which progress payments to subcontractors or other divisions may be included in the base for progress payments pursuant to paragraph (a) of this clause are limited to those subcontracts in which there is expected to be a long "lead time" between the beginning of work and the first delivery, approximating four months or more for small business concerns and six months or more for firms which are not small business concerns, and in which the provisions regarding progress payments are substantially similar to and as favorable to the Company as this "Progress Payment" clause, (except that in the case of those subcontractors which are small business concerns, a "Progress Payment" clause substantially similar to that contained in §1-30.510-1(b) of the Federal Procurement Regulations (FPR) may be used). Progress payment rates for subcontractors shall be the uniform, standard progress payment rate under FPR §1-30.503-1. All rights of the subcontractor with respect to all property to which the Government has title under the subcontract will be made subordinate to the rights of the Company to require delivery of such property to it in the event of default by the Seller under this subcontract or in the event of the bankruptcy or insolvency of the subcontractor.

(3) The Company agrees that any proceeds received by it from property to which the Government has acquired title by virtue of such provisions in any subcontract shall be applied to reduce the amount of unliquidated progress payments made by the Company to the Seller under this subcontract. In the event the Seller fully liquidates such progress payments made by the Company to it hereunder and there are progress payments to any subcontractors which are unliquidated, the Seller shall be subrogated to all the Company's rights by virtue of such provisions in the subcontract or subcontracts involved as if all such rights had been thereupon assigned and transferred to the Seller.

(4) To facilitate small business participation in subcontracting under this subcontract, the Seller agrees to offer and provide progress payments to those subcontractors that are small business concerns, in conformity with the standards for customary progress payments stated in §1-3.503 of the FPR as in effect on the date of this subcontract. The Seller further agrees that the need for such progress payments will not be considered as a handicap or adverse factor in the award of subcontracts.

*See §§1-30.512-2 and 1-30.512-3 for calculation of alternate liquidation percentages. For Sellers who elected to use the transition method in Appendix A of CAS 410, see §§1-30.512-1 and 1-30.512-3(f) for calculation of adjusted ordinary and alternate liquidation percentages.