

PROGRESS PAYMENT FOR 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 under the following terms and conditions:

(a) Computation of Amounts. (1) Unless a smaller amount is requested, each progress payment shall be (i) 95 percent of the amount of the Seller's total costs incurred under this subcontract, except as provided herein with respect to costs of pension contributions, plus (ii) the amount of progress payments to subcontractors as provided in (j) below; all less the sum of previous progress payments. With respect to costs of pension contributions, when pension contributions are paid by the Seller to the retirement fund less frequently than quarterly, accruals of the costs of these pension contributions shall be excluded from the Seller's total costs for progress payment purposes until such costs are paid. If pension contributions are paid on a quarterly or more frequent basis, accruals of the costs of these pension contributions may be included in the Seller's total costs for progress payment purposes provided that the pension contributions are paid to the retirement fund within 30 days after the close of the period covered by the payment. If payments are not made to the fund within such 30-day period, pension contribution costs shall be excluded from the Seller's total costs for progress payment purposes until payment therefor has been made.

(2) 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-materials 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.

(3) The amount of unliquidated progress payments shall not exceed the lesser of (i) 95 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) 95 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.

(4) The aggregate amount of progress payments made shall not exceed 95 percent of the total subcontract price.

(5) 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.

(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 95 percent* (see footnote at end of 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.

(c) Reduction or Suspension. The Company may reduce or suspend progress payments, or liquidate them at 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 the 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 and to which title has vested in the Government 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 payments based on costs allocable to such lost, stolen, destroyed, and damaged property.

(f) Control of Costs and Property. The Seller shall maintain an accounting system and controls adequate for the property 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 and 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," (i) the Seller shall, upon demand, pay to the Company the amount of unliquidated progress payments and (ii) 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 amount mentioned in Item (a)(1)(ii) of this clause shall be the sum of (i) all the progress payments made by the Seller to its subcontractors and remaining unliquidated, and (ii) unpaid billings for progress payments to subcontractors which have been approved for current payment in the ordinary course of business, when under subcontracts which conform to (2) below.

(2) Subcontracts on which progress payments to subcontractors 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 Government as the "Progress Payments" clause set forth in §1-30.510-1(a) of the Federal Procurement Regulations (FPR), (except that in the case of those subcontractors which are small business concerns, a "Progress Payment" clause substantially similar to this clause 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) The billings described in (j)(1)(ii) above shall be paid promptly by the Seller in the ordinary course of business, not later than a reasonable time after payment of equivalent amounts by the Company to the Seller.

(5) To facilitate small business participation in subcontracting under this subcontract, the Seller agrees to offer and provide progress payments to those subcontractors which are small business concerns, in conformity with the standards for customary progress payments stated in §1-30.503 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.

*For lower percentages for this paragraph (b) and for (a)(3)(ii) and (a)(4), see §1-30.512-1.