52.232-12 Advance Payments.

As prescribed in 32.412(a), insert the following clause:

Advance Payments (*May* 2001)

(a) *Requirements for payment*. Advance payments will be made under this contract (1) upon submission of properly certified *invoices* or vouchers by the Contractor, and approval by the administering office, _____ *[insert the name of the office designated under agency procedures]*, or (2) under a letter of credit. The amount of the *invoice* or voucher submitted plus all advance payments previously approved *shall* not exceed $_____. If a letter of credit is used, the Contractor *shall* withdraw cash only when needed for disbursements acceptable under this contract and report cash disbursements and balances as required by the administering office. The Contractor *shall* apply terms similar to this clause to any advance payments to subcontractors.

(b) *Special account.* Until (1) the Contractor has liquidated all advance payments made under the contract and related interest charges and (2) the administering office has approved *in writing* the release of any funds due and payable to the Contractor, all advance payments and other payments under this

contract *shall* be made by check payable to the Contractor marked for deposit only in the Contractor's special account with the _____ *[insert the name of the financial institution]*. None of the funds in the special account *shall* be mingled with other funds of the Contractor. Withdrawals from the special account *may* be made only by check of the Contractor countersigned by the *Contracting Officer* or a Government countersigning agent designated *in writing* by the *Contracting Officer*.

(c) *Use of funds*. The Contractor *may* withdraw funds from the special account only to pay for properly allocable, allowable, and reasonable costs for direct materials, direct labor, and *indirect costs*. Other withdrawals require approval *in writing* by the administering office. Determinations of whether costs are properly allocable, allowable, and reasonable *shall* be in accordance with generally accepted accounting principles, subject to any applicable subparts of part 31 of the Federal *Acquisition* Regulation.

(d) *Repayment to the Government.* At any time, the Contractor *may* repay all or any part of the funds advanced by the Government. Whenever requested *in writing* to do so by the administering office, the Contractor *shall* repay to the Government any part of unliquidated advance payments considered by the administering office to exceed the Contractor's current requirements or the amount specified in paragraph (a) of this clause. If the Contractor fails to repay the amount requested by the administering office, all or any part of the unliquidated advance payments *may* be withdrawn from the special account by check signed by only the countersigning agent and applied to reduction of the unliquidated advance payments under this contract.

(e) *Maximum payment*. When the sum of all unliquidated advance payments, unpaid interest charges, and other payments exceed _____ percent of the contract price, the Government *shall* withhold further payments to the Contractor. On completion or termination of the contract, the Government *shall* deduct from the amount due to the Contractor all unliquidated advance payments and all interest charges payable. If previous payments to the Contractor exceed the amount due, the excess amount *shall* be paid to the Government on demand. For purposes of this paragraph, the contract price *shall* be considered to be the stated contract price of $_____, less any subsequent price reductions under the contract, plus (1) any price increases resulting from any terms of this contract

for price redetermination or escalation, and (2) any other price increases that do not, in the aggregate, exceed $_____ *[insert an amount not higher than 10 percent of the stated contract amount inserted in this paragraph].* Any payments withheld under this paragraph *shall* be applied to reduce the unliquidated advance payments. If full liquidation has been made, payments under the contract *shall* resume.

(f) Interest.

(1) The Contractor *shall* pay interest to the Government on the daily unliquidated advance payments at the daily rate specified in paragraph (f)(3) of this clause. Interest *shall* be computed at the end of each calendar month for the actual number of days involved. For the purpose of computing the interest charge-

(i) Advance payments *shall* be considered as increasing the unliquidated balance as of the date of the advance payment check;

(ii) Repayments by Contractor check *shall* be considered as decreasing the unliquidated balance as of the date on which the check is received by the Government authority designated by the *Contracting Officer*; and

(iii) Liquidations by deductions from Government payments to the Contractor *shall* be considered as decreasing the unliquidated balance as of the date of the check for the reduced payment.

(2) Interest charges resulting from the monthly computation *shall* be deducted from payments, other than advance payments, due the Contractor. If the accrued interest exceeds the payment due, any excess interest *shall* be carried forward and deducted from subsequent payments. Interest carried forward *shall* not be compounded. Interest on advance payments *shall* cease to accrue upon satisfactory completion or termination of the contract for the convenience of the Government. The Contractor *shall* charge interest on advance payments to subcontractors in the manner described above and credit the interest to the Government. Interest need not be charged on advance payments to nonprofit educational or research subcontractors for experimental, developmental, or research work.

(3) If interest is required under the contract, the *Contracting Officer shall* determine a daily interest rate based on the higher of (i) the published prime rate of the financial institution (depository) in which the special account is established or (ii) the rate established by the Secretary of the Treasury under Pub.L.92-41 (50 U.S.C. App.1215(b)(2)). The *Contracting Officer shall* revise the daily interest rate during the contract period in keeping with any changes in the cited interest rates.

(4) If the full amount of interest charged under this paragraph has not been paid by deduction or otherwise upon completion or termination of this contract, the Contractor *shall* pay the remaining interest to the Government on demand.

(g) *Financial institution agreement.* Before an advance payment is made under this contract, the Contractor *shall* transmit to the administering office, in the form prescribed by the administering office, an agreement in triplicate from the financial institution in which the special account is established, clearly setting forth the special character of the account and the responsibilities of the financial institution under the account. The Contractor *shall* select a financial institution that is a member bank of the Federal Reserve System, an "insured" bank within the meaning of the Federal Deposit *Insurance* Corporation Act (12 U.S.C. 1811), or a credit union insured by the National Credit Union Administration.

(h) *Lien on special bank account*. The Government *shall* have a lien upon any balance in the special account paramount to all other liens. The Government lien *shall* secure the repayment of any advance payments made under this contract and any related interest charges.

(i) Lien on property under contract.

(1) All advance payments under this contract, together with interest charges, *shall* be secured, when made, by a lien in favor of the Government, paramount to all other liens, on the *supplies* or other things covered by this contract and on material and other property acquired for or allocated to the performance of this contract, except to the extent that the Government by virtue of any other terms of this contract, or otherwise, *shall* have valid title to the *supplies*, materials, or other property as against other creditors of the Contractor.

(2) The Contractor *shall* identify, by marking or segregation, all property that is subject to a lien in favor of the Government by virtue of any terms of this contract in such a way as to indicate that it is subject to a lien and that it has been acquired for or allocated to performing this contract. If, for any reason, the *supplies*, materials, or other property are not identified by marking or segregation, the Government *shall* be considered to have a lien to the extent of the Government's interest under this contract on any mass of property with which the *supplies*, materials, or other property are commingled. The Contractor *shall* maintain adequate accounting control over the property on its books and records.

(3) If, at any time during the progress of the work on the contract, it becomes necessary to deliver to a third person any items or materials on which the Government has a lien, the Contractor *shall* notify the third person of the lien and *shall* obtain from the third person a receipt in duplicate acknowledging the existence of the lien. The Contractor *shall* provide a copy of each receipt to the *Contracting Officer*.

(4) If, under the termination clause, the *Contracting Officer* authorizes the Contractor to sell or retain *termination inventory*, the approval *shall* constitute a release of the Government's lien to the extent that-

(i) The *termination inventory* is sold or retained; and

(ii) The sale proceeds or retention credits are applied to reduce any outstanding advance payments.

(j) *Insurance*.

(1) The Contractor *shall* maintain with responsible *insurance* carriers-

(i) *Insurance* on plant and equipment against fire and other hazards, to the extent that similar properties are usually insured by others operating plants and properties of similar character in the same general locality;

(ii) Adequate *insurance* against liability on account of damage to persons or property; and

(iii) Adequate *insurance* under all applicable workers' compensation laws.

(2) Until work under this contract has been completed and all advance payments made under the contract have been liquidated, the Contractor *shall*-

(i) Maintain this *insurance*;

(ii) Maintain adequate *insurance* on any materials, parts, assemblies, subassemblies, *supplies*, equipment, and other property acquired for or allocable to this contract and subject to the Government lien under paragraph (i) of this clause; and

(iii) Furnish any evidence with respect to its *insurance* that the administering office *may* require.

(k) Default.

(1) If any of the following events occurs, the Government *may*, by written notice to the Contractor, withhold further withdrawals from the special account and further payments on this contract:

(i) Termination of this contract for a fault of the Contractor.

(ii) A finding by the administering office that the Contractor has failed to-

(A) Observe any of the conditions of the advance payment terms;

(B) Comply with any material term of this contract;

(C) Make progress or maintain a financial condition adequate for performance of this contract;

(D) Limit inventory allocated to this contract to reasonable requirements; or

(E) Avoid delinquency in payment of taxes or of the costs of performing this contract in the ordinary course of business.

(iii) The appointment of a trustee, receiver, or liquidator for all or a substantial part of the Contractor's property, or the institution of proceedings by or against the Contractor for bankruptcy, reorganization, arrangement, or liquidation.

(iv) The service of any writ of attachment, levy of execution, or commencement of garnishment proceedings concerning the special account.

(v) The commission of an act of bankruptcy.

(2) If any of the events described in paragraph (k)(1) of this clause continue for 30 days after the written notice to the Contractor, the Government *may* take any of the following additional actions:

(i) Withdraw by checks payable to the Treasurer of the *United States*, signed only by the countersigning agency, all or any part of the balance in the special account and apply the amounts to reduce outstanding advance payments and any other *claims* of the Government against the Contractor.

(ii) Charge interest, in the manner prescribed in paragraph (f) of this clause, on outstanding advance payments during the period of any event described in paragraph (k)(1) of this clause.

(iii) Demand immediate repayment by the Contractor of the unliquidated balance of advance payments.

(iv) Take possession of and, with or without advertisement, sell at public or private sale all or any part of the property on which the Government has a lien under this contract and, after deducting

any expenses incident to the sale, apply the net proceeds of the sale to reduce the unliquidated balance of advance payments or other Government *claims* against the Contractor.

(3) The Government *may* take any of the actions described in paragraphs (k)(1) and (2) of this clause it considers appropriate at its discretion and without limiting any other rights of the Government.

(l) *Prohibition against assignment*. Notwithstanding any other terms of this contract, the Contractor *shall* not assign this contract, any interest therein, or any *claim* under the contract to any party.

(m) *Information and access to records*. The Contractor *shall* furnish to the administering office (1) monthly or at other intervals as required, signed or certified balance sheets and profit and loss statements together with a report on the operation of the special account in the form prescribed by the administering office; and (2) if requested, other information concerning the operation of the Contractor's business. The Contractor *shall* provide the authorized Government representatives proper facilities for *inspection* of the Contractor's books, records, and accounts.

(n) *Other security*. The terms of this contract are considered to provide adequate security to the Government for advance payments; however, if the administering office considers the security inadequate, the Contractor *shall* furnish additional security satisfactory to the administering office, to the extent that the security is available.

(o) *Representations*. The Contractor represents the following:

(1) The balance sheet, the profit and loss statement, and any other supporting financial statements furnished to the administering office fairly reflect the financial condition of the Contractor at the date shown or the period covered, and there has been no subsequent materially adverse change in the financial condition of the Contractor.

(2) No litigation or proceedings are presently pending or threatened against the Contractor, except as shown in the financial statements.

(3) The Contractor has disclosed all contingent liabilities, except for liability resulting from the renegotiation of defense production contracts, in the financial statements furnished to the administering office.

(4) None of the terms in this clause conflict with the authority under which the Contractor is doing business or with the provision of any existing indenture or agreement of the Contractor.

(5) The Contractor has the power to enter into this contract and accept advance payments, and has taken all necessary action to authorize the acceptance under the terms of this contract.

(6) The assets of the Contractor are not subject to any lien or encumbrance of any character except for current taxes not delinquent, and except as shown in the financial statements furnished by the Contractor. There is no current *assignment of claims* under any contract affected by these advance payment provisions.

(7) All information furnished by the Contractor to the administering office in connection with each request for advance payments is true and correct.

(8) These representations *shall* be continuing and *shall* be considered to have been repeated by the submission of each *invoice* for advance payments.

(p) *Covenants*. To the extent the Government considers it necessary while any advance payments

made under this contract remain outstanding, the Contractor, without the prior written consent of the administering office, *shall* not-

(1) Mortgage, pledge, or otherwise encumber or allow to be encumbered, any of the assets of the Contractor now owned or subsequently acquired, or permit any preexisting mortgages, liens, or other encumbrances to remain on or attach to any assets of the Contractor which are allocated to performing this contract and with respect to which the Government has a lien under this contract;

(2) Sell, assign, transfer, or otherwise dispose of accounts receivable, notes, or *claims* for money due or to become due;

(3) Declare or pay any dividends, except dividends payable in stock of the corporation, or make any other distribution on account of any shares of its capital stock, or purchase, redeem, or otherwise acquire for value any of its stock, except as required by sinking fund or redemption arrangements reported to the administering office incident to the establishment of these advance payment provisions;

(4) Sell, convey, or lease all or a substantial part of its assets;

(5) Acquire for value the stock or other securities of any corporation, municipality, or governmental authority, except direct obligations of the *United States*;

(6) Make any advance or loan or incur any liability as guarantor, *surety*, or accommodation endorser for any party;

(7) Permit a writ of attachment or any similar process to be issued against its property without getting a release or bonding the property within 30 days after the entry of the writ of attachment or other process;

(8) Pay any remuneration in any form to its directors, officers, or key employees higher than rates provided in existing agreements of which notice has been given to the administering office; accrue excess remuneration without first obtaining an agreement subordinating it to all *claims* of the Government; or employ any person at a rate of compensation over $_____ ayear;

(9) Change substantially the management, ownership, or control of the corporation;

(10) Merge or consolidate with any other firm or corporation, change the type of business, or engage in any transaction outside the ordinary course of the Contractor’s business as presently conducted;

(11) Deposit any of its funds except in a bank or trust company insured by the Federal Deposit *Insurance* Corporation or a credit union insured by the National Credit Union Administration;

(12) Create or incur indebtedness for advances, other than advances to be made under the terms of this contract, or for borrowings;

(13) Make or covenant for capital expenditures exceeding $_____ in total;

(14) Permit its net current assets, computed in accordance with generally accepted accounting principles, to become less than $_____; or

(15) Make any payments on account of the obligations listed below, except in the manner and to the extent provided in this contract:

[List the pertinent obligations]

(End of clause)

Alternate I (Apr 1984). If the agency desires to waive the countersignature requirement because of the Contractor's financial strength, good performance record, and favorable experience concerning cost disallowances, add the following sentence, if appropriate, to paragraph (b) of the basic clause:

However, for this contract, countersignature on behalf of the Government will not be required unless it is determined necessary by the administering office.

Alternate II (*May* 2001). If used in a cost-reimbursement contract, substitute the following paragraphs (c) and (e), and paragraphs (f)(1) and (f)(2) for paragraphs (c) and (e) and paragraphs (f)(1) and (2) of the basic clause:

(c) *Use of funds*. The Contractor *shall* withdraw funds from the special account only to pay for allowable costs as prescribed by the _____ clause of this contract. Payment for any other types of expenses *shall* be approved *in writing* by the administering office.

(e) *Maximum payment*. When the sum of all unliquidated advance payments, unpaid interest charges, and other payments equal the total estimated cost of $_____ (not including fixed-fee, if any) for the work under this contract, the Government *shall* withhold further payments to the Contractor. Upon completion or termination of the contract, the Government *shall* deduct from the amount due to the Contractor all unliquidated advance payments and interest charges payable. The Contractor *shall* pay any deficiency to the Government upon demand. For purposes of this paragraph, the estimated cost *shall* be considered to be the stated estimated cost, less any subsequent reductions of the estimated cost, plus any increases in the estimated costs that do not, in the aggregate, exceed $_____ *[Insert an amount not higher than 10 percent of the stated estimated cost inserted in this paragraph]*. The estimated cost *shall* include, without limitation, any reimbursable cost (as estimated by the *Contracting Officer*) incident to a termination for the convenience of the Government. Any payments withheld under this paragraph *shall* be applied to reduce the unliquidated advance payments. If full liquidation has been made, payments under the contract *shall* resume.

(f) *Interest*. (1) The Contractor *shall* pay interest to the Government on the daily unliquidated advance payments at the daily rate specified in paragraph (f)(3) of this clause. Interest *shall* be computed at the end of each calendar month for the actual number of days involved. For the purpose of computing the interest charge, the following *shall* be observed:

(i) Advance payments *shall* be considered as increasing the unliquidated balance as of the date of the advance payment check.

(ii) Repayments by Contractor check *shall* be considered as decreasing the unliquidated balance as of the date on which the check is received by the Government authority designated by the *Contracting Officer*.

(iii) Liquidations by deductions from payments to the Contractor *shall* be considered as decreasing the unliquidated balance as of the dates on which the Contractor presents to the *Contracting Officer* full and accurate data for the preparation of each voucher. Credits resulting from these deductions *shall* be made upon the approval of the reimbursement vouchers by the Disbursing Officer, based upon the *Contracting Officer*'s certification of the applicable dates.

(2) Interest charges resulting from the monthly computation *shall* be deducted from any payments on account of the fixed-fee due to the Contractor. If the accrued interest exceeds the payment due, any excess interest *shall* be carried forward and deducted from subsequent payments of the contract price or fixed-fee. Interest carried forward *shall* not be compounded. Interest on advance payments *shall* cease to accrue upon (i) satisfactory completion or (ii) termination of the contract for the convenience of the Government. The Contractor *shall* charge interest on advance payments to subcontractors in the manner described above and credit the interest to the Government. Interest need not be charged on advance payments to nonprofit educational or research subcontractors for experimental, developmental, or research work.

Alternate III (Apr 1984). If the agency considers a more rapid liquidation appropriate, add the following sentence as the first sentence of paragraph (e) of the basic clause with the appropriate percentage specified:

To liquidate the principal amount of any advance payment made to the Contractor, there *shall* be deductions of _____ percent from all payments made by the Government under the contracts involved.

Alternate IV (Apr 1984). If the agency provides advance payments under the contract at no interest to the prime contractor, add the following sentences as the beginning sentences of paragraph (f) of the clause:

No interest *shall* be charged to the prime Contractor for advance payments except for interest charged during a period of default. The terms of this paragraph concerning interest charges for advance payments *shall* not apply to the prime Contractor.

Alternate V (*May* 2001). If the requirement for a special account is eliminated in accordance with 32.409-3(e) or (g), insert the clause set forth below instead of the basic clause.

If this *Alternate* is used in combination with *Alternate II*, disregard the instructions concerning paragraph (c), Use of funds, in *Alternate II*; substitute paragraph (e), Maximum payment, in *Alternate II* for paragraph (d) below; and substitute paragraph (f), Interest, in *Alternate II* for paragraph (e) below and change the reference to paragraph (f)(3) in the first sentence of paragraph (f) of *Alternate II* to (e)(3).

If this *Alternate* is used in combination with *Alternate III*, insert the additional sentence set forth in *Alternate III* as the first sentence of paragraph (d) of this *Alternate*.

If this *Alternate* is used in combination with *Alternate IV*, insert the additional sentences set forth in *Alternate IV* as the beginning sentences of paragraph (e) of this *Alternate*.

Advance Payments Without Special Account (*May* 2001)

(a) *Requirements for payment.* Advance payments will be made under this contract (1) upon submission of properly certified *invoices* or vouchers by the contractor, and approval by the administering office, _____ *[insert the name of the office designated under agency procedures]*, or (2) under a letter of credit. The amount of the *invoice* or voucher submitted plus all advance payments previously approved *shall* not exceed $_____. If a letter of credit is used, the Contractor *shall* withdraw cash only when needed for disbursements acceptable under this contract and report cash disbursements and balances as required by the administering office. The Contractor *shall* apply terms similar to this clause to any advance payments to subcontractors.

(b) *Use of funds*. The Contractor *may* use advance payment funds only to pay for properly allocable,

allowable, and reasonable costs for direct materials, direct labor, and *indirect costs*. Determinations of whether costs are properly allocable, allowable, and reasonable *shall* be in accordance with generally accepted accounting principles, subject to any applicable subparts of part 31 of the Federal *Acquisition* Regulation.

(c) *Repayment to the Government*. At any time, the Contractor *may* repay all or any part of the funds advanced by the Government. Whenever requested *in writing* to do so by the administering office, the Contractor *shall* repay to the Government any part of unliquidated advance payments considered by the administering office to exceed the Contractor's current requirements or the amount specified in paragraph (a) of this clause.

(d) *Maximum payment.* When the sum of all unliquidated advance payments, unpaid interest charges, and other payments exceed ___ percent of the contract price, the Government *shall* withhold further payments to the Contractor. On completion or termination of the contract, the Government *shall* deduct from the amount due to the Contractor all unliquidated advance payments and all interest charges payable. If previous payments to the Contractor exceed the amount due, the excess amount *shall* be paid to the Government on demand. For purposes of this paragraph, the contract price *shall* be considered to be the stated contract price of $___, less any subsequent price reductions under the contract, plus (1) any price increases resulting from any terms of this contract for price redetermination or escalation, and (2) any other price increases that do not, in the aggregate, exceed $____ *[insert an amount not higher than 10 percent of the stated contract amount inserted in this paragraph]*. Any payments withheld under this paragraph *shall* be applied to reduce the unliquidated advance payments. If full liquidation has been made, payments under the contract *shall* resume.

(e)*Interest*. (1) The Contractor *shall* pay interest to the Government on the daily unliquidated advance payments at the daily rate in paragraph (e)(3) of this clause. Interest *shall* be computed at the end of each calendar month for the actual number of days involved. For the purpose of computing the interest charge-

(i) Advance payments *shall* be considered as increasing the unliquidated balance as of the date of the advance payment check;

(ii) Repayments by Contractor check *shall* be considered as decreasing the unliquidated balance as of the date on which the check is received by the Government authority designated by the *Contracting Officer*; and

(iii) Liquidations by deductions from Government payments to the Contractor *shall* be considered as decreasing the unliquidated balance as of the date of the check for the reduced payment.

(2) Interest charges resulting from the monthly computation *shall* be deducted from payments, other than advance payments, due the Contractor. If the accrued interest exceeds the payment due, any excess interest *shall* be carried forward and deducted from subsequent payments. Interest carried forward *shall* not be compounded. Interest on advance payments *shall* cease to accrue upon satisfactory completion or termination of the contract for the convenience of the Government. The Contractor *shall* charge interest on advance payments to subcontractors in the manner described above and credit the interest to the Government. Interest need not be charged on advance payments to nonprofit educational or research subcontractors, for experimental, developmental, or research work.

(3) If interest is required under the contract, the *Contracting Officer shall* determine a daily interest rate based on the rate established by the Secretary of the Treasury under Pub.L.92-41 (50 U.S.C.

App., 1215(b)(2)). The *Contracting Officer shall* revise the daily interest rate during the contract period in keeping with any changes in the cited interest rate.

(4) If the full amount of interest charged under this paragraph has not been paid by deduction or otherwise upon completion or termination of this contract, the Contractor *shall* pay the remaining interest to the Government on demand.

(f)*Lien on property under contract*. (1) All advance payments under this contract, together with interest charges, *shall* be secured, when made, by a lien in favor of the Government, paramount to all other liens, on the *supplies* or other things covered by this contract and on all material and other property acquired for or allocated to the performance of this contract, except to the extent that the Government by virtue of any other terms of this contract, or otherwise, *shall* have valid title to the *supplies*, materials, or other property as against other creditors of the Contractor.

(2) The Contractor *shall* identify, by marking or segregation, all property that is subject to a lien in favor of the Government by virtue of any terms of this contract in such a way as to indicate that it is subject to a lien and that it has been acquired for or allocated to performing this contract. If, for any reason, the *supplies*, materials, or other property are not identified by marking or segregation, the Government *shall* be considered to have a lien to the extent of the Government's interest under this contract on any mass of property with which the *supplies*, materials, or other property are commingled. The Contractor *shall* maintain adequate accounting control over the property on its books and records.

(3) If, at any time during the progress of the work on the contract, it becomes necessary to deliver to a third person any items or materials on which the Government has a lien, the Contractor *shall* notify the third person of the lien and *shall* obtain from the third person a receipt in duplicate acknowledging the existence of the lien. The Contractor *shall* provide a copy of each receipt to the *Contracting Officer*.

(4) If, under the termination clause, the *Contracting Officer* authorizes the contractor to sell or retain *termination inventory*, the approval *shall* constitute a release of the Government's lien to the extent that-

(i) The *termination inventory* is sold or retained; and

(ii) The sale proceeds or retention credits are applied to reduce any outstanding advance payments.

(g)*Insurance*. (1) The Contractor *shall* maintain with responsible *insurance* carriers-

(i) *Insurance* on plant and equipment against fire and other hazards, to the extent that similar properties are usually insured by others operating plants and properties of similar character in the same general locality;

(ii) Adequate *insurance* against liability on account of damage to persons or property; and

(iii) Adequate *insurance* under all applicable workers' compensation laws.

(2) Until work under this contract has been completed and all advance payments made under the contract have been liquidated, the Contractor *shall*-

(i) Maintain this *insurance*;

(ii) Maintain adequate *insurance* on any materials, parts, assemblies, subassemblies, *supplies*,

equipment, and other property acquired for or allocable to this contract and subject to the Government lien under paragraph (f) of this clause; and

(iii) Furnish any evidence with respect to its *insurance* that the administering office *may* require.

(h) *Default*. (1)If any of the following events occur, the Government *may*, by written notice to the Contractor, withhold further payments on this contract:

(i) Termination of this contract for a fault of the Contractor.

(ii) A finding by the administering office that the Contractor has failed to-

(A) Observe any of the conditions of the advance payment terms;

(B) Comply with any material term of this contract;

(C) Make progress or maintain a financial condition adequate for performance of this contract;

(D) Limit inventory allocated to this contract to reasonable requirements; or

(E) Avoid delinquency in payment of taxes or of the costs of performing this contract in the ordinary course of business.

(iii) The appointment of a trustee, receiver, or liquidator for all or a substantial part of the Contractor's property, or the institution of proceedings by or against the Contractor for bankruptcy, reorganization, arrangement, or liquidation.

(iv) The commission of an act of bankruptcy.

(2) If any of the events described in paragraph (h)(1) of this clause continue for 30 days after the written notice to the Contractor, the Government *may* take any of the following additional actions:

(i) Charge interest, in the manner prescribed in paragraph (e) of this clause, on outstanding advance payments during the period of any event described in paragraph (h)(1) of this clause.

(ii) Demand immediate repayment by the Contractor of the unliquidated balance of advance payments.

(iii) Take possession of and, with or without advertisement, sell at public or private sale all or any part of the property on which the Government has a lien under this contract and, after deducting any expenses incident to the sale, apply the net proceeds of the sale to reduce the unliquidated balance of advance payments or other Government *claims* against the Contractor.

(3) The Government *may* take any of the actions described in paragraphs (h)(1) and (h)(2) of this clause it considers appropriate at its discretion and without limiting any other rights of the Government.

(i) *Prohibition against assignment*. Notwithstanding any other terms of this contract, the Contractor *shall* not assign this contract, any interest therein, or any *claim* under the contract to any party.

(j) *Information and access to records*. The Contractor *shall* furnish to the administering office (1) monthly or at other intervals as required, signed or certified balance sheets and profit and loss statements, and, (2)if requested, other information concerning the operation of the contractor's business. The Contractor *shall* provide the authorized Government representatives proper facilities

for *inspection* of the Contractor's books, records, and accounts.

(k) *Other security*. The terms of this contract are considered to provide adequate security to the Government for advance payments; however, if the administering office considers the security inadequate, the Contractor *shall* furnish additional security satisfactory to the administering office, to the extent that the security is available.

(l) *Representations*. The Contractor represents the following:

(1) The balance sheet, the profit and loss statement, and any other supporting financial statements furnished to the administering office fairly reflect the financial condition of the Contractor at the date shown or the period covered, and there has been no subsequent materially adverse change in the financial condition of the Contractor.

(2) No litigation or proceedings are presently pending or threatened against the Contractor, except as shown in the financial statements.

(3) The Contractor has disclosed all contingent liabilities, except for liability resulting from the renegotiation of defense production contracts, in the financial statements furnished to the administering office.

(4) None of the terms in this clause conflict with the authority under which the Contractor is doing business or with the provision of any existing indenture or agreement of the Contractor.

(5) The Contractor has the power to enter into this contract and accept advance payments, and has taken all necessary action to authorize the acceptance under the terms of this contract.

(6) The assets of the Contractor are not subject to any lien or encumbrance of any character except for current taxes not delinquent, and except as shown in the financial statements furnished by the Contractor. There is no current *assignment of claims* under any contract affected by these advance payment provisions.

(7) All information furnished by the Contractor to the administering office in connection with each request for advance payments is true and correct.

(8) These representations *shall* be continuing and *shall* be considered to have been repeated by the submission of each *invoice* for advance payments.

(m) *Covenants*. To the extent the Government considers it necessary while any advance payments made under this contract remain outstanding, the Contractor, without the prior written consent of the administering office, *shall* not-

(1) Mortgage, pledge, or otherwise encumber or allow to be encumbered, any of the assets of the Contractor now owned or subsequently acquired, or permit any preexisting mortgages, liens, or other encumbrances to remain on or attach to any assets of the Contractor which are allocated to performing this contract and with respect to which the Government has a lien under this contract;

(2) Sell, assign, transfer, or otherwise dispose of accounts receivable, notes, or *claims* for money due or to become due;

(3) Declare or pay any dividends, except dividends payable in stock of the corporation, or make any other distribution on account of any shares of its capital stock, or purchase, redeem, or otherwise acquire for value any of its stock, except as required by sinking fund or redemption arrangements

reported to the administering office incident to the establishment of these advance payment provisions;

(4) Sell, convey, or lease all or a substantial part of its assets;

(5) Acquire for value the stock or other securities of any corporation, municipality, or Governmental authority, except direct obligations of the *United States*;

(6) Make any advance or loan or incur any liability as guarantor, *surety*, or accommodation endorser for any party;

(7) Permit a writ of attachment or any similar process to be issued against its property without getting a release or bonding the property within 30 days after the entry of the writ of attachment or other process;

(8) Pay any remuneration in any form to its directors, officers, or key employees higher than rates provided in existing agreements of which notice has been given to the administering office, accrue excess remuneration without first obtaining an agreement subordinating it to all *claims* of the Government, or employ any person at a rate of compensation over $_____ ayear;

(9) Change substantially the management, ownership, or control of the corporation;

(10) Merge or consolidate with any other firm or corporation, change the type of business, or engage in any transaction outside the ordinary course of the Contractor’s business as presently conducted;

(11) Deposit any of its funds except in a bank or trust company insured by the Federal Deposit *Insurance* Corporation or a credit union insured by the National Credit Union Administration;

(12) Create or incur indebtedness for advances, other than advances to be made under the terms of this contract, or for borrowings;

(13) Make or covenant for capital expenditures exceeding $_____ in total;

(14) Permit its net current assets, computed in accordance with generally accepted accounting principles, to become less than $_____; or

(15) Make any payments on account of the obligations listed below, except in the manner and to the extent provided in this contract:

[List the pertinent obligations]

Parent topic: 52.232 [Reserved]