52.232-16 Progress Payments.

As prescribed in 32.502-4(a), insert the following clause:

Progress Payments (Nov 2021)

The Government will make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts of $2,500 or more approved by the *Contracting Officer*, under the following conditions:

(a) Computation of amounts.

(1) Unless the Contractor requests a smaller amount, the Government will compute each progress payment as 80 percent of the Contractor's total costs incurred under this contract 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 Government under this contract. The *Contracting Officer* will consider cost of money that would be allowable under Federal *Acquisition* Regulation (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 the contract 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 Contractor's payment request to the Government.

(3) The Government will exclude accrued costs of Contractor contributions under employee pension plans until actually paid unless-

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

(4) The Contractor *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 contract, 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 Contractor has acquired title; and

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

(6) The total amount of progress payments *shall* not exceed 80 percent of the total contract 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 Contractor *shall* repay the amount of such excess to the Government on demand.

(8) Notwithstanding any other terms of the contract, the Contractor agrees not to request progress payments in dollar amounts of less than $2,500. The *Contracting Officer may* make exceptions.

(9) The costs applicable to items delivered, invoiced, and accepted *shall* not include costs in excess of the contract price of the items.

(b) *Liquidation*. Except as provided in the *Termination for Convenience* of the Government clause, all progress payments *shall* be liquidated by deducting from any payment under this contract, other than advance or progress payments, the unliquidated progress payments, or 80 percent of the amount invoiced, whichever is less. The Contractor *shall* repay to the Government 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 Government reserves the right to unilaterally change from the ordinary liquidation rate to an *alternate* rate when deemed appropriate for proper contract financing.

(c) *Reduction or suspension*. The *Contracting Officer 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 Contractor failed to comply with any material requirement of this contract (which includes paragraphs (f) and (g) of this clause).

(2) Performance of this contract is endangered by the Contractor's—

(i) Failure to make progress; or

(ii) Unsatisfactory financial condition.

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

(4) The Contractor is delinquent in payment of the costs of performing this contract in the ordinary course of business.

(5) The fair value of the undelivered work is less than the amount of unliquidated progress payments for that work.

(6) The Contractor 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 contract, 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 contract.

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

(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 Contractor or subcontractors are required to deliver them to the Government by other clauses of this contract.

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

(4) The Contractor *may* sell any *scrap* resulting from production under this contract without requesting the *Contracting Officer*'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 Contractor *must* obtain the *Contracting Officer*'s advance approval of the action and the terms. The Contractor *shall* (i) exclude the allocable costs of the property from the costs of contract performance, and (ii) repay to the Government any amount of unliquidated progress payments allocable to the property. Repayment *may* be by cash or credit memorandum.

(6) When the Contractor completes all of the obligations under this contract, including liquidation of all progress payments, title *shall* vest in the Contractor for all property (or the proceeds thereof) not-

(i) Delivered to, and accepted by, the Government under this contract; or

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

(7) The terms of this contract 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 Government, the Contractor *shall* bear the risk of loss for property, the title to which vests in the Government under this clause, except to the

extent the Government expressly assumes the risk. The Contractor *shall* repay the Government an amount equal to the unliquidated progress payments that are based on costs allocable to property that is lost (see 45.101).

(f) *Control of costs and property*. The Contractor *shall* maintain an accounting system and controls adequate for the proper administration of this clause.

(g) Reports, forms, and access to records.

(1) The Contractor *shall* promptly furnish reports, certificates, financial statements, and other pertinent information (including estimates to complete) reasonably requested by the *Contracting Officer* for the administration of this clause. Also, the Contractor *shall* give the Government reasonable opportunity to examine and verify the Contractor's books, records, and accounts.

(2) The Contractor *shall* furnish estimates to complete that have been developed or updated within six months of the date of the progress payment request. The estimates to complete *shall* represent the Contractor's best estimate of total costs to complete all remaining contract work required under the contract. The estimates *shall* include sufficient detail to permit Government verification.

(3) Each Contractor request for progress payment *shall*:

(i) Be submitted on Standard Form 1443, Contractor's Request for Progress Payment, or the electronic equivalent as required by agency regulations, in accordance with the form instructions and the contract terms; and

(ii) Include any additional supporting documentation requested by the *Contracting Officer*.

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

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

(2) The Government'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 contract; 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 Government.

(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 6 months between the beginning of work and the first delivery; or, if the subcontractor is a small business concern, 4 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 this clause for any subcontractor that is a large business concern, or this clause with its *Alternate* I for any subcontractor that is a small business concern;

(ii) Are at least as favorable to 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 Contractor;

(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 Government's right to require delivery of the property to the Government if-

(A) The Contractor 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 subcon-

tract to the Government's right to require delivery of the property to the Government if-

(A) The Contractor defaults; or

(B) The subcontractor becomes bankrupt or insolvent.

(5) If the financing payments are in the form of *commercial product* or *commercial service* 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*

product or *commercial service* purchase that meets the definition and standards for *acquisition* of *commercial products* and *commercial services* 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 Government's right to require delivery of the property to the Government if-

(A) The Contractor 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 customary rate used by the *contracting* agency, depending on whether the subcontractor is or is not a small business concern.

(7) Concerning any proceeds received by the Government 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 Government to the Contractor under this contract.

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

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

(k) *Limitations on undefinitized contract actions*. Notwithstanding any other progress payment provisions in this contract, progress payments *may* not exceed 80 percent of costs incurred on work accomplished under undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in subpart 2.1, including *contract modifications* for additional *supplies* or services, but not including *contract modifications* that are within the scope and under the terms of the contract, such as *contract 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 contract action is definitized. Costs incurred which are subject to this limitation *shall* be segregated on Contractor 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 contract actions *shall* be liquidated at 80 percent of the amount invoiced for work performed under the undefinitized contract action as long as the contract action remains undefinitized. The amount of unliquidated progress payments for undefinitized contract actions *shall* not exceed 80 percent of the maximum liability of the Government under the undefinitized contract action or such lower limit specified elsewhere in the contract. Separate limits *may* be specified for separate actions.

(l) *Due date*. The designated payment office will make progress payments on the _____ *[Contracting Officer insert date as prescribed by agency head; if not prescribed, insert "30th"] day* after the designated billing office receives a proper progress payment request. In the event that the

Government requires an audit or other review of a specific progress payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date. Progress payments are considered contract financing and are not subject to the interest penalty provisions of the Prompt Payment Act.

(m) *Progress payments under indefinite-delivery contracts*. The Contractor *shall* account for and submit progress payment requests under individual orders as if the order constituted a separate contract, unless otherwise specified in this contract.

(End of clause)

Alternate I (Mar 2000). If the contract is with a small business concern, change each mention of the progress payment and liquidation rates excepting paragraph (k) to the customary rate of 85 percent for small business concerns (see FAR 32.501-1).

Alternate II (Apr 2003). If the contract is a letter contract, add paragraphs (n) and (o). The amount specified in paragraph (o) *shall* not exceed 80 percent of the maximum liability of the Government under the letter contract. The *contracting officer may* specify separate limits for separate parts of the work.

(n) The *Contracting Officer* will liquidate progress payments made under this letter contract, unless previously liquidated under paragraph (b) of this clause, using the following procedures:

(1) If this letter contract is superseded by a definitive contract, unliquidated progress payments made under this letter contract *shall* be liquidated by deducting the amount from the first progress or other payments made under the definitive contract.

(2) If this letter contract is not superseded by a definitive contract calling for the furnishing of all or part of the articles or services covered under the letter contract, unliquidated progress payments made under the letter contract *shall* be liquidated by deduction from the amount payable under the Termination clause.

(3) If this letter contract is partly terminated and partly superseded by a contract, the Government will allocate the unliquidated progress payments to the terminated and unterminated portions as the Government deems equitable, and will liquidate each portion under the relevant procedure in paragraphs (n)(1) and (n)(2) of this clause.

(4) If the method of liquidating progress payments provided in this clause does not result in full liquidation, the Contractor *shall* immediately pay the unliquidated balance to the Government on demand.

(o) The amount of unliquidated progress payments *shall* not exceed _____ *[Contracting Officer specify dollar amount]*.

Alternate III (Jun 2020). As prescribed in 32.502-4 (d), add the following paragraph (n) to the basic clause. If *Alternate* II is also being used, redesignate the following paragraph as paragraph (p):

(n) The provisions of this clause will not be applicable to individual orders at or below the *simplified acquisition threshold*, as defined in FAR 2.101 on the date of individual order award.

Parent topic: 52.232 [Reserved]