52.232-7 Payments under Time-and-Materials and Labor-Hour Contracts.

As prescribed in 32.111(a)(7), insert the following clause:

Payments under Time-and-Materials and Labor-Hour Contracts (Nov 2021)

The Government will pay the Contractor as follows upon the submission of vouchers approved by the *Contracting Officer* or the authorized representative:

(a) *Hourly rate*.

(1) *Hourly rate* means the rate(s) prescribed in the contract for payment for labor that meets the labor category qualifications of a labor category specified in the contract that are-

(i) Performed by the Contractor;

(ii) Performed by the subcontractors; or

(iii) Transferred between divisions, subsidiaries, or *affiliates* of the Contractor under a common control.

(2) The amounts *shall* be computed by multiplying the appropriate hourly rates prescribed in the Schedule by the number of direct labor hours performed.

(3) The hourly rates *shall* be paid for all labor performed on the contract that meets the labor qualifications specified in the contract. Labor hours incurred to perform tasks for which labor qualifications were specified in the contract will not be paid to the extent the work is performed by employees that do not meet the qualifications specified in the contract, unless specifically authorized by the *Contracting Officer*.

(4) The hourly rates *shall* include wages, *indirect costs*, general and administrative expense, and profit. Fractional parts of an hour *shall* be payable on a prorated basis.

(5) Vouchers *may* be submitted not more than once every two weeks, to the *Contracting Officer* or authorized representative. A small business concern *may* receive more frequent payments than every two weeks. The Contractor *shall* substantiate vouchers (including any subcontractor hours reimbursed at the hourly rate in the schedule) by evidence of actual payment and by-

(i) Individual daily job timekeeping records;

(ii) Records that verify the employees meet the qualifications for the labor categories specified in the contract; or

(iii) Other substantiation approved by the *Contracting Officer*.

(6) Promptly after receipt of each substantiated voucher, the Government *shall*, except as otherwise provided in this contract, and subject to the terms of paragraph (e) of this clause, pay the voucher as approved by the *Contracting Officer* or authorized representative.

(7) Unless otherwise prescribed in the Schedule, the *Contracting Officer may* unilaterally issue a *contract modification* requiring the Contractor to withhold amounts from its billings until a reserve is set aside in an amount that the *Contracting Officer* considers necessary to protect the Government's interests. The *Contracting Officer may* require a withhold of 5 percent of the amounts due under paragraph (a) of this clause, but the total amount withheld for the contract *shall* not exceed $50,000. The amounts withheld *shall* be retained until the Contractor executes and delivers the release required by paragraph (g) of this clause.

(8) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule *shall* not be varied by virtue of the Contractor having performed work on an *overtime* basis. If no *overtime* rates are provided in the Schedule and *overtime* work is approved in advance by the *Contracting Officer*, *overtime* rates *shall* be negotiated. Failure to agree upon these *overtime* rates *shall* be treated as a dispute under the Disputes clause of this contract. If the Schedule provides rates for *overtime*, the premium portion of those rates will be reimbursable only to the extent the *overtime* is approved by the *Contracting Officer*.

(b) *Materials.*

(1) For the purposes of this clause-

(i) *Direct materials* means those materials that enter directly into the *end product*, or that are used or consumed directly in connection with the furnishing of the *end product* or service.

(ii) *Materials* means-

(A) Direct materials, including *supplies* transferred between divisions, subsidiaries, or *affiliates* of the Contractor under a common control;

(B) Subcontracts for *supplies* and incidental services for which there is not a labor category specified in the contract;

(C) Other *direct costs* (*e.g.*, incidental services for which there is not a labor category specified in the contract, travel, computer usage charges, etc.); and

(D) Applicable *indirect costs*.

(2) If the Contractor furnishes its own materials that meet the definition of a *commercial product* or *commercial service* in Federal *Acquisition* Regulation (FAR) 2.101, the price to be paid for such materials *shall* not exceed the Contractor's established catalog or market price, adjusted to reflect the-

(i) Quantities being acquired; and

(ii) Actual cost of any modifications necessary because of contract requirements.

(3) Except as provided for in paragraph (b)(2) of this clause, the Government will reimburse the Contractor for allowable cost of materials provided the Contractor-

(i) Has made payments for materials in accordance with the terms and conditions of the agreement or *invoice*; or

(ii) Ordinarily makes these payments within 30 days of the submission of the Contractor's payment request to the Government and such payment is in accordance with the terms and conditions of the agreement or *invoice*.

(4) Payment for materials is subject to the Allowable Cost and Payment clause of this contract. The *Contracting Officer* will determine allowable costs of materials in accordance with FAR subpart 31.2 in effect on the date of this contract.

(5) The Contractor *may* include allocable *indirect costs* and other *direct costs* to the extent they are-

(i) Comprised only of costs that are clearly excluded from the hourly rate;

(ii) Allocated in accordance with the Contractor's written or established accounting practices; and

(iii) *Indirect costs* are not applied to subcontracts that are paid at the hourly rates.

(6) To the extent able, the Contractor *shall*-

(i) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and

(ii) Take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the Contractor *shall* promptly notify the *Contracting Officer* and give the reasons. The Contractor *shall* give credit to the Government for cash and trade discounts, rebates, *scrap*, commissions, and other amounts that have accrued to the benefit of the Contractor, or would have accrued except for the fault or neglect of the Contractor. The Contractor *shall* not deduct from gross costs the benefits lost without fault or neglect on the part of the Contractor, or lost through fault of the Government.

(7) Except as provided for in 31.205-26(e) and (f), the Government will not pay profit or fee to the prime Contractor on materials.

(c) If the Contractor enters into any subcontract that requires consent under the clause at 52.244-2, Subcontracts, without obtaining such consent, the Government is not required to reimburse the Contractor for any costs incurred under the subcontract prior to the date the Contractor obtains the required consent. Any reimbursement of subcontract costs incurred prior to the date the consent was obtained *shall* be at the sole discretion of the Government.

(d) *Total cost*. It is estimated that the total cost to the Government for the performance of this contract *shall* not exceed the ceiling price set forth in the Schedule, and the Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the Schedule, the Contractor *shall* notify the *Contracting Officer* giving a revised estimate of the total price to the Government for performing this contract with supporting reasons and documentation. If at any time during performing this contract, the Contractor has reason to believe that the total price to the Government for performing this contract will be substantially greater or less than the then stated ceiling price, the Contractor *shall* so notify the *Contracting Officer*, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during performing this contract, the Government has reason to believe that the work to be required in performing this contract will be substantially greater or less than the stated ceiling price, the *Contracting Officer* will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the contract.

(e) *Ceiling price*. The Government will not be obligated to pay the Contractor any amount in excess of the ceiling price in the Schedule, and the Contractor *shall* not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the *Contracting Officer* notifies the Contractor *in writing* that the ceiling price has been increased and specifies in the notice a revised ceiling that *shall* constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase *shall* be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

(f) *Audit*. At any time before final payment under this contract, the *Contracting Officer may* request audit of the vouchers and supporting documentation. Each payment previously made *shall* be subject to reduction to the extent of amounts, on preceding vouchers, that are found by the *Contracting Officer* or authorized representative not to have been properly payable and *shall* also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the voucher designated by the Contractor as the "completion voucher" and supporting documentation, and upon compliance by the Contractor with all terms of this contract (including, without limitation, terms relating to patents and the terms of paragraph (g) of this clause), the Government *shall* promptly pay any balance due the Contractor. The completion voucher, and supporting documentation, *shall* be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event later than 120 days (or such longer period as the *Contracting Officer may* approve *in writing*) from the date of completion.

(g) *Assignment and Release of Claims*. The Contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, *shall* execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and *claims* arising out of or under this contract, subject only to the following exceptions:

(1) Specified *claims* in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement by the Contractor.

(2) *Claims*, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice *in writing* to the *Contracting Officer* not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier.

(3) *Claims* for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable incidental expenses, incurred by the Contractor under the terms of this contract relating to patents.

(h) *Interim payments on contracts for other than services.*

(1) Interim payments made prior to the final payment under the contract are contract financing payments. Contract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act.

(2) The designated payment office will make interim payments for contract financing on the _________ *[Contracting Officer insert day as prescribed by agency head; if not prescribed, insert "30th*] *day* after the designated billing office receives a proper payment request. In the event that the

Government requires an audit or other review of a specific 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.

(i) *Interim payments on contracts for services*. For interim payments made prior to the final payment under this contract, the Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR part 1315.

(End of clause)

Parent topic: 52.232 [Reserved]