49.112-1 Partial payments.

(a) *General.* If the contract authorizes partial payments on *settlement proposals* before settlement, a prime contractor *may* request them on the form prescribed in 49.602-4 at any time after submission of interim or final *settlement proposals*. The Government will process applications for partial payments promptly. A subcontractor *shall* submit its application through the prime contractor which *shall* attach its own *invoice* and recommendations to the subcontractor's application. Partial payments to a subcontractor *shall* be made only through the prime contractor and only after the prime contractor has submitted its interim or final *settlement proposal*. Except for undelivered acceptable finished *products*, partial payments *shall* not be made for profit or fee claimed under the *terminated portion of the contract*. In exercising discretion on the extent of partial payments to be made, the TCO *shall* consider the diligence of the contractor in settling with subcontractors and in preparing its own *settlement proposal*.

(b) *Amount of partial payment.* Before approving any partial payment, the TCO *shall* obtain any desired accounting, engineering, or other specialized reviews of the data submitted in support of the contractor's *settlement proposal*. If the reviews and the TCO's examination of the data indicate that the requested partial payment is proper, reasonable payments *may* be authorized in the discretion of the TCO up to-

(1) 100 percent of the contract price, adjusted for undelivered acceptable items completed before the termination date, or later completed with the approval of the TCO (see 49.205);

(2) 100 percent of the amount of any subcontract settlement paid by the prime contractor if the settlement was approved or ratified by the TCO under 49.108-3(c) or was authorized under 49.108-4;

(3) 90 percent of the *direct cost* of *termination inventory*, including costs of raw materials, purchased parts, *supplies*, and direct labor;

(4) 90 percent of other allowable costs (including settlement expense and manufacturing and administrative *indirect costs*) allocable to the *terminated portion of the contract* and not included in paragraphs (b)(1), (2), or (3) of this section; and

(5) 100 percent of partial payments made to subcontractors under this section.

(c) *Recognition of assignments.* When an *assignment of claims* has been made under the contract, the Government *shall* not make partial payments to other than the assignee unless the parties to the assignment consent *in writing* (see 32.805(e)).

(d) *Security for partial payments.* If any partial payment is made for completed end items or for costs of *termination inventory*, the TCO *shall* protect the Government's interest. This *shall* be done by obtaining title to the completed end items or *termination inventory*, or by the creation of a lien in favor of the Government, paramount to all other liens, on the completed end items or *termination inventory*, or by other appropriate means.

(e) *Deductions in computing amount of partial payments*. The TCO *shall* deduct from the gross amount of any partial payment otherwise payable under 49.112-1(b)-

(1) All unliquidated balances of progress and advance payments (including interest) made to the contractor, which are allocable to the *terminated portion of the contract*; and

(2) The amounts of all credits arising from the purchase, retention, or sale of property, the costs of which are included in the application for payment.

(f) *Limitation on total amount.* The total amount of all partial payments *shall* not exceed the amount that will, in the opinion of the TCO, become due to the contractor because of the termination.

(g) *Effect of overpayment.* If the total of partial payments exceeds the amount finally determined due on the *settlement proposal*, the contractor *shall* repay the excess to the Government on demand, together with interest. The interest *shall* be computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App.1215(b)(2) from the date the excess payment was received by the contractor to the date of repayment. However, interest will not be charged for any-

(1) Excess payment attributable to a reduction in the *settlement proposal* because of retention or other disposition of *termination inventory*, until 10 days after the date of the retention or disposition, or a later date determined by the TCO, or

(2) Overpayment under cost-reimbursement research and development contracts without profit or fee if the overpayments are repaid to the Government within 30 days after demand.

(h) Certification and approval of partial payments.

(1) The contractor *shall* place the following certification on vouchers or *invoices* for partial payments:

The payment covered by this voucher is a partial payment on the Contractor's *settlement proposal* under contract No. _____ under part 49 of the Federal *Acquisition* Regulation.

(2) The TCO *shall* approve the *invoice* or voucher by noting on it the following:

Payment of $ _____ is approved.

Parent topic: 49.112 Payment.