

Defense Federal Acquisition Regulation Supplement

Part 252—Solicitation Provisions and Contract Clauses

252.232-7000 Advance Payment Pool.

As prescribed in 232.412-70(a), use the following clause:

ADVANCE PAYMENT POOL (DEC 1991)

(a) Notwithstanding any other provision of this contract, advance payments will be made for contract performance in accordance with the Determinations, Findings, and Authorization for Advance payment dated _____.

(b) Payments made in accordance with this clause shall be governed by the terms and conditions of the Advance Payment Pool Agreement between the United States of America and (insert the name of the contractor). The Agreement is incorporated in the contract by reference.

(End of clause)

252.232-7001 Disposition of Payments.

As prescribed in 232.412-70(b), use the following clause:

DISPOSITION OF PAYMENTS (DEC 1991)

Payment will be by a dual payee Treasury check made payable to the contractor or the (insert the name of the disbursing office in the advance payment pool agreement), and will be forwarded to that disbursing office for appropriate disposition.

(End of clause)

252.232-7002 Progress Payments for Foreign Military Sales Acquisitions.

As prescribed in 232.502-4-70(a), use the following clause:

PROGRESS PAYMENTS FOR FOREIGN MILITARY SALES ACQUISITIONS (DEC 1991)

If this contract includes foreign military sales (FMS) requirements, the Contractor shall—

(a) Submit a separate progress payment request for each progress payment rate; and

(b) Submit a supporting schedule showing—

(1) The amount of each request distributed to each country's requirements; and

(2) Total price per contract line item applicable to each separate progress payment rate.

(c) Identify in each progress payment request the contract requirements to which it applies (i.e., FMS or U.S.);

(d) Calculate each request on the basis of the prices, costs (including costs to complete), subcontractor progress payments, and progress payment liquidations of the contract requirements to which it applies; and

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(e) Distribute costs among contract line items and countries in a manner acceptable to the Administrative Contracting Officer.

(End of clause)

252.232-7003 Flexible Progress Payments.

As prescribed in 232.502-4-70(b), use the following clause:

FLEXIBLE PROGRESS PAYMENTS (DEC 1991)

(a) This contract is subject to flexible progress payment procedures as set forth in this clause and Defense FAR Supplement 232.502-1-71.

(1) The progress payment rate of this contract is ____ percent. This percentage applies instead of the customary uniform progress payment rate and liquidation rate of the Progress Payments clause.

(2) The progress payment rate of this contract was determined by the DoD Cash Flow Computer Model (name) dated _____, using ____ percent as the minimum rate for the Contractor's investment (as a weighted average of costs) in its work in process inventory over the life of the contract.

(b) If actual and projected cash flow data generated during contract performance reveal that the customary flexible progress payment rate will result in a Contractor investment in work in process inventory more than two percentage points higher or lower than the minimum rate of Contractor investment specified in paragraph (a)(2) of this clause, the progress payment rate shall be redetermined by using the DoD Cash Flow Computer Model. Unless it contained an error, the version of the DoD Cash Flow Computer Model identified in paragraph (a)(2) of this clause shall be used for any redetermination. The customary flexible progress payment rate shall not be less than the customary uniform progress payment rate that would have applied to this contract absent flexible progress payment procedures, and the progress payment rate shall not be greater than 100 percent.

(c) Notwithstanding paragraph (b) of this clause, if at any time the flexible progress payment rate is determined to be overstated because any factual data submitted by the Contractor in support of the rate computation was not current, accurate, and complete at the time the flexible progress payment rate was established, the progress payment rate shall be reduced to the rate that should have been calculated using the model specified in paragraph (a)(2) of this clause. The Contractor shall pay interest in accordance with paragraph (d) of this clause on all resulting overpayments, computed from the date of the Government's overpayment, to the date of liquidation of the overpayment. Payment of any unliquidated overpayment and interest shall be due 30 days after the date of the first written demand for payment.

(d) Interest shall be simple interest at the rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Pub. L. 95-563), which is applicable at the time the Government made the overpayment, and then at the rate applicable for each six month period as fixed by the Secretary, until the overpayment is liquidated.

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(e) Flexible progress payment terms will be made available to subcontractors in accordance with paragraph (j) of the Progress Payments clause and Defense FAR Supplement 232.502-1-71(b)(4).

(End of clause)

252.232-7004 DoD Progress Payment Rates.

As prescribed in 232.502-4-70(b) and (c), use the following clause:

DOD PROGRESS PAYMENT RATES (FEB 1996)

(a) If the contractor is a large business, the Progress Payments clause of this contract is modified to change each mention of the progress payment rate and liquidation rate (including paragraph (k), *Limitations on Unfinalized Contract Actions*) to 75 percent.

(b) If the contractor is a small business, the Progress Payments clause of this contract is modified to change each mention of the progress payment rate and liquidation rate (excepting paragraph (k), *Limitations on Unfinalized Contract Actions*) to 90 percent.

(c) If the contractor is a small disadvantaged business, the Progress Payments clause of this contract is modified to change each mention of the progress payment rate and liquidation rate (excepting paragraph (k), *Limitations on Unfinalized Contract Actions*) to 95 percent.

(d) The above rates are the customary uniform progress payment rates for DoD contracts.

(End of clause)

252.232-7005 Reimbursement of Subcontractor Advance Payments—DoD Pilot Mentor-Protege Program.

As prescribed in 232.412-70(c), use the following clause:

REIMBURSEMENT OF SUBCONTRACTOR ADVANCE PAYMENTS—DOD PILOT MENTOR-PROTEGE PROGRAM (DEC 1991)

(a) The Government will reimburse the Contractor for any advance payments made by the Contractor, as a mentor firm, to a small disadvantaged business, as a protege firm, pursuant to an approved mentor-protege agreement, provided—

(1) The Contractor's subcontract with the protege firm includes a provision substantially the same as FAR 52.232-12, Advance Payments;

(2) The Contractor has administered the advance payments in accordance with the policies of FAR Subpart 32.4; and

(3) The Contractor agrees that any financial loss resulting from the failure or inability of the protege firm to repay any unliquidated advance payments is the sole financial responsibility of the Contractor.

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(b) For a fixed price type contract, advance payments made to a protege firm shall be paid and administered as if they were 100 percent progress payments. The Contractor shall include as a separate attachment with each Standard Form (SF) 1443, Contractor's Request for Progress Payment, a request for reimbursement of advance payments made to a protege firm. The attachment shall provide a separate calculation of lines 14a through 14e of SF 1443 for each protege, reflecting the status of advance payments made to that protege.

(c) For cost reimbursable contracts, reimbursement of advance payments shall be made via public voucher. The Contractor shall show the amounts of advance payments made to each protege on the public voucher, in the form and detail directed by the cognizant contracting officer or contract auditor.

(End of clause)

252.232-7006 Reserved.

252.232-7007 Limitation of Government's obligation.

As prescribed in 232.705-70, use the following clause:

LIMITATION OF GOVERNMENT'S OBLIGATION (AUG 1993)

(a) Contract line item(s) * through * are incrementally funded. For these item(s), the sum of \$ * of the total price is presently available for payment and allotted to this contract. An allotment schedule is set forth in paragraph (i) of this clause.

(b) For item(s) identified in paragraph (a) of this clause, the Contractor agrees to perform up to the point at which the total amount payable by the Government, including reimbursement in the event of termination of those item(s) for the Government's convenience, approximates the total amount currently allotted to the contract. The Contractor will not be obligated to continue work on those item(s) beyond that point. The Government will not be obligated in any event to reimburse the Contractor in excess of the amount allotted to the contract for those item(s) regardless of anything to the contrary in the clause entitled "Termination for Convenience of the Government." As used in this clause, the total amount payable by the Government in the event of termination of applicable contract line item(s) for convenience includes costs, profit, and estimated termination settlement costs for those item(s).

(c) Notwithstanding the dates specified in the allotment schedule in paragraph (i) of this clause, the Contractor will notify the Contracting Officer in writing at least ninety days prior to the date when, in the Contractor's best judgment, the work will reach the point at which the total amount payable by the Government, including any cost for termination for convenience, will approximate 85 percent of the total amount then allotted to the contract for performance of the applicable item(s). The notification will state (1) the estimated date when that point will be reached and (2) an estimate of additional funding, if any, needed to continue performance of applicable line items up to the next scheduled date for allotment of funds identified in paragraph (i) of this clause, or to a mutually agreed upon substitute date. The notification will also advise the Contracting Officer of the estimated amount of additional funds that will be required for the timely performance of the item(s) funded pursuant to this clause, for a subsequent period as may be specified in the allotment schedule in paragraph (i) of this

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clause or otherwise agreed to by the parties. If after such notification additional funds are not allotted by the date identified in the Contractor's notification, or by an agreed substitute date, the Contracting Officer will terminate any item(s) for which additional funds have not been allotted, pursuant to the clause of this contract entitled "Termination for Convenience of the Government."

(d) When additional funds are allotted for continued performance of the contract line item(s) identified in paragraph (a) of this clause, the parties will agree as to the period of contract performance which will be covered by the funds. The provisions of paragraphs (b) through (d) of this clause will apply in like manner to the additional allotted funds and agreed substitute date, and the contract will be modified accordingly.

(e) If, solely by reason of failure of the Government to allot additional funds, by the dates indicated below, in amounts sufficient for timely performance of the contract line item(s) identified in paragraph (a) of this clause, the Contractor incurs additional costs or is delayed in the performance of the work under this contract and if additional funds are allotted, an equitable adjustment will be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the item(s), or in the time of delivery, or both. Failure to agree to any such equitable adjustment hereunder will be a dispute concerning a question of fact within the meaning of the clause entitled "Disputes."

(f) The Government may at any time prior to termination allot additional funds for the performance of the contract line item(s) identified in paragraph (a) of this clause.

(g) The termination provisions of this clause do not limit the rights of the Government under the clause entitled "Default." The provisions of this clause are limited to the work and allotment of funds for the contract line item(s) set forth in paragraph (a) of this clause. This clause no longer applies once the contract is fully funded except with regard to the rights or obligations of the parties concerning equitable adjustments negotiated under paragraphs (d) and (e) of this clause.

(h) Nothing in this clause affects the right of the Government to terminate this contract pursuant to the clause of this contract entitled "Termination for Convenience of the Government."

(i) The parties contemplate that the Government will allot funds to this contract in accordance with the following schedule:

On execution of contract	\$ _____
(month) (day), 199x	\$ _____
(month) (day), 199y	\$ _____
(month) (day), 199z	\$ _____

(End of clause)

ALTERNATE I (AUG 1993).

If only one line item will be incrementally funded, substitute the following paragraph (a) for paragraph (a) of the basic clause:

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(a) Contract line item _____ is incrementally funded. The sum of \$ ____* is presently available for payment and allotted to this contract. An allotment schedule is contained in paragraph (i) of this clause.

* To be inserted after negotiation.

252.232-7008 Assignment of Claims (Overseas).

As prescribed in 232.806(a)(1), use the following clause:

ASSIGNMENT OF CLAIMS (OVERSEAS) (JUN 1997)

(a) No claims for monies due, or to become due, shall be assigned by the Contractor unless—

(1) Approved in writing by the Contracting Officer;

(2) Made in accordance with the laws and regulations of the United States of America; and

(3) Permitted by the laws and regulations of the Contractor's country.

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret," "Secret," or "Confidential" be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive such documents. However, a copy of any part or all of this contract so marked may be furnished, or any information contained herein may be disclosed, to such assignee upon the Contracting Officer's prior written authorization.

(c) Any assignment under this contract shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment may be made to one party as agent or trustee for two or more parties participating in such financing. On each invoice or voucher submitted for payment under this contract to which any assignment applies, and for which direct payment thereof is to be made to an assignee, the Contractor shall—

(1) Identify the assignee by name and complete address; and

(2) Acknowledge the validity of the assignment and the right of the named assignee to receive payment in the amount invoiced or vouchered.

(End of clause)

252.232-7009 Payment by Electronic Funds Transfer (CCR).

As prescribed in 232.1103, use the following clause:

PAYMENT BY ELECTRONIC FUNDS TRANSFER (CCR)(JUN 1998)

(a) *Method of payment.*

(1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) or (b) of this

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clause. As used in this clause, the term “EFT” refers to the funds transfer and may also include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either (i) accept payment by check or some other mutually agreeable method of payment, or (ii) request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (e) of this clause).

(b) *Alternative contractor certification.* If the Contractor certifies in writing, as part of its registration with the Central Contractor Registration (CCR) database that it does not have an account with a financial institution and does not have an authorized payment agent, payment shall be made by check to the remittance address contained in the CCR database. All contractor certifications will expire on January 1, 1999.

(c) *Contractor's EFT information.* Except as provided in paragraph (b) of this clause, the Government shall make payment to the Contractor using the EFT information contained in the CCR database. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the CCR database.

(d) *Mechanisms for EFT payment.* The Government may make payment by EFT through either an Automated Clearing House subject to the banking laws of the United States or the Federal Reserve Wire Transfer System.

(e) *Suspension of payment.* If the Contractor's EFT information in the CCR database is incorrect and the Contractor has not certified under paragraph (b) of this clause, the Government need not make payment to the Contractor under this contract until correct EFT information or certification is entered into the CCR database; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(f) *Contractor EFT arrangements.* If the Contractor has identified multiple payment receiving points (i.e., more than one remittance address or EFT information set) in the CCR database, and the Contractor has not notified the Government of the payment receiving point applicable to this contract, the Government shall make payment to the first payment receiving point (EFT information set or remittance address as applicable) listed in the CCR database.

(g) *Liability for uncompleted or erroneous transfers.*

(1) If an uncompleted or erroneous transfer occurs because the Government failed to use the Contractor's EFT information in the correct manner, the Government remains responsible for—

- (i) Making a correct payment;
- (ii) Paying any prompt payment penalty due; and
- (iii) Recovering any erroneously directed funds.

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(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and—

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or

(ii) If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (e) of this clause shall apply.

(h) *EFT and prompt payment.* A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(i) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee register in the CCR database and be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (e) of this clause.

(j) *Liability for change of EFT information by financial agent.* The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent.

(k) *Payment information.* The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Contractor has certified in accordance with paragraph (b) of this clause or if the Government otherwise makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the CCR database.

(End of clause)