

52.232-5 Payments under Fixed-Price Construction Contracts.

As prescribed in 32.111(a)(5), insert the following clause:

Payments under Fixed-Price *Construction* Contracts (May 2014)

(a) *Payment of price.* The Government *shall* pay the Contractor the contract price as provided in this contract.

(b) *Progress payments.* The Government *shall* make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the *Contracting Officer*, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the *Contracting Officer*.

(1) The Contractor's request for progress payments *shall* include the following substantiation:

(i) An itemization of the amounts requested, related to the various elements of work required by the contract covered by the payment requested.

(ii) A listing of the amount included for work performed by each subcontractor under the contract.

(iii) A listing of the total amount of each subcontract under the contract.

(iv) A listing of the amounts previously paid to each such subcontractor under the contract.

(v) Additional supporting data in a form and detail required by the *Contracting Officer*.

(2) In the preparation of estimates, the *Contracting Officer* may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site also may be taken into consideration if-

(i) Consideration is specifically authorized by this contract; and

(ii) The Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this contract.

(c) *Contractor certification.* Along with each request for progress payments, the Contractor *shall* furnish the following certification, or payment *shall* not be made: (However, if the Contractor elects to delete paragraph (c)(4) from the certification, the certification is still acceptable.)

I hereby certify, to the best of my knowledge and belief, that-

(1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

(2) All payments due to subcontractors and suppliers from previous payments received under the contract have been made, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of Chapter 39 of Title 31, *United States Code*;

(3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract; and

(4) This certification is not to be construed as final acceptance of a subcontractor's performance.

_____ (Name)

_____ (Title)

_____ (Date)

(d) *Refund of unearned amounts.* If the Contractor, after making a certified request for progress payments, discovers that a portion or all of such request constitutes a payment for performance by the Contractor that fails to conform to the specifications, terms, and conditions of this contract (hereinafter referred to as the "unearned amount"), the Contractor *shall*-

(1) Notify the *Contracting Officer* of such performance deficiency; and

(2) Be obligated to pay the Government an amount (computed by the *Contracting Officer* in the manner provided in paragraph (j) of this clause) equal to interest on the unearned amount from the 8 thday after the date of receipt of the unearned amount until-

(i) The date the Contractor notifies the *Contracting Officer* that the performance deficiency has been corrected; or

(ii) The date the Contractor reduces the amount of any subsequent certified request for progress payments by an amount equal to the unearned amount.

(e) *Retainage.* If the *Contracting Officer* finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the *Contracting Officer shall* authorize payment to be made in full. However, if satisfactory progress has not been made, the *Contracting Officer may* retain a maximum of 10 percent of the amount of the payment until satisfactory progress is achieved. When the work is substantially complete, the *Contracting Officer may* retain from previously withheld funds and future progress payments that amount the *Contracting Officer* considers adequate for protection of the Government and *shall* release to the Contractor all the remaining withheld funds. Also, on completion and acceptance of each separate building, public work, or other division of the contract, for which the price is stated separately in the contract, payment *shall* be made for the completed work without retention of a percentage.

(f) *Title, liability, and reservation of rights.* All material and work covered by progress payments made *shall*, at the time of payment, become the sole property of the Government, but this *shall* not be construed as-

(1) Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or

(2) Waiving the right of the Government to require the fulfillment of all of the terms of the contract.

(g) *Reimbursement for bond premiums.* In making these progress payments, the Government *shall*, upon request, reimburse the Contractor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the Contractor has furnished evidence of full payment to the *surety*. The retainage provisions in

paragraph (e) of this clause *shall* not apply to that portion of progress payments attributable to bond premiums.

(h) *Final payment.* The Government *shall* pay the amount due the Contractor under this contract after-

(1) Completion and acceptance of all work;

(2) Presentation of a properly executed voucher; and

(3) Presentation of release of all *claims* against the Government arising by virtue of this contract, other than *claims*, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release *may* also be required of the assignee if the Contractor's *claim* to amounts payable under this contract has been assigned under the *Assignment of Claims Act of 1940* (31 U.S.C.3727 and 41 U.S.C. 6305).

(i) *Limitation because of undefinitized work.* Notwithstanding any provision of this contract, progress payments *shall* not exceed 80 percent on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in FAR 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.

(j) *Interest computation on unearned amounts.* In accordance with 31 U.S.C. 3903(c)(1), the amount payable under paragraph (d)(2) of this clause *shall* be-

(1) Computed at the rate of average bond equivalent rates of 91-day Treasury bills auctioned at the most recent auction of such bills prior to the date the Contractor receives the unearned amount; and

(2) Deducted from the next available payment to the Contractor.

(End of clause)

Parent topic: 52.232 [Reserved]