

Cost Reimbursement Orders for F-22 Prime Contracts

The following terms and conditions apply in addition to the terms and conditions of Appendix 10 or 11 identified elsewhere in this order.

Part 1. Additional Clauses:

1. ALLOWABLE COST AND PAYMENT

(a) Invoicing. Buyer shall make payments to Seller when requested as work progresses, but not more often than once every 2 weeks, in amounts determined to be allowable by Buyer in accordance with the terms of this Contract and Subpart 31.2 of the FAR, and agency supplements as appropriate, in effect on the date of this Contract. If the Contract is with an educational institution, FAR Subpart 31.3 shall apply; and if with a non-profit organization other than an educational institution, FAR Subpart 31.7 shall apply. Seller may submit to the Buyer Procurement Representative, in such form and reasonable detail as the Representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this Contract.

(b) Reimbursing costs.

(1) For the purpose of reimbursing allowable costs (except as provided in paragraph (b)(2) of the clause, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only:

(i) Those recorded costs that, at the time of the request for reimbursement, Seller has paid by cash, check, or other form of actual payment for items or services purchased directly for this Contract;

(ii) When Seller is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for—

(A) Work purchased directly for the Contract and associated financing payments to subcontractors, provided payments will be made—

(1) In accordance with the terms and conditions of a subcontract or invoice; and

(2) Ordinarily prior to the submission of Seller's next payment request to the Government;

(B) Materials issued from Seller's inventory and placed in the production process for use on this Contract;

(C) Direct labor;

(D) Direct travel;

(E) Other direct in-house costs; and

(F) Properly allocable and allowable indirect costs, as shown in the records maintained by Seller for purposes of obtaining reimbursement under Government contracts; and

(iii) The amount of financing payments that have been paid by cash, check, or other forms of payment to Seller's subcontractors.

(2) Accrued costs of Seller contributions under employee pension plans shall be excluded until actually paid unless:

(i) Seller'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 Seller's indirect costs for payment purposes).

(3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) of this clause, allowable indirect costs under this contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) of this clause.

(4) Any statements in specifications or other documents incorporated in this Contract by reference designating performance of services or furnishing of materials at Seller's expense or at no cost to Buyer shall be disregarded for purposes of cost-reimbursement under this clause.

(c) Small business concerns. A small business concern may receive more frequent payments than every 2 weeks.

(d) Final indirect cost rates. Buyer shall reimburse Seller on the basis of final annual indirect cost rates and the appropriate bases established by Seller and the Government in effect for the period covered by the indirect cost rate proposal. Such rates and bases shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this Contract. The rates and bases shall be deemed incorporated into this Contract upon execution.

(e) Billing Rates. There shall be included as allowable indirect costs such overhead rates as may be established by Seller and the cognizant Government agency in accordance with the principles of the FAR and applicable FAR supplement. Pending establishment of final indirect overhead rates for any period, Seller shall be reimbursed at billing rates approved by the cognizant Government agency, which billing rates may be revised from time to time subject to such approval and subject to appropriate adjustment when the final rates for that period are established.

(f) Quick-closeout procedures. When Seller and Buyer agree, quick-closeout procedures of Subpart 42.7 of the FAR may be used.

(g) Audit. At any time or times before final payment, Buyer or the Contracting Officer may have Seller's invoices or vouchers and statements of cost audited. Any payment may be (1) reduced by amounts found not to constitute allowable costs or (2) adjusted for prior overpayments or underpayments.

(h) Final payment.

(1) Seller shall submit a completion invoice or voucher, designated as such, promptly upon completion of the Work, but no later than one year (or longer, as Buyer may approve in writing) from the completion date. Upon approval of that completion invoice or voucher and upon Seller's compliance with all terms of this Contract, Buyer shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

(2) Seller shall pay to Buyer any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by Seller or any assignee under this Contract to the extent that those amounts are properly allocable to costs for which Seller has been reimbursed by Buyer. Reasonable expenses incurred by Seller for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by Buyer. Before final payment under this contract, Seller and each assignee whose assignment is in effect at the time of final payment shall execute and deliver:

(i) An assignment to Buyer, in form and substance satisfactory to Buyer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which Seller has been reimbursed by Buyer under this Contract; and

(ii) A release discharging the Buyer, Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this Contract, except:

(A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(B) Claims (including reasonable incidental expenses) based upon liabilities of Seller to third parties arising out of the performance of this Contract; provided, that the claims are not known to Seller on the date of the execution of the release, and that Seller gives notice of the claims in writing to Buyer within 6 years following the release date or notice of final payment date, whichever is earlier; and

(C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by Seller under the patent clauses of this Contract, excluding, however, any expenses arising from Seller's indemnification of Buyer and the Government against patent liability.

(i) Subcontracts. No subcontract placed under this Contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursements type subcontracts shall not exceed the fee limitations in paragraph 15.404-4(c) of the FAR.

2. LIMITATION OF COST

FAR 52.232-20 Limitation of Funds (Apr 1984) is added with the following modifications:

Applies if this contract is fully funded. "Contracting Officer" and "Government" mean "Buyer."

3. LIMITATION OF FUNDS

FAR 52.232-22 Limitation of Funds (Apr 1984) is added with the following modifications: Applies if this contract is incrementally funded. "Contracting Officer" and "Government" mean "Buyer."

Part II Changed Clauses:

Clause 6 – Warranty is deleted.

Article 35 Compliance with Regulations is changed as follows:

FAR 52.233-3 Protest After Award (1996) is replaced with the Alternate I (Jun 1985) version of the clause.

FAR 52.242--15 52.242-15 Stop-Work Order (Aug 1989) is replaced with the Alternate I (Apr 1984) version of the clause.

FAR 52.243-1 Changes (Fixed Price) (Aug 1987) is deleted and replaced with the following clause:

FAR 52.243-2 Changes – Cost Reimbursement (Aug 1987)

"Contracting Officer" and "Government" mean "Buyer." In paragraph (a) add as subparagraph (4) "Delivery schedule." In paragraph (d) the reference to the disputes clause is deleted.

FAR 52.246-2 Inspection of Supplies (Fixed Price) (Aug 1996) is deleted and replaced with the following clause:

FAR 52.246-3 Inspection of Supplies – Cost Reimbursement (Mar 2001)

"Government" means "Buyer" except (1) in paragraphs (b), (c) and (d) where it means "Buyer and the Government" and (2) in paragraph (k) where the term is unchanged. In subparagraph (e), "60 days" is changed to "120 days", and in subparagraph (f) "6 months" is changed to "12 months."

FAR 52.249-2 Termination for Convenience – (Fixed Price) (Aug 1996) is deleted and replaced with the following clause:

FAR52.249-6 Termination (Cost Reimbursement) (Sep 1996)

"Government" and "Contracting Officer" mean "Buyer." In paragraph (f) "1 year" is changed to "six months." In paragraph (d) "120" days" is changed to "60 days." In paragraph (e) "15 days" is change to "30 days," and "45 days" is changed to "60 days." Paragraph (j) is deleted. Settlements and payments under this clause may be subject to the approval of the Prime Contract's Contracting Officer.

FAR 52.249-8 Default (Fixed-Price Supply and Service) (Apr 1984) is deleted.