



DOC 200
GOVERNMENT SUBCONTRACTS-ALL AGENCIES
PROGRESS PAYMENTS

ULA will make progress payments to the CONTRACTOR when requested as work progresses, but not more frequently than monthly in amounts of \$2,500 or more approved by ULA under the following conditions:

(a) Computation of amounts.

- (1) Unless the CONTRACTOR requests a smaller amount, each progress payment shall be computed as (i) eighty (80) percent* of the CONTRACTOR's cumulative total costs incurred under this Contract, as shown by records maintained by the CONTRACTOR for the purpose of obtaining payment under ULA Contracts, plus (ii) progress payments to subcontractors (see paragraph (j) of this clause), all less the sum of all previous progress payments made by ULA under this Contract. Cost of money that would be allowable under Federal Acquisition Regulation (FAR) 31.205-10 shall be deemed an incurred cost for progress payment purposes.
- (2) The following conditions apply to the timing of including costs in progress payment requests:
 - (i.) The costs of supplies and services purchased by the CONTRACTOR directly for this Contract may be included only after payment by cash, check, or other form of actual payment has occurred.
 - (ii.) Costs for the following may be included when incurred, even if before payment, when the CONTRACTOR is not delinquent in payment of the costs of Contract performance in the ordinary course of business:
 - A. Materials issued from the CONTRACTOR's stores inventory and placed in the production process for use on this Contract.
 - B. Direct labor, direct travel, and other direct in-house costs.
 - C. Properly allocable and allowable indirect costs.
 - (iii.) Accrued costs of CONTRACTOR contributions under employee pension, profit sharing, and stock ownership plans shall be excluded until actually paid unless –
 - A. The CONTRACTOR's practice is to contribute to the plans quarterly or more frequently; and
 - B. The contribution does not remain unpaid thirty (30) days after the end of the applicable quarter or shorter payment period (any contributions remaining unpaid shall be excluded from the CONTRACTOR's total costs for progress payments until paid).
 - (iv.) If the Contract is subject to the special transition method authorized in Cost Accounting Standard (CAS) 410, Allocation of Business Unit General and Administrative Expense to Final Cost Objective, General and Administrative expenses (G&A) shall not be included in progress payment requests until the suspense account prescribed in CAS 410 is less than –
 - A. Five million dollars; or
 - B. The value of the work-in-process inventories under contracts entered into after the suspense account was established (only a pro rata share of the G&A allocable to the excess of the inventory over the suspense account value is includable in progress payment requests under this Contract).
- (3) The CONTRACTOR shall not include the following in total costs for progress payment purposes in subparagraph (a)(1)(i) above:
 - (i.) Costs that are not reasonable, allocable to this Contract, and consistent with sound and generally accepted accounting principles and practices.

- (ii.) Costs incurred by subcontractors or suppliers.
- (iii.) Costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs.
- (iv.) Payments made or amounts payable to subcontractors or suppliers, except for –
 - A. Completed work, including partial deliveries, to which the CONTRACTOR has acquired title; and
 - B. Work under cost-reimbursement or time-and-material subcontracts to which the CONTRACTOR has acquired title.
- (4) The amount of unliquidated progress payments may exceed neither (i) the progress payments made against incomplete work (including allowable unliquidated progress payments to subcontractors) nor (ii) the value, for progress payment purposes, of the incomplete work. Incomplete work shall be considered to be the supplies and services required by this Contract, for which delivery and invoicing by the CONTRACTOR and acceptance by the Government are incomplete.
- (5) The total amount of progress payments shall not exceed eighty (80) percent of the total Contract price.
- (6) If a progress payment or the unliquidated progress payments exceed the amounts permitted by subparagraphs (a)(4) or (a)(5) above, the CONTRACTOR shall repay the amount of such excess to ULA on demand.

(b) Liquidation.

- (1) Except as provided in the Termination clause of this Contract, all progress payments shall be liquidated by deducting from any payment under this Contract, other than advance or progress payments, the unliquidated progress payments, or eighty (80) percent* of the amount invoiced, whichever is less. The CONTRACTOR shall repay to ULA any amounts required by a retroactive price reduction, after computing liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly. ULA reserves the right to unilaterally change from the ordinary liquidation rate to an alternate rate when deemed appropriate for proper Contract financing.

* If the Contract is with a small business concern, change the progress payment and liquidation rates to eighty-five (85) percent from the Contractor's total cost for progress payments until paid.

If the Contract is under a DoD prime contract, change the progress payment rates to eighty (80) percent for large business concerns, ninety (90) percent for small business concerns, and ninety-five (95) percent for small disadvantaged business concerns.

If the Contract is under a NASA prime contract, change the progress payment rate to eighty-five (85) percent for large business concerns, ninety (90) percent for small business concerns, and one hundred (100) percent for Phase II contracts in the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs.

(c) Reduction or suspension.

ULA may reduce or suspend progress payments, increase the rate of liquidation, or take a combination of these actions, after finding on substantial evidence any of the following conditions:

- (1) The CONTRACTOR failed to comply with any material requirement of this Contract (which includes paragraphs (f) and (g) below).
- (2) Performance of this Contract is endangered by the CONTRACTOR's (i) failure to make progress or (ii) unsatisfactory financial condition.
- (3) Inventory allocated to this Contract substantially exceeds reasonable requirements.
- (4) The CONTRACTOR is delinquent in payment of the costs of performing this Contract in the ordinary course of business.
- (5) The unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this Contract.

- (6) The CONTRACTOR is realizing less profit than that reflected in the establishment of any alternate liquidation rate in paragraph (b) above, and that rate is less than the progress payment rate stated in subparagraph (a)(1) above.

(d) Title

- (1) Title to the property described in this paragraph (d) shall vest in the Government or ULA. Vestiture shall be immediate upon the date of this Contract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this Contract.
- (2) "Property" as used in this clause, includes all of the below-described items acquired or produced by the CONTRACTOR that are or should be allocable or properly chargeable to this Contract under sound and generally accepted accounting principles and practices.
- (i) Parts, materials, inventories, and Work in process;
 - (ii) Special tooling and special test equipment to which ULA or the Government is to acquire title under any other clause of this Contract;
 - (iii) Nondurable (i.e., non-capital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids, title to which would not be obtained as special tooling under subparagraph (ii) above; and
 - (iv) Drawings and technical data, to the extent the CONTRACTOR or subcontractors are required to deliver them to ULA or the Government by other clauses of this Contract.
- (3) Although title to property is in the Government or ULA under this clause, other applicable clauses of this Contract, e.g., the termination or special tooling clauses, shall determine the handling and disposition of the property.
- (4) The CONTRACTOR may sell any scrap resulting from production under this Contract without requesting ULA approval, but the proceeds shall be credited against the costs of performance.
- (5) To acquire for its own use or dispose of property to which title is vested in the Government under this clause, the CONTRACTOR must obtain Government advanced approval, through ULA, of the action and the terms. The CONTRACTOR shall (i) exclude the allocable costs of the property from the costs of contract performance, and (ii) repay to ULA any amount of unliquidated progress payments allocable to the property. Repayment may be by cash or credit memorandum.
- (6) When the CONTRACTOR completes all of the obligations under this Contract, including liquidation of all progress payments, title shall vest in the CONTRACTOR for all property (or the proceeds thereof) not --
- (i) Delivered to, and accepted by, ULA under this Contract; or
 - (ii) Incorporated in supplies delivered to, and accepted by, ULA under this Contract and to which title is vested in the Government or ULA under this clause.
- (7) The terms of this Contract concerning liability for ULA or Government-furnished property shall not apply to property to which the Government or ULA acquired title solely under this clause.

(e) Risk of loss.

Before delivery to and acceptance by ULA, the CONTRACTOR shall bear the risk of loss for property, the title to which vests in the Government or ULA under this clause, except to the extent ULA or the Government expressly assumes the risk. The CONTRACTOR shall repay ULA an amount equal to the unliquidated progress payments that are based on costs allocable to property that is damaged, lost, stolen, or destroyed.

(f) Control of costs and property.

The CONTRACTOR shall maintain an accounting system and property controls adequate for the proper administration of this clause.

(g) Reports and access to records

The CONTRACTOR shall promptly furnish reports, certificates, financial statements, and other pertinent information reasonably requested by ULA for the administration of this clause. Also, the CONTRACTOR shall give ULA and the Government reasonable opportunity to examine and verify the CONTRACTOR's books, records, and accounts.

(h) Special terms regarding default.

If this Contract is terminated under the Default clause of this Contract, (i) the CONTRACTOR shall, on demand, repay to ULA the amount of unliquidated progress payments and (ii) title shall vest in the CONTRACTOR, on full liquidation of progress payments, for all property for which ULA elects not to require delivery under the Default clause. ULA shall be liable for no payment except as provided by the Default clause.

(i) Reservations of rights.

- (1) No payment or vesting of title under this clause shall (i) excuse the CONTRACTOR from performance of obligations under this Contract or (ii) constitute a waiver of any of the rights or remedies of the parties under this Contract.
- (2) ULA's rights and remedies under this clause (i) shall not be exclusive but rather shall be in addition to any other rights and remedies provided by law or this Contract and (ii) shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of ULA.

(j) Financing payments to subcontractors.

The progress payments to subcontractors mentioned in (a) (1) and (a) (2) of this clause shall be all progress payments to subcontractors or divisions, if the following conditions are met:

- (1) The amounts included are limited to (i) the unliquidated remainder of progress payments made plus, (ii) for small business concerns, any unpaid subcontractor requests for progress payments that the CONTRACTOR has approved for current payment in the ordinary course of business.
- (2) The subcontract or interdivisional order is expected to involve a minimum of approximately six (6) months between the beginning of work and the first delivery, or, if the subcontractor is a small business concern, four (4) months.
- (3) The terms of the subcontract or interdivisional order concerning progress payments --
 - (i) Are substantially similar to the terms of the clause at FAR 52.232-16, "Progress Payments" for any subcontractor that is a large business concern or that clause with its *Alternate I* for any subcontractor that is a small business concern;
 - (ii) Are at least as favorable to ULA and the Government as the terms of this clause;
 - (iii) Are not more favorable to the subcontractor or division than the terms of this clause are to the CONTRACTOR;
 - (iv) Are in conformance with the requirements of FAR 32.504(e); and
 - (v) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's and ULA's right to require delivery of the property to the Government or ULA if --
 - (A) The CONTRACTOR defaults; or
 - (B) The subcontractor becomes bankrupt or insolvent.
- (4) The progress payment rate in the subcontract is the customary rate used by ULA, depending on whether the subcontractor is or is not a small business concern.
- (5) The parties agree concerning any proceeds received by ULA for property to which title has vested in the Government or ULA under the subcontract terms, that the proceeds shall be applied to reducing any unliquidated progress payments by ULA to the CONTRACTOR under this Contract.

- (6) If no unliquidated progress payments to the CONTRACTOR remain, but there are unliquidated progress payments that the CONTRACTOR has made to any subcontractor, the CONTRACTOR shall be subrogated to all the rights ULA and the Government obtained through the terms required by this clause to be in any subcontract, as if all such rights had been assigned and transferred to the CONTRACTOR.
- (7) The CONTRACTOR shall pay the subcontractor's progress payment request under subdivision (j)(1)(ii) above, within a reasonable time after receiving ULA progress payment covering those amounts.
- (8) To facilitate small business participation in subcontracting under this Contract, the CONTRACTOR agrees to provide progress payments to small business concerns, in conformity with the standards for customary progress payments stated in the FAR Subpart 32.5. The CONTRACTOR further agrees that the need for such progress payments shall not be considered as a handicap or adverse factor in the award of subcontracts.

(k) Limitations on undefinitized contract actions.

Notwithstanding any other progress payment provision in this Contract, progress payments may not exceed eighty (80) percent of costs incurred on work accomplished under 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. This limitation shall apply to the costs incurred, as computed in accordance with paragraph (a) of this clause, and shall remain in effect until the Contract action is definitized. Costs incurred which are subject to this limitation shall be segregated on CONTRACTOR progress payment requests and invoices from those costs eligible for higher progress payment rates. For purposes of progress payment liquidation, as described in paragraph (b) of this clause, progress payments for undefinitized Contract actions shall be liquidated at eighty (80) percent of the amount invoiced for work performed under the undefinitized Contract action as long as the Contract action remains undefinitized. The amount of unliquidated progress payments for undefinitized Contract actions shall not exceed eighty (80) percent of the maximum liability of ULA under the undefinitized Contract action or such lower limit specified elsewhere in the Contract. Separate limits may be specified for separate actions.