

APPENDIX 'N'

PROGRESS PAYMENTS FOR SMALL BUSINESS CONCERNS

Progress payments shall be made to the Seller when requested as work progresses, but not more frequently than monthly in amounts approved by Buyer, under the following conditions:

1. Computation Amounts.

a. Unless the Seller requests a smaller amount, each progress payment shall be computed as (i) *% of the Seller's cumulative total costs under this Purchase Order as shown records maintained by the Seller for the purpose of obtaining payment by Buyer plus (ii) progress payments to subcontractors (see paragraph 10. below), all less the sum of all previous progress payments made by the Buyer under this Purchase Order. Cost of money that would be allowable under 31.205-10 of the Federal Acquisition Regulation shall be deemed an incurred cost for progress payment purposes.

b. Accrued costs of Seller contributions under employee pension plans shall be

1) Tw () Tj 104.25 0 TD 0 Tc -0.336 Tw () Tj 12.75 0 Tc-0

- (a) Completed work including partial deliveries, to which the Seller has acquired title; and
 - (b) Work under cost-reimbursement or time-and-material subcontracts to which the Seller has acquired title.
 - d. 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 Purchase Order for which delivery and invoicing by the Seller and acceptance by the Buyer are incomplete.
 - e. The total amount of progress payments shall not exceed *% of the total Purchase Order price.
 - f. If a progress payment or the unliquidated progress payments exceed the amounts permitted by subparagraphs 1.d. or 1.e. above, the Seller shall repay the amount of such excess to the Buyer upon demand.
2. Liquidation. Except as provided in the Termination for Convenience clause, all progress payments shall be liquidated by deducting from any payment under this Purchase Order, other than advance or progress payments, the unliquidated progress payments, or *% of the amount invoiced, whichever is less. Seller shall repay to the Buyer 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. The Buyer reserves the right to unilaterally change from the ordinary liquidation rate to an alternate rate when deemed appropriate for proper Purchase Order financing.
3. Reduction or Suspension. The Buyer 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:
- a. Seller failed to comply with any material requirement of this Purchase Order which includes paragraphs 6. and 7. below.
 - b. Performance of this Purchase Order is endangered by the Seller's (i) failure to make progress or (ii) unsatisfactory financial condition.
 - c. Inventory allocated to this Purchase Order substantially exceeds reasonable requirements.
 - d. The Seller is delinquent in payment of the costs of performing this Purchase Order in the ordinary course of business.

- e. The unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this Purchase Order.
- f. The Seller is realizing less profit than that reflected in the establishment of any alternate liquidation rate in paragraph 2. above, and that rate is less than the progress payment rate stated in subparagraph 1.a. above.

4. Title.

- a. Title to the property described in this paragraph 4. shall vest in the Government. Vestiture shall be immediately upon the date of this Purchase Order, 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 Purchase Order.
- b. "Property," as used in this clause, includes all of the below-described items acquired or produced by the Seller that are or should be allocable or properly chargeable to this Purchase Order under sound and generally accepted accounting principles and practices.
 - (1) Parts, materials, inventories, and work in process;
 - (2) Special tools, special test equipment to which the Government is to acquire title under any other clause of this Purchase Order;
 - (3) Nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufactures, title to which would not be obtained as special tools, under subparagraph (2) above; and
 - (4) Drawings and technical data, to the extent the Seller or Seller's subcontractors are required to deliver them to the Buyer by other clauses of this Purchase Order.
- c. Although title to property is in the Government under this clause, other applicable clauses of the Purchase Order, e.g., the termination or special tools clauses, shall determine the hands, disposition of the property.
- d. The Seller may sell any scrap resulting from production under this Purchase Order without requesting the Buyer's approval, but the proceeds shall be credited against the costs of performance.
- e. To acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Seller must obtain the Buyer's advance approval of the action and the terms. The Seller shall (i) exclude the allocable costs of the property from the costs of Purchase Order performance, and (ii)

repay to the Buyer any amount of unliquidated progress payments allocable to the property. Repayment may be by cash or credit memorandum.

- f. When the Seller completes all of the obligations under this Purchase Order, including liquidation of all progress payments, title shall vest in the Seller for all property (or the proceeds thereof) not--
 - (1) Delivered to, and accepted by, Buyer or the Government under this Purchase Order; or
 - (2) Incorporated in supplies delivered to, and accepted by, the Buyer or the Government under this Purchase Order and to which title is vested in the Government under this clause.
 - g. The terms of this Purchase Order concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this clause.
5. Risk of Loss. Before delivery to and acceptance by the Government, the Seller shall bear the risk of loss for property, the title to which vests in the Government under this clause except to the extent the Government expressly assumes the risk. The Seller shall repay the Buyer an amount equal to the unliquidated progress

5.

5.

constitute a waiver of any of the rights or remedies of the parties under the Purchase Order.

- b. The Buyer'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 Purchase Order 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 the Buyer.
10. Progress Payments to Subcontractors. The amounts mentioned in item 1.a.(ii) above shall be all progress payments to subcontractors or divisions, if the following conditions are met:
- a. 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 Seller has approved for current payment in the ordinary course of business.
 - b. 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.
 - c. The terms of the subcontract or interdivisional order concerning progress payments--
 - (1) Are substantially similar to the terms of the clause at 52.232-16, Progress Payments, of the Federal Acquisition Regulation, 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.
 - (2) Are at least as favorable to the Buyer and the Government as the terms of this clause;
 - (3) Are not more favorable to the subcontractor or division than the terms of this clause are to the Seller;
 - (4) Are in conformance with the requirements of paragraph 32.504(e) of the Federal Acquisition Regulation; and
 - (5) subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if (i) the Seller defaults or (ii) the subcontractor becomes bankrupt or insolvent.
 - d. The progress payment rate in the subcontract is the customary rate, depending on whether the subcontractor is or is not a small business concern.

- e. The parties agree concerning any proceeds received by the Government for property to which title has vested in the Government under the subcontract terms, that the proceeds shall be applied to reducing any unliquidated progress payments by the Buyer to the Seller under this Purchase Order.
- f. If no unliquidated progress payments to the Seller remain, but there are unliquidated progress payments that the Seller has made to any subcontractor, the Seller shall be subrogated to all the rights the Buyer or the Government obtained through the terms required by this clause to be in any subcontract which Seller has made to any subcontractor.