

# 1. EXCEPTION TO TERMS -- CONSTRUCTION (Clause H-9.1) (December 2024)

Seller is not required to submit a cost loaded construction schedule. Terms and Conditions of Purchase, Fixed-Price Construction Purchase Order/Contract 1658-01-23, is modified as follows:

Section 4 is replaced with the following language:

## 4. INVOICE AND PAYMENTS

- (a) The Buyer shall pay the Seller the Order price as provided in this Order.
- (b) Along with request for payment, the Seller shall furnish the following certification, or payment shall not be made:

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 Order;
- 2) Timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements; and
- 3) This request for payment does not include any amounts that the Seller intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract.

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(Name)

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(Title)

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(Date)

- (c) If the Seller, after making a certified request for payment, discovers that a portion or all of such request constitutes a payment for performance by the Seller that fails to conform to the specifications, terms, and conditions of this Order (hereinafter referred to as the "unearned amount"), the Seller shall:
  - (1) Notify the Buyer of such performance deficiency; and
  - (2) Be obligated to pay the Buyer an amount (computed by the Buyer in the manner provided in 31 U.S.C. 3903 (c) (1)) equal to interest on the unearned amount from the date of receipt of the unearned amount until:
    - (i) The date the Seller notifies the Buyer that the performance deficiency has been corrected; or
    - (ii) The date the Seller reduces the amount of any subsequent certified request for payment by an amount equal to the unearned amount.
- (d) In making payment, there shall be retained 10 percent of the estimated amount until final completion and acceptance of the purchase Order work.
- (e) All material and work covered by payment made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as:
  - (1) Relieving the Seller 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 Buyer to require the fulfillment of all of the terms of the Order.
- (f) If performance or payment bonds are required under this Order, the Buyer shall pay to the Seller that portion of the Order price equal to the total premiums paid by the Seller to obtain bonds. This payment shall be paid at one time to the Seller together with the payment otherwise due after the Seller has: (1) furnished the bonds; (2) furnished evidence of full payment to the surety; and (3) submitted a request for payment. Payments for bond premiums shall not be made as increments of individual progress payments. The retainage provisions in paragraph (e) of this clause shall not apply to that portion of a progress payment attributable to bond premiums.
- (g) Upon completion and acceptance of all work, the amount due the Seller under this Order shall be paid upon the presentation of a properly executed invoice and after the Seller shall have furnished the Buyer with a release of all claims against the Buyer and the Government arising by virtue of this Order, other than claims in stated amounts that the Seller has specifically excepted from the operation of the release.

Section 21 is replaced with the following language:

## **21. PROGRESS SCHEDULES AND REQUIREMENTS FOR OVERTIME WORK**

- (a) If, in the opinion of the Buyer, the Seller falls behind the approved schedule, the Seller shall take steps necessary to improve its progress, including those that may be required by the Buyer, without additional cost to the Buyer. In this circumstance, the Buyer may require the Seller to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Buyer deems necessary to demonstrate how the approved rate of progress will be regained. Where extended working hours are not attributable to an excusable delay under the Default clause of this purchase order/solicitation, the Seller shall be liable for any increased costs to the Buyer for administering the solicitation/purchase order (i.e. additional security forces, project engineer superintendence, or utilities) during such periods.
- (b) Onsite work during other than the hours stated in the construction specifications (the normal daytime business hours of the Buyer if not stated in the construction specifications) shall be subject to Buyer approval. Requests for extended work hours shall be submitted during Buyer's normal daytime business hours: (1) twenty-four hours in advance of Seller's need if the extended hours will occur on Saturday, Sunday, or a holiday; or, (2) four hours in advance of Seller's need if the extended hours will occur during other periods. Notwithstanding Buyer approval to work extended hours, such work will be stopped should it disrupt Buyer operations.
- (c) Failure of the Seller to comply with the requirements of the Buyer under this clause constitutes grounds for a determination by the Buyer that the Seller is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the Order. Upon making this determination, the Buyer may terminate the Seller's right to proceed with the work, or any separable part of it, in accordance with the default terms of this Order.