

## PURCHASE ORDER ATTACHMENT SS-11

### MODIFICATION FOR COST-PLUS-INCENTIVE-FEE PROCUREMENT (FAR)

Provision I, for Cost-Plus-Fixed-Fee Purchase Order General Provisions, is hereby revised to read as follows:

#### 1. ALLOWABLE COST, INCENTIVE-FEE, AND PAYMENT

- A. 1. For the performance of this order, Buyer shall pay to Seller:
- a. the cost thereof (hereinafter referred to as "allowable cost") determined by the Buyer to be allowable in accordance with--
    - (i) Part 31.2 of the Federal Acquisition Regulation, as amended by the DoD FAR Supplement, in effect on the date of this order; and
    - (ii) the terms of this order; and
  - b. a fee determined as provided in this order.
2. The target cost and target fee as set forth elsewhere in this order shall be subject to adjustment in accordance with H. and I. below. As used throughout this order, the term--
- a. "target cost," means the estimated cost of this order initially negotiated, adjusted in accordance with H. below; and
  - b. "target fee," means the fee, which was initially negotiated on the assumption that this order would be performed for a cost equal to the estimated cost initially negotiated, adjusted in accordance with H. below.
- B. Once each month (or at more frequent intervals, if approved by Buyer) Seller may submit to Buyer, in such form and reasonable detail as Buyer may require, an invoice supported by a statement of cost incurred by Seller in performance of this order and claimed to constitute allowable cost. For this purpose, except as provided herein with respect to pension contributions, the term "costs" shall include only those recorded costs which result, at the time of the request for reimbursement, from payment by cash, check, interdivisional notices of payments, or other form of actual payment for items or services purchased directly for the order, together with (when the Seller is not delinquent in payment of costs of performance in the ordinary course of business) costs incurred, but not necessarily paid, for materials which have been issued from the Seller's stores inventory and placed in the production process for use on the order, for direct labor, for direct travel, for other direct in-house costs, and properly allocated and allowable indirect costs, as is shown by records maintained by the Seller for purposes of obtaining reimbursement under Government contracts or subcontracts plus the amount of progress payments which have been paid to Seller's subcontractors under similar cost standards. In addition, when pension contributions are paid by the Seller to the retirement fund less frequently than quarterly, accrued costs therefor shall be excluded from indirect costs for payment purposes until such costs are paid. If pension contributions are paid on a quarterly or more frequent basis, accruals therefore may be included in indirect costs for payment purposes provided that they are paid to the fund within 30 days after the close of the period covered. If payments are not made to the fund within such 30-day period, pension contribution costs shall be excluded from indirect cost for payment purposes until payment has been made. The restriction on payment more frequently than monthly and the requirement of prior payment for items or services purchased directly for the order shall not apply when the Seller is a small business concern.
- C. Except as otherwise provided in this order and subject to "D" below, Buyer shall make payment promptly after receipt of each invoice and statement of cost. Payment of fee shall be made to Seller based upon the target fee provided for in I. below and the percentage of work completed as determined by Buyer; provided, however, that whenever in the opinion of Buyer, Seller's performance or cost then incurred indicates that the target fee will not be achieved, payment of fee will be based on such lesser fee, not lower than the minimum fee, as the Buyer may determine to be appropriate; and provided further, that after payment of 85% of the fee which Buyer has determined to be appropriate (or 85% of the target fee if no such determination has been made), further payment on account of the fee shall be withheld until a

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*PURCHASE ORDER ATTACHMENT SS-11 (continued)*

reserve of \$100,000 or 15% of the total fee (target or determined), whichever is less, shall have been set aside. When Buyer has ordered that fee payments be reduced in accordance with the foregoing it may nevertheless increase the basis for payment to an amount not exceeding the target fee upon an affirmative showing by Seller that such action is justified and equitable.

- D. At any time or times prior to final payment under this order, Buyer may have the invoices and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in related invoices, which are found by Buyer, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayments, or increased for underpayments, in preceding invoices.
- E. On receipt and approval of the invoice designated by Seller as "completion invoice" and upon compliance by Seller with all the provisions of this order (including, without limitation, the provisions relating to patents and the provisions of F. below) Buyer shall promptly pay to Seller any balance of allowable cost, and any part of the fee, which has been withheld pursuant to C. above or otherwise not paid to Seller. The completion invoice shall be submitted by Seller promptly following completion of the work under this order but in no event later than six months (or such longer period as Buyer may in its discretion approve in writing) from the date of such completion.
- F. Seller agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by Seller or any assignee under this order shall be paid by Seller to Buyer, to the extent that they are properly allocable to costs for which Seller has been reimbursed by Buyer under this order. Reasonable expenses incurred by Seller for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by Buyer. Prior to final payment under this order, Seller and each assignee under this order whose assignment is in effect at the time of final payment under this order shall execute and deliver an assignment and release substantially identical to that set forth in Exhibit A to Attachment GL-18, subject to such amendments as Buyer may find advisable in order to make such form appropriate to this order. Buyer shall not be required to make final payment until Seller executes such release.
- G. In the event this order involves U. S. Government work as noted on the face of the order and the contracting officer having jurisdiction over Buyer's prime contract under which this order was issued shall not approve or shall subsequently disallow payment or reimbursement to Buyer of any payments which may be made to Seller hereunder, Seller shall promptly refund to Buyer upon demand the amount as to which each non-approval or disallowance applies. Seller may thereupon treat such disallowance or non-approval as a dispute subject to settlement in accordance with the Purchase Order General Provisions clause entitled "Disputes".
- H. When the work under this order (including any supplies or services which are ordered separately under, or otherwise added to, this order) is increased or decreased, appropriate adjustments in the target cost and target fee shall be set forth in a change order to this order.
- I. The fee payable hereunder shall be the target fee increased by \_\_\_ cents for every dollar by which the total allowable cost is less than the target cost or decreased by \_\_\_ cents for every dollar by which the total allowable cost exceeds the target cost. In no event will the fee be greater than \_\_\_ per cent nor less than \_\_\_ percent of the target cost; and within these limits such fee shall be subject to adjustment, by reason of increase or decrease of total allowable cost, on account of payment under any assignment made and any claims excepted from the release provided under F, above.

**END OF DOCUMENT**

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