

Department of Education

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funds will be obligated under the contract to cover an estimated base performance period. Additional funds are intended to be allotted to the contract by contract modification, up to and including the full estimated cost of the entire period of performance. This intent notwithstanding, the Government will not be obligated to reimburse the contractor for cost incurred in excess of the periodic allotments, nor will the contractor be obligated to perform in excess of the amount allotted.

(b) The Limitation of Cost clause in FAR 52.232-20 shall supersede the Limitation of Funds clause in the event the contract becomes fully funded.

(End of provision)

3452.232-72 Method of payment.

As prescribed in 3432.170, insert the following clause in all solicitations and contracts:

METHOD OF PAYMENT (AUG 1987)

(a) Payments under this contract will be made either by check or by wire transfer through the Treasury Financial Communications System at the option of the Government.

(b) The contractor shall forward the following information in writing to (designated payment party) not later than seven days after receipt of notice of award.

(1) Full name (where practicable), title, phone number, and complete mailing address of responsible official(s) to whom check payments are to be sent, and who may be contacted concerning the bank account information requested below.

(2) The following bank account information required to accomplish wire transfers:

(i) Name, address, and telegraphic abbreviation of the receiving financial institution:

(ii) Receiving financial institution's nine-digit American Bankers Association (ABA) identifying number for routing transfer of funds. (Provide this number only if the receiving financial institution has access to the Federal Reserve Communications System.)

(iii) Recipient's name and account number at the receiving financial institution to be credited with the funds.

(iv) If the receiving financial institution does not have access to the Federal Reserve Communications System, provide the name of the correspondent financial institution through which the receiving financial institution receives electronic funds transfer messages. If a correspondent financial institution is specified, also provide the address and telegraphic abbreviation of that institution and its nine-digit ABA identifying number for routing transfer of funds.

(c) Any changes to the information furnished under paragraph (b) of this clause

shall be furnished to (designated payment office) in writing at least 30 days before the effective date of the change. It is the contractor's responsibility to furnish these changes promptly to avoid payments to erroneous addresses or bank accounts.

(d) The document furnishing the information required in paragraphs (b) and (c) must be dated and contain the signature, title, and telephone number of the contractor's official authorized to provide it, as well as the contractor's name and contract number.

(End of clause)

3452.237-70 Identification of reports under consulting services contracts.

As prescribed in 3437.270, insert the following clause in all solicitations and contracts for consulting services:

IDENTIFICATION OF REPORTS UNDER CONSULTING SERVICE CONTRACTS (AUG 1987)

The contractor shall set forth on the cover of every report submitted pursuant to this contract the following information:

(a) Name and business address of the contractor; (b) contract number; (c) contract dollar amount; (d) whether the contract was competitively or noncompetitively awarded; (e) name of the Contracting Officer's Technical Representative and complete office identification and address; and (f) names of the managerial and professional personnel responsible for the content and preparation of the report.

(End of clause)

3452.237-71 Services of consultants.

As prescribed in 3437.271, insert the following clause in all solicitations and resultant cost-reimbursement contracts:

SERVICES OF CONSULTANTS (AUG 1987)

Except as otherwise expressly provided elsewhere in this contract, and notwithstanding the provisions of the clause of the contract entitled "Subcontracts Under Cost-Reimbursement and Letter Contracts," the prior written approval of the contracting officer shall be required:

(a) If any employee of the contractor is to be paid as a "consultant" under this contract; and

(b) For the utilization of the services of any consultant under this contract exceeding the daily rate set forth elsewhere in this contract or, if no amount is set forth, \$150, exclusive of travel costs, or if the services of any consultant under this contract will exceed 10 days in any calendar year.

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If that contracting officer's approval is required, the contractor shall obtain and furnish to the contracting officer information concerning the need for the consultant services and the reasonableness of the fees to be paid, including, but not limited to, whether fees to be paid to any consultant exceed the lowest fee charged by consultant to others for performing consultant services of a similar nature.

(End of clause)

3452.242-70 Litigation and claims.

As prescribed in 3442.7002, insert the following clause in all solicitations and resultant cost-reimbursement contracts:

LITIGATION AND CLAIMS (AUG 1987)

(a) The contractor shall give the contracting officer immediate notice in writing of:

- (1) Any action, filed against the contractor arising out of the performance of this contract, including any proceeding before any administrative agency or court of law, and also including, but not limited to, the performance of any subcontract hereunder; and
- (2) Any claim against the contractor for a cost which is allowable under the clause entitled "Allowable Cost and Payment."

(b) Except as otherwise directed by the contracting officer, the contractor shall immediately furnish the contracting officer copies of all pertinent papers received under that action or claim.

(c) If required by the contracting officer, the contractor shall:

- (1) Effect an assignment and subrogation in favor of the Government of all the contractor's rights and claim (except those against the Government) arising out of the action or claim against the contractor; and
- (2) Authorize the Government to settle or defend the action or claim and to represent the contractor in, or to take charge of, the action.

(d) If the settlement or defense of an action or claim is undertaken by the Government, the contractor shall furnish all reasonable required assistance. However, if an action against the contractor is not covered by a policy of insurance, the contractor shall notify the contracting officer and proceed with the defense of the action in good faith.

(e) To the extent not in conflict with any applicable policy of insurance, the contractor may, with the contracting officer's approval, settle any such action or claim.

(f)(1) The Government shall not be liable for the expense of defending any action or for any costs resulting from the loss thereof to the extent that the contractor would have been compensated by insurance that was required by law, regulation, contract clause, or

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other written direction of the contracting officer, but which the contractor failed to secure through its own fault or negligence.

(2) In any event, unless otherwise expressly provided in this contract, the contractor shall not be reimbursed or indemnified by the Government for any cost or expense of liability that the contractor may incur or be subject to by reason of any loss, injury, or damage, to the person or to real or personal property of any third parties as may arise from the performance of this contract.

(End of clause)

3452.242-71 Notice to the Government of delays.

As prescribed in 3442.7003, insert the following clause in all solicitations and contracts other than purchase orders:

NOTICE TO THE GOVERNMENT OF DELAYS (AUG 1987)

Whenever the contractor has knowledge that any actual or potential situation, including but not limited to labor disputes, is delaying or threatens to delay the timely performance of work under this contract, the contractor shall immediately give written notice thereof, including all relevant information with respect thereto, to the contracting officer.

(End of clause)

3452.242-72 Withholding of contract payments.

As prescribed in 3442.7001, insert the following clause in all solicitations and contracts other than purchase orders:

WITHHOLDING OF CONTRACT PAYMENTS (AUG 1987)

Notwithstanding any other payment provisions of this contract, failure of the contractor to submit required reports when due or failure to perform or deliver required work, supplies, or services, or failure to meet any of the requirements of the contract, will result in the withholding of payments under this contract in such amounts as the contracting officer deems appropriate, unless the failure arises out of causes beyond the control, and without the fault of negligence, of the contractor, as defined by the clause entitled "Excusable Delays" or "Default", as applicable. The Government shall promptly notify the contractor of its intention to withhold payment of any invoice or voucher submitted. Payment will be withheld until the failure is cured, a new delivery schedule is agreed upon, or payment is made as part of a termination settlement.