



COST REIMBURSEMENT AND FEDERAL ACQUISITION REGULATION (FAR) FLOWDOWN PROVISIONS FOR SUBCONTRACTS/PURCHASE ORDERS FOR NON-COMMERCIAL ITEMS UNDER A U.S. GOVERNMENT PRIME CONTRACT

SECTION I: COST REIMBURSEMENT PROVISIONS

1. Allowable Cost and Payment
2. Fee

SECTION II: FAR FLOWDOWN PROVISIONS

- A Incorporation of FAR Clauses
- B Government Subcontract
- C Notes
- D Amendments Required by Prime Contract
- E FAR Flowdown Clauses

SECTION I: COST REIMBURSEMENT PROVISIONS

1. ALLOWABLE COST AND PAYMENT.

(a) **Invoicing.** LOCKHEED MARTIN shall make payments to the CONTRACTOR when requested as work progresses, but not more often than once every 2 weeks, in amounts determined to be allowable by LOCKHEED MARTIN in accordance with the terms of this Contract and Subpart 31.2 of the FAR; and agency supplements as appropriate, in effect on the date of this Contract. If the Contract is with an educational institution, FAR Subpart 31.3 shall apply; and if with a non-profit organization other than an educational institution, FAR Subpart 31.7 shall apply. The CONTRACTOR may submit to the LOCKHEED MARTIN Purchasing Representative, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this Contract.

(b) **Reimbursing costs.**

(1) For the purpose of reimbursing allowable costs (except as provided in subparagraph (2) below, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only:

- (i) Those recorded costs that, at the time of the request for reimbursement, the CONTRACTOR has paid by cash, check, or other form of actual payment for items or services purchased directly for the Contract.
- (ii) When the CONTRACTOR is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for:
 - (A) Materials issued from the CONTRACTOR's inventory and placed in the production process for use on the Contract;
 - (B) Direct labor;
 - (C) Direct travel;
 - (D) Other direct in-house costs; and
 - (E) Properly allocable and allowable indirect costs, as shown in the records maintained by the CONTRACTOR for purposes of obtaining reimbursement under Government contracts.

(iii) The amount of progress payments that have been paid to the CONTRACTOR's subcontractors under similar cost standards.

(2) CONTRACTOR contributions to any pension, profit sharing, or employee stock ownership plan funds that are paid quarterly or more often may be included in indirect costs for payment purposes; provided, that the CONTRACTOR pays the contribution to the fund within 30 days after the close of the period covered.

Payments made 30 days or more after the close of a period shall not be included until the CONTRACTOR actually makes the payment. Accrued costs for such contributions that are paid less often than quarterly shall be excluded from indirect costs for payment purposes until the CONTRACTOR actually makes the payment.

(3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) below, allowable indirect costs under this Contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) below.

(4) Except as otherwise expressly provided to the contrary in these Provisions or in the Schedule of this Contract, any statements in specifications or other documents incorporated in this Contract by reference designating performance of services or furnishing of materials at the CONTRACTOR's expense or at no cost to LOCKHEED MARTIN shall be disregarded for purposes of cost reimbursement under this clause.

(c) **Small business concerns.** A small business concern may be paid as often as every 2 weeks and may invoice and be paid for recorded costs for items or services purchased directly for the Contract, even though the concern has not yet paid for those items or services.

(d) **Final indirect cost rates.** LOCKHEED MARTIN shall reimburse SELLER on the basis of final annual indirect cost rates and the appropriate bases established by SELLER and the Government in effect for the period covered by the indirect cost rate proposal. Such rates and bases shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this Contract. The rates and bases shall be deemed incorporated into this Contract upon execution.

- (e) **Billing Rates.** There shall be included as allowable indirect costs such overhead rates as may be established by CONTRACTOR and the cognizant Government Agency in accordance with the principles of the Federal Acquisition Regulation and applicable FAR Supplement. Pending establishment of final overhead rates for any period, CONTRACTOR shall be reimbursed at billing rates approved by the cognizant Government Agency, which billing rates may be revised from time to time subject to such approval and subject to appropriate adjustment when the final rates for that period are established.
- (f) **Quick closeout procedures.** When the CONTRACTOR and LOCKHEED MARTIN agree, the quick closeout procedures of Subpart 42.7 of the FAR may be used.
- (g) **Audit.** At any time or times before final payment, LOCKHEED MARTIN or the Government may audit the CONTRACTOR's invoices or vouchers and statements of cost. Any payment may be (1) reduced by amounts found by LOCKHEED MARTIN or the Government not to constitute allowable costs or (2) adjusted for prior overpayments or underpayments.
- (h) **Final payment.**
- (1) The CONTRACTOR shall submit a completion invoice or voucher, designated as such, promptly upon completion of the work, but no later than one year (or longer, as LOCKHEED MARTIN may approve in writing) from the completion date. Upon approval of that invoice or voucher, and upon the CONTRACTOR's compliance with all terms of this Contract, LOCKHEED MARTIN shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.
 - (2) The CONTRACTOR shall pay to LOCKHEED MARTIN any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the CONTRACTOR or any assignee under this Contract, to the extent that those amounts are properly allocable to costs for which the CONTRACTOR has been reimbursed by LOCKHEED MARTIN. Reasonable expenses incurred by the CONTRACTOR for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by LOCKHEED MARTIN. Before final payment under this Contract, the CONTRACTOR and each assignee whose assignment is in effect at the time of final payment shall execute and deliver:
 - (i) An assignment to LOCKHEED MARTIN, in form and substance satisfactory to LOCKHEED MARTIN, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the CONTRACTOR has been reimbursed by LOCKHEED MARTIN under this Contract; and
 - (ii) A release discharging LOCKHEED MARTIN, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this Contract, except for specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known.
- (i) **Subcontracts.** No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in paragraph 15.404-4(c)(4)(i) of the Federal Acquisition Regulation (FAR).

LOCKHEED MARTIN shall pay the CONTRACTOR for performing this Contract the fixed fee as specified in the Schedule. After payment of 85 percent of the fixed fee, LOCKHEED MARTIN may withhold further payment of fee until a reserve is set aside in an amount that LOCKHEED MARTIN considers necessary in its sole discretion to protect LOCKHEED MARTIN's interest. This reserve shall not exceed 15 percent of the total fixed fee or \$100,000, whichever is less.

SECTION II: FAR FLOWDOWN PROVISIONS

A. INCORPORATION OF FAR CLAUSES

The Federal Acquisition Regulation Supplement (FAR) clauses referenced below are incorporated herein by reference, with the same force and effect as if they were given in full text, and are applicable, including any notes following the clause citation, to this Contract. If the date or substance of any of the clauses listed below is different than the date or substance of the clause actually incorporated in the Prime Contract referenced by number herein, the date or substance of the clause incorporated by said Prime Contract shall apply instead.

B. GOVERNMENT SUBCONTRACT

This Contract is entered into by the Parties in support of a US Government contract.

As used in the FAR clauses referenced below and otherwise in this Contract:

1. "CONTRACTOR" means the Seller, as defined in Corporate Document 3, acting as the immediate (first-tier) subcontractor to LOCKHEED MARTIN.
2. "Prime Contract" means the contract between LOCKHEED MARTIN and the U.S. Government or between LOCKHEED MARTIN and its higher-tier contractor who has a contract with the U.S. Government.
3. "Contract" means this contract.
4. "Subcontract" means any contract placed by the CONTRACTOR or lower-tier subcontractors under this Contract.

C. NOTES:

1. Substitute "LOCKHEED MARTIN" for "Government" or "United States" as applicable throughout this clause.
2. Substitute "LOCKHEED MARTIN Purchasing Representative" for "Contracting Officer", "Administrative Contracting Officer", and "ACO" throughout this clause.
3. Insert "and LOCKHEED MARTIN" after "Government" throughout this clause.
4. Insert "or LOCKHEED MARTIN" after "Government" throughout this clause.
5. Communication/notification required under this clause from/to the CONTRACTOR to/from the Contracting Officer shall be through LOCKHEED MARTIN.
6. "Contracting Officer" shall mean the U.S. Government Contracting Officer for LOCKHEED MARTIN's government prime contract under which this Contract is entered.

2. FIXED FEE. (Applicable only if this Contract includes a fixed fee.)

D. **AMENDMENTS REQUIRED BY PRIME CONTRACT.**

CONTRACTOR agrees that upon the request of LOCKHEED MARTIN it will negotiate in good faith with LOCKHEED MARTIN relative to amendments to this Contract to incorporate additional provisions herein or to change provisions hereof, as LOCKHEED MARTIN may reasonably deem necessary in order to comply with the provisions of the applicable prime contract or with the provisions of amendments to such prime contract. If any such amendment to this Contract causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this Contract, an equitable adjustment shall be made pursuant to the "Changes" Clause of this Contract.

E. **FAR SUPPLEMENT (FARS) FLOWDOWN CLAUSES.**

REFERENCE TITLE

1. **The following FARS clauses apply to this Contract :**

- (a) 52.215-2 **AUDIT AND RECORDS-NEGOTIATION** (AUG 1996) (Insert "and the LOCKHEED MARTIN Purchasing Representative" after "the Contracting Officer or representatives of the Contracting Officer" or after "...representatives of the Contracting Officer who are employees of the Government", where indicated throughout the clause. If this is a cost-type contract with an educational institution or other non-profit organization, add ALTERNATE II (JAN 1997).)
- (b) 52.222-2 **PAYMENT FOR OVERTIME PREMIUMS** (JUL 1990) (Insert ZERO in the Blank; See Notes 2 and 3)
- (c) 52.232-20 **LIMITATION OF COST** (APR 1984) (Applicable if this Contract is fully funded; See Notes 1 and 2)
- (d) 52.232-22 **LIMITATION OF FUNDS** APR 1984) (Applicable if this Contract is incrementally funded; See Notes 1 and 2)
- (e) 52.233-3 **PROTEST AFTER AWARD** (AUG 1996) ALT I (JUN 1985) (In the event LOCKHEED MARTIN's customer has directed LOCKHEED MARTIN to stop performance of the work under the prime contract under which this contract is issued pursuant to FAR 33.1, LOCKHEED MARTIN may, by written order to SELLER, direct SELLER to stop performance of the work called for by this Contract; "30 days" means "20 days" in paragraph (b)(2); Note 1 applies except the first time it appears in paragraph (f); in paragraph (f) add after "33.104(h)(1)" "and recovers those costs from LOCKHEED MARTIN"; See Note 2.)
- (f) 52.242-15 **STOP-WORK ORDER** (AUG 1989) with ALTERNATE I (APR 1984) (See Notes 1 and 2.)
- (g) 52.243-2 **CHANGES - COST REIMBURSEMENT** (AUG 1987) (Delete the reference to the "disputes" clause in subparagraph (d); See Notes 1 and 2)

(h) 52.246-3 **INSPECTION OF SUPPLIES - COST REIMBURSEMENT** (APR 1984) (In subparagraph (e), change "60 days" to "120 days", and in subparagraph (f) change "6 months" to "12 months". See Note 1, except in subparagraph (k), where Note 3 applies. The Government also may exercise any of LOCKHEED MARTIN's inspection rights under this clause.)

(i) 52.246-5 **INSPECTION OF SERVICES - COST REIMBURSEMENT** (APR 1984) (See Note 1. The Government also may exercise any of LOCKHEED MARTIN's inspection rights under this clause.)

(j) 52.249-6 **TERMINATION** (COST-REIMBURSEMENT) (SEP 1996) (See Notes 1 and 2. Substitute "90 days" for "120 days" and "90-day" for "120-day" in paragraph (d). Substitute "180 days" for "1 year" in paragraph (f). Delete paragraph (j). Settlements and payments under this clause may be subject to the approval of the Prime Contract's Contracting Officer.)

2. **The following Fixed Price clauses are deleted from this Contract.**

- (a) 52.233-3 **PROTEST AFTER AWARD** (AUG 1996)
- (b) 52.242-15 **STOP-WORK ORDER** (AUG 1989)
- (c) 52.243-1 **CHANGES - FIXED PRICE** (AUG 1987)
- (d) 52.245-17 **SPECIAL TOOLING** (DEC 1989).
- (e) 52.246-2 **INSPECTION OF SUPPLIES - FIXED PRICE** (AUG 1996)
- (f) 52.246-4 **INSPECTION OF SERVICES - FIXED PRICE** (AUG 1996)
- (g) 52.246-7 **INSPECTION OF RESEARCH AND DEVELOPMENT - FIXED PRICE** (AUG 1996)
- (h) 52.249-2 **TERMINATION FOR CONVENIENCE OF THE GOVERNMENT** (FIXED-PRICE) (SEP 1996)
- (i) 52.249-8 **DEFAULT** (FIXED PRICE SUPPLY AND SERVICE) (APR 1984)