

52.216-23

INDEFINITE QUANTITY (OCT 1995)

(a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the *maximum*. The Government shall order at least the quantity of supplies or services designated in the Schedule as the *minimum*.

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; *provided*, that the Contractor shall not be required to make any deliveries under this contract after ___ [insert date].

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 55 FR 38518, Sept. 18, 1990; 60 FR 49727, Sept. 26, 1995]

52.216-23 Execution and Commencement of Work.

As prescribed in 16.603-4(b)(1), insert the following clause in solicitations and contracts when a letter contract is contemplated, except that it may be omitted from letter contracts awarded on SF 26:

EXECUTION AND COMMENCEMENT OF WORK
(APR 1984)

The Contractor shall indicate acceptance of this letter contract by signing three copies of the contract and returning them to the Contracting Officer not later than ___ [insert date]. Upon acceptance by both parties, the Contractor shall proceed with performance of the work, including purchase of necessary materials.

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(End of clause)

52.216-24 Limitation of Government Liability.

As prescribed in 16.603-4(b)(2), insert the following clause in solicitations and contracts when a letter contract is contemplated:

LIMITATION OF GOVERNMENT LIABILITY (APR 1984)

(a) In performing this contract, the Contractor is not authorized to make expenditures or incur obligations exceeding ___ dollars.

(b) The maximum amount for which the Government shall be liable if this contract is terminated is ___ dollars.

(End of clause)

52.216-25 Contract Definitization.

As prescribed in 16.603-4(b)(3), insert the following clause:

CONTRACT DEFINITIZATION (OCT 1997)

(a) A ___ [insert specific type of contract] definitive contract is contemplated. The Contractor agrees to begin promptly negotiating with the Contracting Officer the terms of a definitive contract that will include (1) all clauses required by the Federal Acquisition Regulation (FAR) on the date of execution of the letter contract, (2) all clauses required by law on the date of execution of the definitive contract, and (3) any other mutually agreeable clauses, terms, and conditions. The Contractor agrees to submit a ___ [insert specific type of proposal (e.g., fixed-price or cost-and-fee)] proposal and cost or pricing data supporting its proposal.

(b) The schedule for definitizing this contract is [insert target date for definitization of the contract and dates for submission of proposal, beginning of negotiations, and, if appropriate, submission of make-or-buy and subcontracting plans and cost or pricing data]:

(c) If agreement on a definitive contract to supersede this letter contract is not reached by the target date in paragraph (b) above, or within any extension of it granted by the Contracting Officer, the Contracting Officer may, with the approval of the head of the contracting activity, determine a reasonable price or fee in accordance with subpart 15.4 and part 31 of the FAR, subject to Contractor appeal as provided in the Disputes clause. In any event, the Contractor shall proceed with completion of the contract, subject only to the Limitation of Government Liability clause.

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(1) After the Contracting Officer's determination of price or fee, the contract shall be governed by—

(i) All clauses required by the FAR on the date of execution of this letter contract for either fixed-price or cost-reimbursement contracts, as determined by the Contracting Officer under this paragraph (c);

(ii) All clauses required by law as of the date of the Contracting Officer's determination; and

(iii) Any other clauses, terms, and conditions mutually agreed upon.

(2) To the extent consistent with subparagraph (c)(1) above, all clauses, terms, and conditions included in this letter contract shall continue in effect, except those that by their nature apply only to a letter contract.

(End of clause)

Alternate I (APR 1984). In letter contracts awarded on the basis of price competition, add the following paragraph (d) to the basic clause:

(d) The definitive contract resulting from this letter contract will include a negotiated ___ [insert price ceiling or firm fixed price] in no event to exceed ___ [insert the proposed price upon which the award was based].

[48 FR 42478, Sept. 19, 1983, as amended at 60 FR 48221, Sept. 18, 1995; 62 FR 51271, Sept. 30, 1997]

52.216-26 Payments of Allowable Costs Before Definitization.

As prescribed in 16.603-4(c), insert the following clause:

PAYMENTS OF ALLOWABLE COSTS BEFORE DEFINITIZATION (MAR 2000)

(a) *Reimbursement rate.* Pending the placing of the definitive contract referred to in this letter contract, the Government will promptly reimburse the Contractor for all allowable costs under this contract at the following rates:

(1) One hundred percent of approved costs representing financing payments to subcontractors under fixed-price subcontracts, provided that the Government's payments to the Contractor will not exceed 80 percent of the allowable costs of those subcontractors.

(2) One hundred percent of approved costs representing cost-reimbursement subcontracts; *provided*, that the Government's payments to the Contractor shall not exceed 85 percent of the allowable costs of those subcontractors.

(3) Eighty-five percent of all other approved costs.

(b) *Limitation of reimbursement.* To determine the amounts payable to the Contractor under this letter contract, the Contracting Officer shall determine allowable costs in ac-

cordance with the applicable cost principles in part 31 of the Federal Acquisition Regulation (FAR). The total reimbursement made under this paragraph shall not exceed 85 percent of the maximum amount of the Government's liability, as stated in this contract.

(c) *Invoicing.* Payments shall be made promptly to the Contractor when requested as work progresses, but (except for small business concerns) not more often than every 2 weeks, in amounts approved by the Contracting Officer. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost incurred by the Contractor in the performance of this contract.

(d) *Allowable costs.* For the purpose of determining allowable costs, the term *costs* includes—

(1) Those recorded costs that result, at the time of the request for reimbursement, from payment by cash, check, or other form of actual payment for items or services purchased directly for the contract;

(2) When the Contractor is not delinquent in payment of costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for—

(i) Supplies and services purchased directly for the contract, provided payments will be made—

(A) In accordance with the terms and conditions of a subcontract or invoice; and

(B) Ordinarily prior to the submission of the Contractor's next payment request to the Government;

(ii) Materials issued from the Contractor's stores inventory and placed in the production process for use on the contract;

(iii) Direct labor;

(iv) Direct travel;

(v) Other direct in-house costs; and

(vi) Properly allocable and allowable indirect costs as shown on the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and

(3) The amount of financing payments that the Contractor has paid by cash, check, or other forms of payment to subcontractors.

(e) *Small business concerns.* A small business concern may receive more frequent payments than every 2 weeks.

(f) *Audit.* At any time before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of costs audited. Any payment may be (1) reduced by any amounts found by the Contracting Officer not to constitute allowable costs or (2) adjusted for overpayments or underpayments made on preceding invoices or vouchers.