

## Contract Clauses

### CBO 01 Terms and Conditions Limited (Oct 2004)

This contract expressly limits acceptance to terms and conditions stated herein. Any additional or different terms and conditions proposed by the Contractor are rejected unless expressly agreed to by the Congressional Budget Office (CBO) in writing. If the Contractor commences shipment or performance pursuant to this contract, then the Contractor shall be deemed to have agreed to and accepted this contract in its entirety, including its terms and conditions as set forth herein.

(a) *Payment.*

- (1) Upon submission of proper invoices or time statements to the designated office and at the time(s) provided for in this contract, CBO shall pay the Contractor –
  - (i) the prices stipulated in this contract for supplies delivered and accepted, less any deductions provided in this contract. Unless otherwise specified, payment shall be made upon acceptance of any portion of the work delivered or rendered for which a price is separately stated in the contract; or
  - (ii) at the rates prescribed for the services performed by the Contractor and accepted as set forth in this contract. If provided for in this contract, CBO shall also pay the Contractor –
    - (A) A per diem rate in lieu of subsistence for each day the Contractor is in a travel status away from home or regular place of employment in accordance with CBO’s travel policy as authorized in appropriate Travel Orders; and
    - (B) Any other transportation expenses.
- (2) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date the electronic funds transfer was made by CBO.
- (3) *Payment due date.* The payment due date shall be the 30th day after CBO’s Office of Financial Management has received a proper invoice from the Contractor. However, if that Office fails to annotate the invoice with the actual date of receipt at the time of receipt, the invoice payment due date shall be the 30th day after the date of the Contractor’s invoice; provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements. If the contract does not require submission of an invoice for payment, the due date will be, and CBO shall pay the Contractor, as specified in the contract.

(b) *Invoice.*

- (1) Unless this contract does not require submission of an invoice for payment, the Contractor’s invoices must be submitted before payment can be made. An invoice is the Contractor’s bill or written request for payment under the contract for supplies delivered or services performed. An invoice shall be prepared and submitted to the Office of Financial Management by **one** of the following methods:

Method 1 (preferred)	Method 2	Method 3
<i>E-mail invoices to:</i> <a href="mailto:invoices@cbo.gov">invoices@cbo.gov</a>	<i>Fax invoices to:</i> (202) 755-1092	<i>Mail/deliver invoices to:</i> Office of Financial Management Congressional Budget Office 2 <sup>nd</sup> and D Streets SW Washington DC 20515 Tel: (202) 226-2609

**NOTICE:** Mailing invoices to CBO’s street address in lieu of electronic submission may delay payment. Due to the special mail handling procedures currently in effect, it can take up to 2 weeks for CBO to receive invoices through the mail. Electronic submission is the preferred invoice submission method.

- (2) A proper invoice must include the items below. If the invoice does not comply with these requirements, the Contractor shall be notified of the defect within seven (7) days after receipt of the invoice by CBO’s Office of Financial Management.
  - (i) Name and address of the Contractor;
  - (ii) Invoice number and date;
  - (iii) The Contractor’s Tax Identification Number;
  - (iv) Purchase Order or contract number or other authorization for supplies delivered or services performed;
  - (v) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services rendered;

- (vi) Name, title, phone number, and mailing address of person to be notified in the event of a defective invoice;
- (vii) Any other information or documentation required by the contract.

If the contract is for a subscription, the invoice must also include the following items:

- (viii) The starting and ending dates of the subscription delivery; and
- (ix) Either that orders have been placed in effect for the addressees required, or that the orders will be placed in effect upon receipt of payment.

(c) *Method of Payment.*

- (1) All payments by CBO under this contract shall be made by electronic funds transfer (EFT). CBO shall make payment to the Contractor using the EFT information—
  - (i) provided by the Contractor on the CBO Vendor Survey form; or
  - (ii) obtained MANUALLY by CBO from the Central Contractor Registration (CCR) database.
- (2) CBO need not make payment to the Contractor under this contract, and any invoice shall be deemed not to be a proper invoice for the purpose of the payment clause under this contract, unless and until CBO has been provided or has been able to obtain the Contractor's EFT information under paragraph (c)(1).
- (3) The Contractor shall be responsible for notifying CBO when the Contractor's EFT information changes. The Contractor shall either:
  - (i) provide a revised CBO Vendor Survey form; or
  - (ii) notify CBO Procurement Services that changes have been entered into the CCR (CBO DOES NOT MAINTAIN AN AUTOMATED LINK TO CCR).
- (4)
  - (i) If an incomplete or erroneous transfer occurs because CBO used the Contractor's correct EFT information inaccurately, CBO remains responsible for making a correct payment and recovering any erroneously directed funds.
  - (ii) If an incomplete or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of release of the EFT payment transaction instruction to the Federal Reserve System, then—
    - (A) if the funds are no longer under the control of the designated billing office, CBO is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or
    - (B) if the funds remain under the control of the designated billing office, CBO shall not make payment until the Contractor provides CBO with the notification required in paragraph (c)(2).
- (5) CBO shall forward to the Contractor available payment information at the request of the Contractor. CBO does not guarantee that any particular format or method of delivery is available and retains the latitude to use the format and delivery method most convenient to CBO.

(d) *Inspection and Acceptance.* The Contractor shall only tender for acceptance those supplies or services that conform to the requirements of this contract. CBO reserves the right to inspect or test any supplies or services that have been tendered for acceptance. CBO may require repair or replacement of nonconforming supplies or re-performance of nonconforming services at no increase in contract price. Payment for any supplies or services hereunder shall not be deemed an acceptance thereof and is without prejudice to any and all claims that CBO may have against the Contractor.

(e) *Assignment.*

- (1) Neither this contract nor the obligation of the Contractor to perform shall be assigned or delegated by the Contractor without CBO's consent.
- (2) The Contractor may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency.
- (3) If the Contractor assigns the proceeds of this contract, the Contractor shall require as a condition of any such assignment, that the assignee submit a completed Vendor Survey form and shall be paid by EFT in accordance with the terms of the Method of Payment clause of this contract. In all respects, the requirements of that clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the payment to be other than the Contractor, in the absence of a proper assignment of claims acceptable to CBO, is incorrect EFT information within the meaning of paragraph (b) of the Method of Payment clause.

(f) *Changes.*

- (1) CBO may at any time, by written order, make changes within the general scope of this contract in any one or more of the following:
  - (i) Description of services to be performed;
  - (ii) Time of performance;

- (iii) Place of delivery or performance.
- (iv) Drawings, designs, or specifications when supplies to be furnished are to be specially manufactured for CBO.

- (2) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, CBO shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.
- (3) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if CBO decides that the facts justify it, CBO may receive and act upon a proposal submitted before final payment of the contract.
- (4) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(g) *Risk of Loss/Title.*

Unless specified elsewhere in this contract—

- (1) title to supplies furnished under this contract shall pass to CBO upon acceptance; and
- (2) risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until delivery of the supplies to CBO's place of business.

(h) *Warranties.*

- (1) The Contractor warrants free and clear title to all delivered products and further warrants that the products shall be free from defects in workmanship, material or design and shall conform either to the description and specifications in this contract or consistent with the sample of said product provided to CBO.
- (2) The Contractor warrants that the products, in the form delivered to CBO, are free from any valid claim for patent infringement and that any labels or trademarks affixed thereto by or on behalf of the Contractor are free from any valid claim for copyright or trademark infringement and agrees to save and hold harmless and indemnify CBO against such infringement liability based upon CBO's possession thereof without alteration.
- (3) The goods and services provided shall be free from defects in materials and workmanship for a period of at least ninety (90) days after completion of performance (in the case of services) or after acceptance (in the case of goods or supplies) unless a longer warranty period is provided or is required by law. Should the Contractor's services or goods or supplies prove to be defective within the warranty period, the Contractor agrees to promptly replace or repair the goods or supplies or correct such services to CBO's satisfaction without cost to CBO.
- (4) Unless this contract specifies otherwise, the Contractor represents that all goods, supplies, and other materials provided are new and are not of such age or so deteriorated as to impair their usefulness or safety.
- (5) Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to CBO for consequential damages resulting from any defect or deficiencies in accepted items.

(i) *Endorsements/News Releases/Advertising.* The Contractor agrees not to refer to this contract or CBO, in advertising, promotional or any other materials, in such a manner as to state or imply that the products or services provided are endorsed or preferred by CBO or are considered by CBO to be superior to other products or services. No news release, press conference, or advertisement pertaining to this contract will be distributed or broadcast without prior written approval by CBO.

(j) *Obligations Contingent on Future Appropriation.* Unless otherwise provided in this contract, CBO's obligation under this contract in any fiscal year beyond the fiscal year for which this contract is entered into is contingent on the availability of appropriated funds.

(k) *Excusable Delays.* The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, describing the matter in detail, shall remedy such occurrence expeditiously, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(l) *Waiver of Default.* Waiver by either party of any default by the other hereunder shall not be deemed a waiver by such party of any other, subsequent default.

(m) *Termination for Convenience.* CBO reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor will be notified by the Contracting Officer, in writing, and shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting

the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of CBO have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(n) *Termination for Default.* CBO may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide CBO, upon request, with adequate assurances of future performance. In the event of termination for cause, the Contractor will be notified by the Contracting Officer in writing. CBO shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to CBO for any and all rights and remedies provided by law. If it is determined that CBO improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(o) *Disputes.*

- (1) It is the policy of CBO that, to the fullest extent practicable, disputes over matters such as terms and conditions should be informally and expeditiously resolved between the Contractor and the Contracting Officer.
- (2) If a dispute cannot be resolved between the Contractor and the Contracting Officer, an appeal regarding a dispute shall be made in writing to:

Office of General Counsel  
Congressional Budget Office  
470 Ford House Office Building  
Washington, DC 20515

Any written appeal regarding a dispute shall be decided by the Deputy General Counsel (DGC), who shall reduce the decision to writing and mail or otherwise furnish a copy thereof to the Contractor. Within 30 days from the receipt of such copy, if no further appeal is taken, the decision of the DGC shall be final and conclusive.

- (3) The Contractor may appeal the decision of the DGC in writing to the Deputy Director, or a designee.

Deputy Director  
Congressional Budget Office  
402 Ford House Office Building  
Washington, DC 20515

The Deputy shall reduce the decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Deputy shall be final and conclusive. Upon final decision of a dispute, the Contractor shall proceed diligently with the performance of the contract and in accordance with the final decision.

(p) *Compliance with Laws.* The Contractor shall comply with all applicable Federal, State, and local laws, rules and regulations applicable to its performance under this contract. The Contractor further agrees to hold CBO harmless from any and all liabilities, claims, fines, penalties, including reasonable costs and settlements, which may arise out of the delivery by the Contractor of goods or supplies or the furnishing of services that do not meet the requirements of any applicable laws or regulations. In addition, to the greatest extent practicable, all equipment and products delivered under this Contract shall be American-made.