

LETTER SUBCONTRACT PROVISIONS

(a) The Seller, by acceptance of this letter subcontract, agrees to [insert language concerning submission of certified cost or pricing data, subcontracting plans, or other obligations of the Seller] and [enter into][continue] negotiation of a definitive subcontract. The definitive subcontract shall be a [enter type of subcontract].

(b) The Seller shall not expend or obligate more than \$_____ pending execution of the definitive subcontract.

(c) This letter subcontract will be superseded by a definitive subcontract within _____ days. This letter subcontract may be terminated either (1) at any time for the convenience of the Government, or (2) in the event the Seller and the Company fail to agree upon the terms of, and to execute, a definitive subcontract within the time specified or any extension thereof.

(d) If this letter subcontract is terminated, the Seller shall be reimbursed in accordance with Article _____, [Termination][Termination for the Convenience of the Government] of Terms and Conditions _____. However, if termination results from the failure of the parties to agree upon the terms of and to execute a definitive subcontract, reimbursement shall exclude the payment of profit or fee.

(e) The total payments under paragraph (d) above shall be limited to the total dollar amount authorized to be expended by this letter subcontract.

Ordinarily, the Seller will not be paid during performance of the letter subcontract because the definitive subcontract will be executed within a short period of time and because negotiating leverage is relinquished by allowing payment. However, a letter subcontract will generally incorporate the complete terms and conditions, which allow payment under specified circumstances, and it may be necessary to include an additional paragraph indicating that the normal payment provisions are suspended while the letter subcontract is in effect. For example, in cost-reimbursement procurements, a paragraph similar to the following may be used:

(f) The provisions of Article _____, "Allowable Cost and Payment," of Terms and Conditions _____ to the contrary notwithstanding, the Seller shall not submit invoices during performance of this letter subcontract for costs incurred.

In fixed-price procurements, it will not be necessary to include a paragraph concerning payment if no occasion for payment will arise during performance of the letter subcontract. However, if the Buyer incorporates a progress payment clause to be applicable to the definitive subcontract but not to the letter subcontract, a paragraph similar to the following should be used:

(f) The provisions of the clause entitled PROGRESS PAYMENT FOR OTHER THAN SMALL BUSINESS CONCERNS - TOTAL COSTS [or PROGRESS PAYMENT FOR SMALL BUSINESS CONCERNS - TOTAL COSTS, as appropriate] to the contrary notwithstanding, no progress payments will be made to the Seller during performance of this letter subcontract.

If progress payments are to be made under the letter subcontract as well as the definitive subcontract, a paragraph similar to the following should be used:

(f) During the period of performance of this letter subcontract, paragraph (a)(4) of the clause entitled PROGRESS PAYMENT FOR OTHER THAN SMALL BUSINESS CONCERNS - TOTAL COSTS [or PROGRESS PAYMENT FOR SMALL BUSINESS CONCERNS - TOTAL COSTS, as appropriate] is revised to read: "The aggregate amount of progress payments made under this letter subcontract shall not exceed \$_____. [Insert an amount equal to 90% (95% if the Seller is a small business concern) of the amount the Seller is authorized to expend or obligate under the letter subcontract.]