NASA Procedural Requirements

COMPLIANCE IS MANDATORY

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Request Notification of Change (NASA Only)

Subject: Disbursements

Responsible Office: Office of the Chief Financial Officer

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Appendix F. Payments under Construction Contracts

F.1 Payments Standards

F.1.1 NASA shall follow these standards when making progress payments under construction contracts:

a. NASA may approve a request for progress payment if the application meets the requirements specified in the Required Documentation for Construction Payments section below.

b. The certification by the prime vendor, as defined in the Required Documentation for Construction Payments section below, is not to be construed as final acceptance of the subcontractor's performance.

c. NASA shall return any such payment request which is defective to the vendor within seven days after receipt, with a statement identifying the defect(s).

d. In the event the vendor's progress payment request contains an error and the vendor is paid more than entitled to under the terms of the contract, the vendor is obligated to pay interest to NASA on unearned amounts in its possession. The same holds true if NASA should mistakenly pay the vendor more than was authorized by the contract at the time of the payment. A vendor is obligated to pay interest to NASA on unearned amounts in its possession from:

(1) The eighth day after receipt of funds from NASA until the date the vendor notifies NASA that the performance deficiency has been corrected, or the date the vendor reduces the amount of any subsequent payment request by an amount equal to the unearned amount in its possession when the vendor discovers that all or a portion of a payment received from NASA constitutes a payment for the vendor's performance that fails to conform to the specifications, terms, and conditions of its contract with the agency, under 31 U.S.C. 3905(a).

(2) The eighth day after the receipt of funds from NASA until the date the performance deficiency of a subcontractor is corrected, or the date the vendor reduces the amount of any subsequent payment request by an amount equal to the unearned amount in its possession, when the vendor discovers that all or a portion of a payment received from the agency would constitute a payment for the subcontractor's performance that fails to conform to the subcontract agreement and may be withheld, under 31 U.S.C. 3905(e).

e. Interest payment on unearned amounts due to the Government under 31 U.S.C. 3905(a)(2) or 3905(e)(6), shall:

(1) Be computed on the basis of the average bond equivalent rates of 91-day Treasury bills auctioned at the most recent auction of such bills prior to the date the vendor received the unearned amount.

(2) Be deducted from the next available payment to the vendor.

(3) Be deposited in the Miscellaneous Receipts Account and then revert to Treasury.

F.2 Required Documentation for Construction Payments

F.2.1 Substantiation of the amount(s) requested shall include:

a. An itemization of the amounts requested related to the various elements of work specified in the contract.

b. A listing of the amount included for work performed by each subcontractor under the contract.

c. A listing of the total amount for each subcontract under the contract.

d. A listing of the amounts previously paid to each subcontractor under the contract.

e. Additional supporting data and detail in a form required by the contracting officer.

F.2.2 Certification by the prime vendor is required, to the best of the vendor's knowledge and belief that:

a. The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract.

b. Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of 31 U.S.C. Subtitle III, Chapter 39.

c. The application does not include any amounts which the prime vendor intends to withhold or retain from a subcontractor or supplier, in accordance with the terms and conditions of their subcontract.

F.3 Interest Penalties

F.3.1 NASA may pay interest on the following:

a. A progress payment request (including a monthly percentage-of completion progress payment or milestone payments for completed phases, increments, or segments of any project) that is approved as payable by NASA and remains unpaid for:

(1) A period of more than 14 days after receipt of the payment request by the designated agency office; or

(2) A longer period specified in the solicitation and/or contract if required, to afford the Government a practicable opportunity to adequately inspect the work and to determine the adequacy of the vendor's performance under the contract.

b. Any amounts NASA has retained pursuant to a prime contract clause providing for retaining a percentage of progress payments otherwise due to a vendor and that are approved for release to the vendor, if such amounts are not paid by the date specified in the contract, or, in the absence of such a specified date, by the 30th day after final acceptance.

c. Final payments, based on completion and acceptance of all work (including any retained amounts), and payments for partial performances that have been accepted by NASA, if such payments are made after the later of:

(1) The 30th day after the date on which the designated agency office receives a proper invoice; or

(2) The 30th day after agency acceptance of the completed work or services. Acceptance shall be deemed to have occurred on the effective date of contract settlement (agreement between the Government and contractor to release all claims) on a final invoice where the payment amount is subject to contract settlement actions.

d. For the purpose of computing interest penalties, acceptance shall be deemed to have occurred on the seventh day after work or services have been completed in accordance with the terms of the contract.

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