

Attachment 23, Performance-Based Payments

(a) Amount of payments and limitations on payments. Subject to such other limitations and conditions as are specified in this purchase order and this clause, the amount of payments and limitations on payments shall be specified in the purchase order's description of the basis for payment.

(b) Seller request for performance-based payment. The Seller may submit requests for payment of performance-based payments not more frequently than monthly, in a form and manner acceptable to Lockheed Martin. Unless otherwise authorized by Lockheed Martin, all performance-based payments in any period for which payment is being requested shall be included in a single request, appropriately itemized and totaled. The Seller's request shall contain the information and certification detailed in paragraphs (l) and (m) of this clause.

(c) Approval and payment of requests.

(1) The Seller shall not be entitled to payment of a request for performance-based payment prior to successful accomplishment of the event or performance criterion for which payment is requested. Lockheed Martin shall determine whether the event or performance criterion for which payment is requested has been successfully accomplished in accordance with the terms of the purchase order. Lockheed Martin may, at any time, require the Seller to substantiate the successful performance of any event or performance criterion which has been or is represented as being payable.

(3) The approval by Lockheed Martin of a request for performance-based payment does not constitute an acceptance by the Lockheed Martin and does not excuse the Seller from performance of obligations under this purchase order.

(d) Liquidation of performance-based payments.

(1) Performance-based finance amounts paid prior to payment for delivery of an item shall be liquidated by deducting a percentage or a designated dollar amount from the delivery payment. If the performance-based finance payments are on a delivery item basis, the liquidation amount for each such line item shall be the percent of that delivery item price that was previously paid under performance-based finance payments or the designated dollar amount. If the performance-based finance payments are on a whole purchase order basis, liquidation shall be by either predesignated liquidation amounts or a liquidation percentage.

(2) If at any time the amount of payments under this purchase order exceeds any limitation in this purchase order, the Seller shall repay to Lockheed Martin the excess. Unless otherwise determined by Lockheed Martin, such excess shall be credited as a reduction in the unliquidated performance-based payment balance(s), after adjustment of invoice payments and balances for any retroactive price adjustments.

(e) Reduction or suspension of performance-based payments. Lockheed Martin may reduce or suspend performance-based payments, liquidate performance-based payments by deduction from any payment under the purchase order, or take a combination of these actions after finding upon substantial evidence any of the following conditions:

(1) The Seller failed to comply with any material requirement of this purchase order (which includes paragraphs (h) and (i) of this clause).

(2) Performance of this purchase order is endangered by the Seller's --

- (i) Failure to make progress; or
- (ii) Unsatisfactory financial condition.

(3) The Seller is delinquent in payment of any lower tier subcontractor or supplier under this purchase order in the ordinary course of business.

(f) Title.

(1) Title to the property described in this paragraph (f) shall vest in Lockheed Martin. Vestiture shall be immediately upon the date of the first performance-based payment under this purchase order, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this purchase order

(2) "Property," as used in this clause, includes all of the following described items acquired or produced by the Seller that are or should be allocable or properly chargeable to this purchase order under sound and generally accepted accounting principles and practices:

(i) Parts, materials, inventories, and work in process;

(ii) Special tooling and special test equipment to which the Government is to acquire title under any other clause of this purchase order;

(iii) Nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment and other similar manufacturing aids, title to which would not be obtained as special tooling under subparagraph (f)(2)(ii) of this clause; and

(iv) Drawings and technical data, to the extent the Seller or lower tier subcontractors are required to deliver them to Lockheed Martin by other clauses of this purchase order.

(3) Although title to property is in Lockheed Martin under this clause, other applicable clauses of this purchase order (e.g., the termination or special tooling clauses) shall determine the handling and disposition of the property.

(4) The Seller may sell any scrap resulting from production under this purchase order, without requesting Lockheed Martin's approval, provided that any significant reduction in the value of the property to which Lockheed Martin has title under this clause is reported in writing to Lockheed Martin.

(5) In order to acquire for its own use or dispose of property to which title is vested in Lockheed Martin under this clause, the Seller must obtain Lockheed Martin's advance approval of the action and the terms. If approved, the basis for payment (the events or performance criteria) to which the property is related shall be deemed to be not in compliance with the terms of the purchase order and not payable (if the property is part of or needed for performance), and the Seller shall refund the related performance-based payments in accordance with paragraph (d) of this clause.

(6) When the Seller completes all of the obligations under this purchase order, including liquidation of all performance-based payments, title shall vest in the Seller for all property (or the proceeds thereof) not --

(i) Delivered to, and accepted by, Lockheed Martin under this purchase order; or

(ii) Incorporated in supplies delivered to, and accepted by, Lockheed Martin under this purchase order and to which title is vested in Lockheed Martin under this clause.

(7) The terms of this purchase order concerning liability for Lockheed Martin or Government-furnished property shall not apply to property to which Lockheed Martin or the Government acquired title solely under this clause.

(g) Risk of loss. Before delivery to and acceptance by Lockheed Martin, the Seller shall bear the risk of loss for property, the title to which vests in Lockheed Martin under this clause, except to the extent Lockheed Martin expressly assumes the risk. If any property is damaged, lost, stolen, or destroyed, the basis of payment (the events or performance criteria) to which the property is related shall be deemed to be not in compliance with the terms of the purchase order and not payable (if the property is part of or needed for

performance), and the Seller shall refund the related performance-based payments in accordance with paragraph (d) of this clause.

(h) Records and controls. The Seller shall maintain records and controls adequate for administration of this clause. The Seller shall have no entitlement to performance-based payments during any time the Seller's records or controls are determined by the Lockheed Martin to be inadequate for administration of this clause.

(i) Reports and Lockheed Martin access. The Seller shall promptly furnish reports, certificates, financial statements, and other pertinent information requested by Lockheed Martin for the administration of this clause and to determine that an event or other criterion prompting a financing payment has been successfully accomplished. The Seller shall give Lockheed Martin reasonable opportunity to examine and verify the Seller's records and to examine and verify the Seller's performance of this purchase order for administration of this clause.

(j) Special terms regarding default. If this purchase order is terminated under the Default clause,

(1) the Seller shall, on demand, repay to Lockheed Martin the amount of unliquidated performance-based payments, and

(2) title shall vest in the Seller, on full liquidation of all performance-based payments, for all property for which Lockheed Martin elects not to require delivery under the Default clause of this purchase order. Lockheed Martin shall be liable for no payment except as provided by the Default clause.

(k) Reservation of rights.

(1) No payment or vesting of title under this clause shall --

(i) Excuse the Seller from performance of obligations under this purchase order; or

(ii) Constitute a waiver of any of the rights or remedies of the parties under the purchase order.

(2) Lockheed Martin's rights and remedies under this clause --

(i) Shall not be exclusive, but rather shall be in addition to any other rights and remedies provided by law or this purchase order; and

(ii) Shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of Lockheed Martin.

(l) Content of Seller's request for performance-based payment. The Seller's request for performance-based payment shall contain the following:

(1) The name and address of the Seller;

(2) The date of the request for performance-based payment;

(3) The purchase order number and/or other identifier of the purchase order or order under which the request is made;

(4) Such information and documentation as is required by the purchase order's description of the basis for payment; and

(5) A certification by a Seller official authorized to bind the Seller, as specified in paragraph (m) of this clause.

(m) Content of Seller's certification. As required in paragraph (l)(5) of this clause, the Seller shall make the following certification in each request for performance-based payment:

I certify to the best of my knowledge and belief that --

(1) This request for performance-based payment is true and correct; this request (and attachments) has been prepared from the books and records of the Seller, in accordance with the purchase order and the instructions of Lockheed Martin;

(2) (Except as reported in writing on _____), all payments to lower tier subcontractors and suppliers under this purchase order have been paid, or will be paid, currently, when due in the ordinary course of business;

(3) There are no encumbrances (except as reported in writing on _____) against the property acquired or produced for, and allocated or properly chargeable to, the purchase order which would affect or impair the Government's title;

(4) There has been no materially adverse change in the financial condition of the Seller since the submission by the Seller to Lockheed Martin of the most recent written information dated _____; and

(5) After the making of this requested performance-based payment, the amount of all payments for each deliverable item for which performance-based payments have been requested will not exceed any limitation in the purchase order, and the amount of all payments under the purchase order will not exceed any limitation in the purchase order.