

COMPENSATION & PAYMENT PROVISIONS (COST REIMBURSABLE)

Note: Articles flagged with an asterisk (*) are Flow-down requirements as defined in Article SUBCONTRACTORS AND SUPPLIERS in Contract Document GENERAL CONDITIONS.

CP-01 BASIS OF COMPENSATION *

A. Reimbursable Costs

1. Metro will reimburse the Contractor for costs in accordance with FAR Subpart 31.2 and:
 - a. Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract; or
 - b. Costs incurred, but not necessarily paid, for:
 1. Materials issued from the Contractor's inventory and placed in the production process for use on the Contract;
 2. Direct labor;
 3. Direct travel;
 4. Other direct in-house costs;
 5. Allowable indirect costs;
 6. Subcontractors and Suppliers.
2. All costs that are expressly unallowable or mutually agreed to be unallowable, including directly associated costs, shall be excluded from any Billing, Claim, or proposal applicable to Metro's Contract or CWO.
3. Those Contractors subject to FAR Part 30 for federal contracts shall allocate and bill costs in accordance with their Cost Accounting Standards Disclosure Statement for this Contract.

B. Limitations On Reimbursable Costs *

1. Advanced Agreement Limitations

Metro will not reimburse any costs exceeding the limitation on cost/rate(s) stated in the Advanced Agreement on Costs.

2. Other Direct Costs (ODC)

Metro will reimburse ODC's at actual net costs or prices to the Contractor or its Subcontractors at any tier, (e.g. the cost or price less any refunds, discounts, rebates, or other items of value received by the Contractor or its Subcontractors at any tier, that have the effect of reducing the cost or price actually incurred).

3. Indirect Costs

An indirect cost is an allowable cost, and is not directly identified as a direct cost. The following costs, without limitation, shall not be reimbursable as a direct cost:

4. Overtime

If overtime work is required, the indirect rate in the Advanced Agreement on Cost shall apply only to the straight time portion of the premium rate, as required by Law.

5. Taxes

- a. The Total Contract Price includes compensation for all taxes, duties, permit and other fees and/or royalties imposed with respect to the Work, and any equipment, materials, labor or services included therein.
- b. Contractor shall pay all federal, state, and local taxes, and duties applicable to and assessable against any Work, including but not limited to retail sales and use, excise, transportation, export, import, business, and special taxes.
- c. Contractor shall ascertain and pay the taxes when due. Further, Contractor shall maintain auditable Records, subject to Metro reviews, confirming that tax payments are current at all times.

6. Bid and Proposal Costs

All costs incurred in preparing, submitting and supporting any bid/proposal (whether or not accepted by Metro).

7. Insurance Costs

Costs of premiums or deductibles or losses in excess of amounts recoverable through insurance paid by the Contractor as required in the Exhibit to the Form of Contract, entitled INSURANCE are excluded from reimbursement. Any costs recovered or recoverable under any other insurance policy or other party are also excluded from reimbursement.

8. Fringe Benefits

All costs associated with direct labor fringe, including but not limited to employee compensated personal absence, payroll taxes and payroll additives.

9. Incentives

All costs associated with the costs of employee incentive compensation (including cash bonuses, suggestion awards, safety awards and other

forms of incentive compensation), shall be allowable only to the extent that they are paid or accrued:

- a. In accordance with FAR 31.2 and applicable Internal Revenue Code;
- b. Under an agreement (in effect for twelve (12) months prior to award of the Contract) entered into in good faith between Contractor and the employees; and
- c. Are not a distribution of profits.

10. Disallowance of Facilities Cost of Capital

Facilities cost of capital shall not be allowed as a reimbursable direct cost and shall not be included in the computation of any Indirect Cost Rate, provisional or actual.

C. Provisional And Final Annual Indirect Cost Rates

1. Provisional Indirect Rates

Provisional rates. Until final annual indirect cost rates are established for any period, Metro shall reimburse the Contractor at provisional rates established by the Contracting Officer or by an Authorized Representative subject to adjustment when the final rates are established. These provisional rates:

- a. Shall be the estimated final rates;
- b. May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment; and
- c. Shall be established in the Advance Agreement on Cost (Form of Contract, Exhibit 1).

2. Final Annual Indirect Rate

- a. The Contractor shall submit an acceptable final annual indirect cost rate proposal to the Contracting Officer within the 6-month period following the expiration of each of its fiscal years. The Contractor shall support its proposal with adequate supporting data and submit the Certification of Final Annual Indirect Costs, the form of which is attached hereto as Exhibit 1 ("Rate Certification"). The Rate Certification shall be signed by an individual of the Contractor's organization at a level no lower than a vice president or chief financial officer of the business segment of the Contractor that submits the proposal.

Failure by the Contractor to submit a signed Rate Certification, as described in this Paragraph may result in final annual indirect costs at rates unilaterally established by the Contracting Officer.

- b. The Contractor shall submit its proposed final rates based on the Contractor's actual cost experience for that period. The Contracting Officer and the Contractor shall establish the final annual indirect cost rates as promptly as practical after audit of the Contractor's proposal.
- c. The Contractor and the Contracting Officer shall execute a written Modification setting forth the final annual indirect cost rates. The Modification shall specify:
 - 1. The agreed-upon final annual indirect cost rates,
 - 2. The bases to which the rates apply,
 - 3. The periods for which the rates apply,
 - 4. Any specific indirect cost items identified as direct costs in the settlement, and
 - 5. The affected Contract and/or Subcontract, identifying any with advance agreements or special terms and the applicable rates.

The Modification shall not change the Contract value or specific cost allowance or disallowance provided for in this Contract.

- d. Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.
- e. Within 30 days after settlement of the final annual indirect cost rates the Contractor shall submit an invoice adjusting the difference between the provisional and final annual indirect rates.
- f. If the Contractor fails to submit an invoice or voucher within the time specified in this Section, the Contracting Officer may:
 - 1. Determine the amounts due to the Contractor under the contract; and
 - 2. Record this determination in a unilateral Modification to the Contract, which shall constitute the final decision of the Contracting Officer in accordance with the Disputes clause.

D. Fixed Fee

The Fixed Fee shall be an amount fixed at the inception of the Contract and specified in the Form of Contract with respect to the Work planned and scheduled as set forth in the Scope of Work, and shall not vary with actual

costs for the Work. A change shall not result in a Change to the Fixed Fee except for a major modification as defined in the Changes Article.

CP-02 LIMITATION OF COST AND NOTIFICATION REQUIREMENTS

- A. Contractor agrees to use its best efforts to perform the work specified in the Schedule (what schedule) and all obligations under this Contract within the NTE costs.
- B. The Contractor shall notify the Contracting Officer in writing and provide a revised estimate of the total cost of performing this Contract whenever it has reason to believe that:
 - 1. The costs the Contractor expects to incur under this Contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the NTE cost specified in the Form of Contract; or
 - 2. The total cost for the performance of this Contract, exclusive of any fee, will be either greater or less than the NTE.
- C. Metro is not obligated to reimburse the Contractor for costs incurred in excess of the NTE cost specified in the Form of Contract, and the Contractor is not obligated to continue performance under this Contract (including actions under the Termination clause of this Contract) or otherwise incur costs in excess of the NTE cost specified in the Form of Contract, until the Contracting Officer modifies the Contract increasing the NTE cost.
- D. Only the Contracting Officer is authorized to increase the NTE cost. In the absence of the Contracting Officer's written authorization Metro is not obligated to reimburse the Contractor for any costs in excess of the NTE cost.
- E. Modifications shall not be considered an authorization to exceed the NTE cost to Metro specified in the Form of Contract, unless they contain a statement increasing the NTE cost.

CP-03 RETENTION REQUIREMENTS

A. Applicability

This Article applies if Retention is specified in the Form of Contract.

B. Retention

Metro shall retain from each payment ten percent (10%) of the fixed fee billed as part security for the fulfillment of the Contract by the Contractor. However, after fifty percent (50%) of the Work has been completed, if in the sole discretion of Metro, progress on the Work is satisfactory, Metro will not make further deductions on the remaining payments, except that the amount of the retention withheld shall not at any time thereafter be less than 5% of all of the Total Fixed Fee, as amended, or as adjusted by major Modifications.

However, if Metro thereafter determines that the Work, or progress of the Work, is unsatisfactory, Metro may reinstate, continue or increase retentions in amounts necessary to increase the total retention to an amount not to exceed ten percent (10%) of the Total Fixed Fee.

CP-04 PAYMENT & INVOICING *

A. Payments

Metro will make payments to the Contractor when requested as work progresses, but not more often than once a month, in amounts determined to be allowable by the Contracting Officer in accordance with the terms of this Contract.

B. Payment To Subcontractors

1. Applicability:

This Section only applies if the Contractor has employed Subcontractors.

2. Requirements:

- b. Payments – Contractor shall pay each Subcontractor under this Contract for satisfactory performance of its Subcontracts no later than ten (10) days after its receipt of each payment from Metro.**
- c. Final Payment to Subcontractors – The Contractor shall pay to each Subcontractor all amounts it has retained from payments on all amounts not in dispute under the Subcontract, within ten (10) days after the satisfactory completion of all required provisions of the Subcontractor's Work.**

C. Invoicing

- 1. The Contractor shall submit, monthly, a request for payment (Invoice) for Work rendered covering those Reimbursable Costs incurred by the Contractor in the previous month. The invoice shall be submitted in a form acceptable to the Contracting Officer. The Invoice shall contain a copy of such documentation required by the Contracting Officer to support the request for payment. The Invoice shall be signed and submitted to the address shown in the Form of Contract. An acceptable Invoice shall be accompanied by a certified statement, signed by an authorized officer of the Contractor, identical to the Certification for Request for Payment, attached as Exhibit 2 ("Payment Certification").**
- 2. Metro shall pay the Contractor within thirty (30) days from the date of receipt of an acceptable Invoice. Metro will notify the Contractor, of any defects in the Invoice submitted.**
- 3. The Payment Certification shall state that all Subcontractors and Suppliers who have furnished any Goods or labor prior to the date of the**

Payment Certification have been paid all amounts due them pursuant to the terms of their Subcontracts or purchase orders. The failure of the Contractor to certify payments made to Subcontractors, may result in Metro withholding the amount not certified, or exercising any other rights Metro may have under the Contract.

D. Final Invoice

1. Upon approval of a final invoice submitted by the Contractor in accordance with this Article, and upon the Contractor's compliance with all terms of this Contract, Metro shall promptly pay any balance of allowable costs and any fee not previously paid.
2. The Contractor shall pay or assign to Metro any refunds, rebates, credits, or other amounts (including interest, if any) not previously paid or assigned, accruing to or received by the Contractor or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the Contractor has been reimbursed by Metro. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Contracting Officer.
3. Before Final Payment under this contract, the Contractor and each assignee whose assignment is in effect at the time of Final Payment shall execute and deliver a release discharging Metro, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract.

CP-05 AUDIT REQUIREMENTS *

A. Applicability

This Section applies to the Contractor, its Subcontractors and Suppliers. The Contractor, its Subcontractors and Suppliers shall be subject to audit at any reasonable time by the Authorized Auditors for any Costs incurred for this Contract, Task Order, CWO or Modification.

B. Defined Terms

Audit: Audit, examine, verify, review, excerpt, vouch or transcribe Contractor's, Subcontractors' or Suppliers' Records.

Authorized Auditors: Metro employees, any firm s appointed by Metro or other authorized agencies acting as agents of a Governmental Entity. For federally funded Contracts, Authorized Auditors shall also include the FTA Administrator, the Comptroller General of the United States, or any of their duly authorized representatives including any Project Management Oversight (PMO) Contractor.

Costs: Amounts (both direct and indirect) claimed to be due and payable, or anticipated to be incurred in performing the Contract, CWO, Task Order or Modification.

Records: All of the Contractor's, Subcontractors' or Suppliers' Cost or pricing data supporting the Contract or Modification or Element thereof, including but not limited to books, data, Records, documents, reports, computations and projections, accounting procedures and practices and other evidence, in all forms (e.g. paper or machine readable media such as disk, tape, etc.) or types (e.g., databases, applications software, database management software, utilities, etc.), sufficient to properly reflect the performance of the Work and all Costs claimed to have been incurred or anticipated to be incurred in performing the Work. Any information provided by the Contractor, Subcontractor or Supplier on machine-readable media, shall be provided in a format accessible and readable by the Authorized Auditors. The detail and depth of Records required as backup support for Audits shall be that which adequately establishes and maintains visibility of both allowable, and identified unallowable costs including directly associated costs.

Reproduce: Copy, download, transcribe, print etc. by any means whatsoever free of charge.

C. Access

1. Records

Upon reasonable written advance notice to the Contractor, Subcontractors or Suppliers, with a copy sent to the Contractor's Authorized Representative, the Authorized Auditors shall have access during Contractor's normal business hours to all Records related to Costs or performance of the Contract for the purpose of Auditing..

2. Worksites

For any federally funded major capital project, access shall also include the Worksite.

D. Records Retention

The Contractor, Subcontractors and Suppliers shall maintain all Records required under this Contract, for a period of not less than three years after the date of Termination in whole or in part or Final Payment, whichever is later. In the event of litigation or settlement of claims arising from the performance of this Contract, the Contractor, Subcontractor and Suppliers shall maintain all Records related to this Contract until Metro or any Governmental Agency or their duly authorized representatives have disposed of all such litigation, appeals, claims or exceptions related thereto.

E. Reproduction of Records

The Authorized Auditors shall have the right to Reproduce any Contractor, Subcontractor or Supplier Records. The Contractor, Subcontractor or Supplier shall make Records (or to the extent accepted by the Authorized Auditors, photographs, micro-photographs or other authentic reproductions thereof) available to the Authorized Auditors at the Contractor's offices at all reasonable times and without charge.

F. Modifications

The Contractor, Subcontractors or Suppliers shall maintain and segregate Cost and pricing data and Records sufficient to properly reflect all direct and indirect Costs of whatever nature claimed to have been incurred or anticipated to be incurred in connection with a Modification to the Contract.

G. Defective Cost and Pricing Data

FAR 52-215-10 Price Reduction for Defective Cost or Pricing Data and 52.215-11 Price Reduction for Defective Cost or Pricing Data-Modifications shall apply to this Contract. The term Government referred to in the FAR clauses shall include Metro for purposes of this Contract.

H. Disposition Of Audit Findings

The Contracting Officer may use all evidence in the Records including the Audit findings to demand payment from the Contractor or adjust any Contractor's invoice to:

1. Reduce amounts found by the Contracting Officer to be unallowable costs; or
2. Adjust for prior overpayments or underpayments.

TBD (IFB/RFP No.)
TBD (Solicitation Title)

EXHIBIT 1 - RATE CERTIFICATION

This is to certify that I have reviewed this proposal to establish final annual indirect cost rates and to the best of my knowledge and belief:

1. All costs included in this proposal (identify proposal and date) to establish final annual indirect cost rates for (identify period covered by rate) are allowable in accordance with this Contract and the cost principles of the Federal Acquisition Regulation (FAR) and its supplements that are applicable to the contracts to which the final annual indirect cost rates will apply; and
2. This proposal does not include any costs which are expressly unallowable under this Contract, or cost principles of the FAR or its supplements made applicable under the Contract.

I certify under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct

Firm: _____

Signature: _____

Name of Certifying Official: _____

Title: _____

Date of Execution: _____

EXHIBIT 2 - PAYMENT CERTIFICATION

1. I hereby certify to the best of my knowledge and belief that:
 - A. This Payment Request represents a true and correct statement of the Work performed;
 - B. The Work completed to date under this Contract is in full accordance with the terms of the Contract; and
 - C. All Subcontractors and/or Suppliers who have performed Work on the project through the closing date of the prior Payment Request have been paid their proportionate share of all previous payments from Metro.

2. I understand that it is a violation of both the federal and California False Claims Acts to knowingly present or cause to be presented to Metro a false claim for payment or approval. A claim includes a demand or request for money. It is also a violation of the False Claims Acts to knowingly make use of a false Record or statement to get a false claim paid. The term "knowingly" includes either actual knowledge of the information, deliberate ignorance of the truth or falsity of the information, or reckless disregard for the truth or falsity of the information. Proof of specific intent to defraud is not necessary under the False Claims Acts. I understand that the penalties under the Federal False Claims Act and State of California False Claims Act are non-exclusive, and are in addition to any other criminal and/or civil remedies which Metro may have either under contract or law.

I certify under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct

Firm: _____

Signature: _____

Name of Certifying Official: _____

Title: _____

Date of Execution: _____

END OF COMPENSATION & PAYMENT PROVISIONS

