

COMPENSATION & PAYMENT PROVISIONS (TIME & MATERIAL) CONTRACT

Note:

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

CP-1 BASIS OF COMPENSATION (TIME-AND-MATERIALS AND LABOR-HOUR CONTRACTS)

The Metro will pay the Contractor as follows upon the submission of invoices or vouchers approved by the Contracting Officer:

A. Hourly rate

1. The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the Form of Contract by the number of direct labor hours performed. The rates shall include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis. Vouchers may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer), to the Contracting Officer. The Contractor shall substantiate vouchers by evidence of actual payment and by individual daily job timecards, or other substantiation approved by the Contracting Officer. Promptly after receipt of each substantiated voucher, the Metro shall, except as otherwise provided in this contract, and subject to the terms of (E) of this section, pay the voucher as approved by the Contracting Officer.
2. Unless otherwise prescribed in the Form of Contract, the Contracting Officer shall withhold 5 percent of the amounts due under this paragraph (a), but the total amount withheld shall not exceed \$50,000. The amounts withheld shall be retained until the execution and delivery of a release by the Contractor as provided in paragraph (f) of this section.
3. Unless the Form of Contract prescribes otherwise, the hourly rates in the Form of Contract shall not be varied by virtue of the Contractor having performed work on an overtime basis. If no overtime rates are provided in the Form of Contract and overtime work is approved in advance by the Contracting Officer, overtime rates shall be negotiated. Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of this contract. If the Form of Contract provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.

B. Materials and subcontracts

1. The Contracting Officer will determine allowable costs of direct materials in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract. Direct materials, as used in this clause, are those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product.

2. The Metro will reimburse the Contractor for items and services purchased directly for the contract only when payments of cash, checks, or other forms of payment have been made for such purchased items or services.
 - a. The Metro will reimburse the Contractor for costs of subcontracts that are authorized under the Consent to Subcontract clause of this contract, provided that the costs are consistent with paragraph (B)(3) of this clause.
 - b. The Metro will limit reimbursable costs in connection with subcontracts to the amounts paid for items and services purchased directly for the contract only when the Contractor has made payments of cash, checks, or other forms of payment to the subcontractor
 1. In accordance with the terms and conditions of a subcontract or invoice; and
 2. Ordinarily prior to the submission of the Contractor's next payment request to the Metro.
 - c. The Metro will not reimburse the Contractor for any costs arising from the letting, administration, or supervision of performance of the subcontract, if the costs are included in the hourly rates payable under paragraph (A)(1) of this clause.
3. To the extent able, the Contractor shall:
 - a. Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and
 - b. Take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the Contractor shall promptly notify the Contracting Officer and give the reasons. The Contractor shall give credit to the Metro for cash and trade discounts, rebates, scrap, commissions, and other amounts that have accrued to the benefit of the Contractor, or would have accrued except for the fault or neglect of the Contractor. The Contractor shall not deduct from gross costs the benefits lost without fault or neglect on the part of the Contractor, or lost through fault of the Metro.
 - c. Segregate and separately identify sales tax paid on materials purchased for and billed to this contract.

C. Total cost.

It is estimated that the total cost to the Metro for the performance of this contract shall not exceed the ceiling price set forth in the Form of Contract and the Contractor agrees to use its best efforts to perform the work specified in the Form of Contract and all obligations under this contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the Form of Contract, the Contractor shall notify the Contracting Officer giving a revised estimate of the total price to the Metro for performing this contract with supporting reasons and documentation. If at any time during performing this contract, the Contractor has reason to believe that the total price to the Metro for performing this contract will be greater or substantially less than the then stated ceiling price, the Contractor shall so notify the Contracting Officer, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during performing this contract, the Metro has reason to believe that the work to be required in performing this contract will be substantially greater or less than the stated ceiling price, the Contracting Officer will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the contract.

D. Ceiling price

The Metro shall not be obligated to pay the Contractor any amount in excess of the ceiling price in the Form of Contract, and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Form of Contract, unless and until the Contracting Officer shall have notified the Contractor in writing that the ceiling price has been increased and shall have specified in the notice a revised ceiling that shall constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the Form of Contract has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

E. Audit

At any time before final payment under this contract the Contracting Officer may request audit of the invoices or vouchers and substantiating material. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices or vouchers, that are found by the Contracting Officer not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the voucher or invoice designated by the Contractor as the "completion voucher" or "completion invoice" and substantiating material, and upon compliance by the Contractor with all terms of this contract (including, without limitation, terms relating to patents and the

terms of (F) and (G) of this section), the Metro shall promptly pay any balance due the Contractor. The completion invoice or voucher, and substantiating material, shall be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event later than 1 year (or such longer period as the Contracting Officer may approve in writing) from the date of completion.

F. Assignment

The Contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Metro, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

1. Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement by the Contractor.
2. Claims, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the Metro is prepared to make final payment, whichever is earlier.
3. Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Metro against patent liability), including reasonable incidental expenses, incurred by the Contractor under the terms of this contract relating to patents.

G. Refunds.

The Contractor agrees that any refunds, rebates, or credits (including any related interest) accruing to or received by the Contractor or any assignee, that arise under the materials portion of this contract and for which the Contractor has received reimbursement, shall be paid by the Contractor to the Metro. The Contractor and each assignee, under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, an assignment to the Metro of such refunds, rebates, or credits (including any interest) in form and substance satisfactory to the Contracting Officer.

H. Interim payments

1. Interim payments made prior to the final payment under the contract are contract financing payments. Contract financing payments are not subject to interest penalty provisions.

2. The Metro will make interim payments for contract financing on the 30th day after the Metro receives a proper payment request. In the event that the Metro requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the contract, the Metro is not compelled to make payment by the specified due date.

Alternate I. If the nature of the work to be performed requires the Contractor to furnish material that the Contractor regularly sells to the general public in the normal course of business, add the following paragraph (4) to paragraph (B) of the basic clause:

Yes No

If the nature of the work to be performed requires the Contractor to furnish material that the Contractor regularly sells to the general public in the normal course of business, the price to be paid for such material, notwithstanding the other requirements of this paragraph (b), shall be on the basis of an established catalog or list price, in effect when the material is furnished, less all applicable discounts to the Metro, provided that in no event shall such price be in excess of the Contractor's sales price to its most favored customer for the same item in like quantity, or the current market price, whichever is lower.

Alternate II. If a labor-hour contract is contemplated, and if no specific reimbursement for materials furnished is intended, the Contracting Officer may add the following paragraph (I) to the basic clause:

Yes No

- I. The terms of this clause that govern reimbursement for materials furnished are considered to have been deleted.

CP-2 LIMITATION OF COST NOTICE

The Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that the costs it expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the total amount so far allotted to the contract by the Metro. The notice shall include the following:

1. Date on which the Contractor expects to reach this one hundred percent (100%) level; and
2. Contractor's best judgment of whether the Work can be completed within the Total Estimated Cost and/or approved Schedule.
3. If, however, the Work cannot be completed within the Total Estimated Cost and/or Schedule, the Contractor shall provide its best estimate of:
 - a. The additional cost and/or time required to complete all Work;

Cost includes:

- Direct labor
- ODCs
- Indirect cost
- Reimbursed Subcontractor Costs

- b. Proposed changes to the Work which would allow the Work to be completed within the Total Estimated Costs and/or Schedule; and
- c. A statement setting forth in detail the reasons why the Work cannot be completed within the Total Estimated Cost and/or Schedule.

Yes No

CP-3 RETENTION

The Metro will deduct and retain a maximum of ten percent (10%) from each progress payment until a total of five percent (5%) of the Total Contract/ Price is reached. Such amounts will be retained until thirty (30) days after the Metro has determined the Contractor has completed and the Metro has accepted the Work. However, if in the opinion of the Metro, progress on the Work is unsatisfactory, deductions will be reinstated in such amounts as to cause the total retention to equal ten percent (10%) of the Total Contract/CWO Price. Upon Final Acceptance, the Contractor shall submit an Invoice for release of retention in accordance with the terms of the Contract.

To meet the requirements set forth above, the Contractor may select one of the following methods for withholding the required amount of funds:

1. Escrow account utilizing Contractor funds, securities, etc., bearing interest and subject to the Metro's accessibility.
2. Retention bonds, subject to the Metro's approval.
3. Letters of Credit, subject to the Metro's approval.

CP-4 INVOICING*

The Contractor shall submit a monthly Invoice covering those costs incurred by the Contractor in the previous months for the Work completed. The Invoice shall be prepared in a form acceptable to the Metro. The Invoice shall list all of the Contractor's, direct labor costs by individual, respective labor category, labor category rate and the number of hours performed by each worker on each Statement of Work task. It shall include all materials provided with copies of supplier invoices. Contractor shall separately identify sales tax paid. Each Invoice shall be accompanied by a certified statement, signed by an authorized officer of the Contractor, identical to the Certification for Request for Payment (Attachment 2) that the Invoice is a true and correct statement of those Reimbursable Costs incurred by the Contractor and that Subcontractors and Suppliers have been paid from the previous payment.

The final invoice is to be marked FINAL and a copy sent to the cognizant Contract Administrator.

CP-5 PAYMENT TO SUBCONTRACTORS

A. Requirements

Pursuant to 49 Code of Federal Regulations (CFR) Part 26, the Contractor shall pay each Subcontractor under this Contract for satisfactory performance of its Contract, other than a Subcontractor Design Professionals (SDP), no later than ten (10) days after receipt of each Progress Payment received from the Metro. The Contractor shall pay to each Subcontractor all amounts it has retained from payments under the Subcontract within ten (10) days after the Subcontractor's work is satisfactorily completed. Any delay of payment beyond the ten (10) day time limit shall be only for good cause, and only upon the prior written approval of Metro.

B. Failure to Comply

If the Metro determines that the Contractor has failed to comply with this Article, the Metro may give written notice to the Contractor and the Contractor's Surety that if the default is not remedied within a specified period of time -- at least five (5) days -- the Contract may be terminated for cause in accordance with Article TERMINATION FOR DEFAULT in Contract Document GENERAL CONDITIONS.

CP-6 PAYMENT OF TAXES

The Contractor shall pay all taxes, assessments, and duties applicable to and assessable against any Goods, Work, processes, and operations incidental to or involved in the Contract, including but not limited to retail sales and use, transportation, export, import, business, and special taxes. The Contractor is responsible for determining all applicable taxes, assessments, and duties required to be paid under the Contract and paying them when due. The prices established in the Contract shall include compensation for any taxes, assessments and duties the Contractor is required to pay by laws and regulations in effect on the date the Qualification/Proposal was submitted or CWO issued. The Contractor will maintain auditable records subject to Metro reviews, confirming that tax payments are current at all times.

ATTACHMENT 2 - CERTIFICATION FOR REQUEST FOR PAYMENT

I hereby certify under penalty of perjury as follows:

That the claim for payment is in all respects true, correct; that the services mentioned herein were actually rendered and/or supplies delivered to the Metro in accordance with the contract.

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 the 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 the Metro may have either under contract or law.

ATTACHMENT 3 - EXAMPLE OF TIMESHEET

TIMESHEET FOR JOE BLOW, ABC COMPANY

MONDAY - 7/10/00 **TOTAL BILLABLE HRS. 6.5**

8:00a - 9:00a Meeting with Mr. Jones, Metro Staff Title to discuss strategy
9:00a -10:30a Prepare for meeting with UTU
10:30a -11:30a Phone conversation with N.Y. Office, with Mr. Smith, President of XYZ Corp. to discuss availability to meet with Metro on strategy.
11:30a -1:00p Lunch
1:00p - 4:00p Negotiate with UTU.

TUESDAY - 7/11/00 **TOTAL BILLABLE HRS. 5.0**

8:00a-11:00a Continue negotiations from previous day
11:00a-1:00p **Lunch**
1:00p-3:00p Meeting with Mr. Jones and Mr. Doe to provide progress status

WEDNESDAY - 7/12/00 **TOTAL BILLABLE HRS. X.0**

THURSDAY - 7/13/00 **TOTAL BILLABLE HRS. X.0**

FRIDAY - 7/14/00 **TOTAL BILLABLE HRS. X.0**

SIGNATURE: _____
DATE: _____

