



Modifications to the General Provisions and FAR, DFARS and NASA Provisions for Government Cost Type Contracts

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Section II, General Provisions and FAR, DFARS, and NASA Provisions for Government Fixed Price Contracts are applicable to this procurement with the following modifications. These modifications either replace the corresponding provision(s) in Section II, or are additions to the General Provisions in Section II.

3. INSPECTIONS AND ACCEPTANCE (Replace with the following):

(A) Seller will provide and maintain an inspection system acceptable to MDHS and the Government covering goods and services under this Contract and will tender only goods that have been inspected and found to conform to this Contract's requirements. Seller will keep records evidencing inspections and their result, and will make these records available to MDHS and the Government during contract performance and for three years after final payment.

(B) MDHS and the Government may inspect and test all goods and services under this Contract. Such inspections and tests, to the extent practicable, may occur at all times and places, including the period and place of manufacture or performance, and in any event, before acceptance. MDHS and the Government will perform any inspections and tests in a manner that will not unduly delay the work.

(C) If MDHS or the Government performs an inspection or test on the premises of Seller or its subcontractor, Seller will furnish, and require its subcontractor to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as may be otherwise provided in this Contract, MDHS or the Government will bear the expense of inspection or tests made at other than Seller's or Seller's subcontractor's premises; provided, that in case of rejection, MDHS and the Government will not be liable for any reduction in the value of samples inspected or tested.

(D) MDHS will accept or give notice of rejection of goods delivered and services performed within ninety (90) calendar days of receipt of goods or completion of services.

(E) Goods

(1) At any time during contract performance, but no later than six (6) months after acceptance of the goods to be delivered under this Contract, MDHS may, at

its option, require Seller to replace or correct any nonconforming goods. Except as otherwise provided in paragraph (B) (3) below, the cost of replacement or correction will be included in allowable cost, but no fee will be paid. Seller will not tender for acceptance corrected or rejected goods without disclosing the former rejection or requirement for correction, and, when required, will disclose the corrective action taken.

(2) If Seller fails to proceed with reasonable promptness to perform required replacement or correction, MDHS may - (a) by contract or otherwise, perform the replacement or correction and charge to Seller any increased cost or make an equitable reduction in any fixed fee paid or payable under this Contract; (b) require delivery of undelivered goods at any equitable reduction in any fixed fee paid or payable under this Contract; or (c) cancel this Contract for default.

(3) Notwithstanding paragraphs (1) and (2), MDHS may at any time require Seller to correct or replace, without cost to MDHS, nonconforming supplies if the nonconformities are due to (a) fraud, lack of good faith on the part of Seller's managerial personnel or (b) the conduct of one or more of Seller's employees selected or retained by Seller after any of Seller's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(F) Services

(1) If services do not conform with Contract requirements, MDHS may require Seller to perform the services again in conformity with contract requirements, for no additional fee. When the defects in services cannot be corrected by re-performance, MDHS may (a) require Seller to take necessary action to ensure that future performance conforms to contract requirements; and (b) reduce any fee payable under the Contract to reflect the reduced value of the services performed.

(2) If Seller fails to promptly perform the services again or to take the action necessary to ensure future performance in conformity with contract requirements, MDHS may (a) by Contract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances or (b) cancel this Contract for default.

(G) This Article applies to corrected or replacement goods or services in the same manner as to goods or services originally delivered or performed.

8. INVOICE AND PAYMENT (Replace with the following):

(A) For each shipment of goods or completed item of services, Seller will submit an original invoice marked "original" and one copy marked "copy" to the appropriate MDHS Accounts Payable Department. Taxes, if any, must be separately itemized. Contract number and line item number must appear on all invoices, shipping documents, quality certificates, and packing sheets.

(B) Determination of payment due date, whether under net or discount terms, will be based on the latest of (i) the date goods are received or services performed; (ii) the date provided in this Contract for receipt of goods or completion of services; or (iii) the date an accurate invoice is received.

(C) Payment of fee will be made in monthly installments based upon the percentage of completion of this Contract, as determined by MDHS. Payment will be deemed to have been made when deposited in the mail.

(D) Except as provided in this Article, payment will be made in accordance with the following clauses of the Federal Acquisition Regulation ("FAR") in effect on the date of this Contract, which are incorporated by reference. In each of the following clauses, "Contractor" means Seller, "Contracting Officer" and "Government" mean MDHS, and "Disputes Clause" means the Disputes Clause of this Contract.

(1) FAR 52.216-7 Allowable Cost and Payment.

(2) FAR 52.216-8 Fixed Fee, if this is a cost-plus-fixed fee contract.

(3) FAR 52.216-10 Incentive Fee, if this is a cost-plus-incentive fee contract.

(4) FAR 52.216-11 Cost Contract - No Fee, if this is a cost contract with no fee.

(5) FAR 52.216-12 Cost Sharing Contract - No Fee, if this is a cost sharing contract with no fee.

10 TERMINATION FOR CONVENIENCE, AND 11, TERMINATION FOR DEFAULT: (Replace with the following termination clause):

(A) MDHS may terminate performance of work under this Contract in whole or, from time to time, in part in accordance with FAR 52.249-6 Termination (Cost Reimbursement), in effect on the date of this Contract, which clause is incorporated by reference, except for paragraphs (d) and (i). "Contractor" means Seller, and "Government" and "Contracting Officer" mean MDHS. The period for submitting Seller's termination settlement proposal is reduced to six months, and Seller will not be obligated to pay interest in excess of the maximum rate allowed by law.

(B) Unless prohibited by law, MDHS may cancel this Contract in whole or in part without liability in the event of Seller's suspension of business, insolvency, institution of bankruptcy or liquidation proceedings by or against Seller, appointment of a trustee or receiver for Seller's property or business, or any assignment, reorganization or arrangement by Seller for the benefit of its creditors.

14. TITLE (Replace with the following):

The Government will have title to (i) all work under this Contract, completed or in the course of manufacture or assembly in Seller's plant; and (ii) all Seller-purchased material, parts, assemblies, tools, machinery, equipment and supplies (collectively "Seller-purchased material") for which Seller is entitled to reimbursement under this Contract.

25. AUDIT (Replace with the following):

(A) Until three years after final payment, Seller will maintain, and MDHS will have the right to examine and audit, books, records, documents, and accounting procedures and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this Contract.

(B) Before making each payment under this Contract, MDHS may require Seller to submit vouchers, receipts, payroll information and labor and material releases.

31. FAR, DFARS, AND NASA PROVISIONS (Additional FAR Clause.)

52.249-6 Termination - Cost Reimbursement Type Contracts.

32. LIMITATIONS OF COST (Additional provision):

(A) The parties estimate that performance of this Contract, exclusive of any fee, will not cost MDHS more than the estimated cost specified in the Contract. Seller will use its best efforts to perform its obligations under this Contract within the estimated cost.

(B) If Seller has reason to believe that, within the next sixty (60) calendar days, incurred costs will exceed seventy five percent (75%) of the estimated cost, Seller will notify MDHS in writing.

(C) If Seller has reason to believe that the total cost to perform this Contract, exclusive of any fee, will be either greater or substantially less than the estimated cost, Seller will notify MDHS in writing. In its notification, Seller will provide MDHS with a revised projection of the total cost of performing this Contract.

(D) MDHS will not reimburse Seller for costs incurred in excess of the estimated cost; and Seller may discontinue performance of this Contract or otherwise decline to incur costs in excess of the estimated cost until MDHS (1) notifies Seller in writing that the estimated cost has been increased and (2) revises the contract to reflect a revised estimated total cost of performing the Contract.

(E) If the estimated cost is increased, any costs Seller incurs before the increase in excess of the previously estimated cost will be allowable to the same extent as if incurred afterward, unless MDHS directs in its notice that the increase is solely to cover termination or other specified expenses.

(F) Change orders will not be considered an authorization to exceed the estimated cost to MDHS, unless they contain a statement increasing the estimated cost.