

## **SECTION 109 MEASUREMENT AND PAYMENT**

### **109.06     PRICING OF ADJUSTMENTS – Revise this subsection to read as follows:**

Price Adjustments will not be allowed because of variations in contract quantities, except for major items and as provided below:

- a. When the quantity of work or material to be furnished is increased by more than 25% of the quantity shown in the bid schedule, the Contractor shall be entitled to an equitable price adjustment on that portion of work over the 25% increase. Price adjustment shall not exceed an additional 15% of the unit bid price.
- b. When the quantity of work or material to be furnished is decreased by more than 25% of the quantity shown in the bid schedule, the Contractor shall be entitled to an equitable price adjustment on that portion of work over the 25% reduction. Price adjustment shall not exceed an additional 50% of the unit bid price.

For changes and variations in accepted quantities of items, the prices agreed upon and any agreed adjustments in contract time will be incorporated in the written order issued by the Engineer, which will be so written as to indicate acceptance for the Contractor as evidenced by his signature.

No extended overhead cost shall be considered resulting from Change Orders. Overhead cost shall remain the same according to original Schedule of Estimated Values submitted in the bid by the Contractor.

### **109.08     PROGRESS PAYMENT – Revise this Subsection to read as follows:**

The Commonwealth will pay the contract price as provided in this clause.

The Commonwealth will make progress payments monthly as the work proceeds or at more frequent intervals as determined by the Contracting Officer, on estimates approved by the Contracting Officer.

Before the first progress payment under the Contract becomes due, the Contractor shall prepare a breakdown of the contract price acceptable to the Contracting Officer showing the amount included therein for each principal category of the work, in such detail as requested. The values in the breakdown will be used to provide a basis for determining progress payments. The contractor's overhead, profit and cost of bonds shall be prorated throughout the life of the contract.

Except as provided in the Contract, the contract price shall include all applicable Federal, Commonwealth of the Northern Mariana Islands, and local taxes and duties.

Estimates on which progress payments are based shall include the value (as determined by the Contracting Officer) of satisfactory in place work performed pursuant to change orders.

Preparatory work done will not be taken into consideration in preparing estimates upon which progress payments are based.

The Contracting Officer, at his discretion, may authorize payments for materials delivered and stored (Undistributed Material) on the work site. The Contractor is fully responsible for the materials delivered and stored by him. Material on hand (Undistributed Material) meeting the requirements of the contract that are to be incorporated in the work whether delivered in the vicinity of the project site or stored in acceptable storage places will be considered for partial payments up to 50% of its total cost. Partial payment for material on hand does not constitute acceptance of such material for use in completing items of work. **Partial payments will not be made for living or perishable material** until incorporated into the project. The quantity paid will not exceed the corresponding quantity estimated in the contract.

The Contractor, prior to receiving a progress or final payment under the Contract, shall submit to the Contracting Officer a certification that the Contractor has made payments from the proceeds of prior payments, or that he will make timely payment from the proceeds of the progress payments or final payment due him, to his workers, subcontractors, and suppliers in accordance with the Contractor's contractual agreement with them.

The Contractor and Subcontractor must comply with the requirements of Statement of Compliance during each progress payment. The need for the statement of compliance resulted from the amendment of the Davis-Bacon Act. Refer to the Labor Standard Provision of this specification.

In making each progress payment, there shall be retained ten percent (10%) of the estimated amount until final completion and acceptance of the contract work. However, if the Contracting Officer, at any time after fifty percent (50%) of the work has been completed, finds that satisfactory progress is being made, the Contracting Officer may authorize any of the remaining progress payments be made in full without retention. Also, whenever the work is substantially complete, the Contracting Officer, if he considers the amount retained to be in excess of the amount adequate for the protection of the Commonwealth, at his discretion, may release to the Contractor all or a portion of such excess amount. Furthermore, upon completion and acceptance of each separate building, public work, or other division of the contract on which the price is stated separately in the contract, payment may be made therefore without retention of a percentage.

All material and work covered by progress payments made shall thereupon become the sole property of the Commonwealth, but this provision shall not be construed as relieving the Contractor from the sole responsibility for all material and work upon which the payments have been made or the restoration of any damaged work, or as waiving the right of the Commonwealth to require the fulfillment of all of the terms of the contract.

**109.09**     **FINAL PAYMENT** – Revise this Subsection to read as follows:

Upon completion and acceptance of all work, the amount due the Contractor under the Contract shall be paid upon the presentation of a properly executed voucher and after the Contractor shall have furnished the Commonwealth with a written release of all claims against the Commonwealth arising by virtue of the Contract, other than claims stated in amounts as may be specifically excepted by the Contractor from the operation of the release. If the Contractor's claim to amounts payable under the Contract has been assigned under the "Assignment of Claims" clause, a release may also be required of the assignee.

Final payment to the Contractor will not be processed until the Contracting Officer verifies that all "as-built" information has been properly recorded on the "As-Built Drawings" as required by the contract.

Add the following Subsections:

**109.10**     **ASSIGNMENT OF CLAIMS** - If the Contract provides for payments aggregating One Thousand Dollars (US\$1,000.00) or more, claims for monies due or to become due the Contractor from the Commonwealth under the Contract may be assigned to a bank, trust company or other financing institution, including any U.S. federal lending agency, and may thereafter be further assigned or reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under the Contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing.

In no event shall copies of the Contract Documents or of any drawings, specifications, or other similar documents relating to work under the Contract, if marked "Secret", "Top Secret" or "Confidential", be furnished to any assignee, nor may any part of all the Contract so marked be disclosed to such assignee without the prior written authorization of the Contracting Officer.

**109.11**     **DIFFERING SITE CONDITION:**

- a. The Contractor shall promptly, and before such conditions are disturbed, notify the Contracting Officer in writing of:
  - (i) Subsurface or latent physical conditions at the site differing materially from those indicated in the Contract, or;
  - (ii) Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered, and generally recognized as hindering work of the character provided for in the Contract.
- b. The Contracting Officer shall promptly investigate the conditions, and if he finds that such conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for performance of, any part of the work under the Contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the contract modified in writing accordingly.
- c. No claim by the Contractor under this clause shall be allowed unless the Contractor has given notice required in (a) above; provided, however, the time prescribed therefore may be extended by the Commonwealth.
- d. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract.
- e. The contractor shall submit all claims for equitable adjustment in accordance with, and subject to the requirements and limitations set out in paragraph (a) of the "Equitable Adjustment" clause.

- f. Upon written request by the Contracting Officer, the Contractor shall submit a proposal, in accordance with the requirements and limitations set out in paragraph (a) of the "Equitable Adjustment" clause, for work involving contemplated changes covered by the request, within the time limit indicated in the request or any extension of such limit as may be subsequently granted. If, within a reasonable time after receipt of such a proposal, the Contracting Officer orders the Contractor to proceed with the performance of the work contemplated, the proposal submitted prior to the order shall constitute the Contractor's statement of the monetary extent of claim for equitable adjustment.

**109.12 EQUITABLE ADJUSTMENTS:**

- (a) The Contractor's written statement of the monetary extent of a claim for equitable adjustment shall be submitted in the form of a lump sum proposal (unless otherwise requested by the Contracting Officer) with an itemized breakdown of all increases or decreases in the cost of the Contractor's and all subcontractors' work, in at least the following detail:
- (i) Material quantities and unit costs,
  - (ii) Labor costs (identified with specific item of material to be placed or operation to be performed),
  - (iii) Workmen's Compensation and Public Liability Insurance overhead, and
  - (iv) Employment taxes under FICA, FUTA, and CNMI Social Security System.
- (b) The percentage for overhead, profit, and commission shall be negotiated and may vary according to the nature, extent, and complexity of the work involved, but in no case shall exceed fifteen percent (15%) of the estimated cost of the work, and shall be considered to include, but is not limited to, insurance other than that mentioned in this clause, bonds, use of small tools, incidental job burdens, and general office expense. No percentages for overhead, profit or commission, will be allowed on employment taxes under FICA, FUTA, and CNMI Social Security System.
- (c) The Contractor shall submit with the proposal, any request for time extension related to the claim for equitable adjustment.
- (d) In considering a proposal, the Contracting Officer will make check estimates in detail, utilizing unit prices where specified or agreed upon, with a view to arriving at an equitable adjustment.
- (e) After receipt of a proposal with a detailed breakdown, the Contracting Officer shall act promptly thereon. Provided, however, that when the necessity to proceed with a change does not allow sufficient time to properly check a proposal, or in the event of failure to reach an agreement on a proposal, the Contracting Officer may order the Contractor to proceed on the basis of price to be determined at the earliest practicable date but not to be more than the increase or less than the decrease proposed.

- (f) Except in unusual cases where neither the Contractor nor the Commonwealth can ascertain the full extent of the work which will be required pursuant to a change until the work involved therein has been substantially completed, final agreement on a proposal shall be effected no later than the time when the work involved is estimated by the Contracting Officer to be 50% complete; in the event final agreement cannot be reached by that time, the Contracting Officer shall issue a unilateral determination as to the equitable adjustment of the contract price and the time required for performance.

**END OF SECTION 109**