# PROGRESS PAYMENTS TOTAL COSTS (SMALL BUSINESS)

Progress payments shall be made to the Subcontractor when requested as work progresses, but not more frequently than monthly in amounts approved by Fermilab, under the following conditions:

(a) COMPUTATION OF AMOUNTS.

(1) Unless the Subcontractor requests a smaller amount, each progress payment shall be computed as (i) 85 percent of the Subcontractor's total costs incurred under this subcontract, plus (ii) progress payments to sub-subcontractors (see paragraph (j) below), all less the sum of all previous progress payments made by Fermilab under this subcontract. Cost of money that would be allowable under 31.205-10 of the Federal Acquisition Regulation shall be deemed an incurred cost for progress payment purposes.

(2) Accrued costs of Subcontractor contributions under employee pension plans shall be excluded until actually paid unless:

(i) The Subcontractor's practice is to make contributions to the retirement fund quarterly or more frequently; and

(ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Subcontractor's total costs for progress payments until paid).

(3) The Subcontractor shall not include the following in total costs for progress payment purposes in subparagraph (a)(1)(i) above:

(i) Costs that are not reasonable, allocable to this subcontract, and consistent with sound and generally accepted accounting principles and practices.

(ii) Costs incurred by sub-subcontractors or suppliers.

(iii) Costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs.

(iv) Payments made or amounts payable to sub-subcontractors or suppliers, except for:

(a) Completed work, including partial deliveries, to which the Subcontractor has acquired title; and

(b) Work under cost-reimbursement or time-and-material sub-subcontracts to which the Subcontractor has acquired title.

(4) The amount of unliquidated progress payments may exceed neither (i) the progress payments made against incomplete work (including allowable unliquidated progress payments to sub-subcontractors) nor (ii) the value, for progress payment purposes, of the incomplete work. Incomplete work shall be considered to be the supplies and services required by this subcontract, for which delivery and invoicing by the Subcontractor and acceptance by Fermilab are incomplete.

(5) The total amount of progress payments shall not exceed 85 percent of the total subcontract price.

(6) If a progress payment or the unliquidated progress payments exceed the amounts permitted by subparagraphs (a)(4) or (a)(5) above, the Subcontractor shall repay the amount of such excess to Fermilab on demand.

(b) LIQUIDATION.

Except as provided in the Termination for Convenience of Fermilab clause, all progress payments shall be liquidated by deducting from any payment under this subcontract, other than advance or progress payments, the unliquidated progress payments, or 85 percent of the amount invoiced, whichever is less. The Subcontractor shall repay to Fermilab any amounts required by a retroactive price reduction, after computing liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly. Fermilab reserves the right to unilaterally change from the ordinary liquidation rate to an alternate rate when deemed appropriate for proper subcontract financing.

(c) REDUCTION OR SUSPENSION.

Fermilab may reduce or suspend progress payments, increase the rate of liquidation, or take a combination of these actions, after finding on substantial evidence any of the following conditions:

(1) The Subcontractor failed to comply with any material requirement of this subcontract (which includes paragraphs (f) and (g) below).

(2) Performance of this subcontract is endangered by the Subcontractor's (i) failure to make progress or (ii) unsatisfactory financial condition.

(3) Inventory allocated to this subcontract substantially exceeds reasonable requirements.

(4) The Subcontractor is delinquent in payment of the costs of performing this subcontract in the ordinary course of business.

(5) The unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this subcontract.

(6) The Subcontractor is realizing less profit than reflected in the establishment of any alternate liquidation rate in paragraph (b) above, and that rate is less than the progress payment rate stated in subparagraph (a)(1) above.

(d) TITLE.

(1) Title to the property described in this paragraph (d) shall vest in the Government. Vestiture shall be immediately upon the date of this subcontract, 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 subcontract.

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

(i) Parts, materials, 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 subcontract;

(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 (ii) above; and

(iv) Drawings and technical data, to the extent the Subcontractor or sub-subcontractors are required to deliver them to Fermilab by other clauses of this subcontract.

(3) Although title to property is in the Government under this clause, other applicable clauses of this subcontract, e.g., the termination clause, shall determine the handling and disposition of the property.

(4) The Subcontractor may sell any scrap resulting from the production under this subcontract without requesting Fermilab's approval, but the proceeds shall be credited against the costs of performance.

(5) To acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Subcontractor must obtain Fermilab's advance approval of the action and the terms. The Subcontractor shall (i) exclude the allocable costs of the property from the costs of subcontract performance, and (ii) repay to Fermilab any amount of unliquidated progress payments allocable to the property. Repayment may be by cash or credit memorandum.

(6) When the Subcontractor completes all of the obligations under this subcontract, including liquidation of all progress payments, title shall vest in the Subcontractor for all property (or the proceeds thereof) not–

(i) Delivered to, and accepted by Fermilab under this subcontract; or

(ii) Incorporated in supplies delivered to, and accepted by, Fermilab under this subcontract and to which title is vested in the Government under this clause.

(7) The terms of this subcontract concerning liability for Fermilab-furnished property shall not apply to property to which the Government acquired title solely under this clause.

(e) RISK OF LOSS.

Before delivery to and acceptance by Fermilab, the Subcontractor shall bear the risk of loss for property, the title to which vests in the Government under this clause, except to the extent Fermilab expressly assumes the risk. The Subcontractor shall repay Fermilab an amount equal to the unliquidated progress payments that are based on costs allocable to property that is damaged, lost, stolen, or destroyed.

(f) CONTROL OF COSTS AND PROPERTY.

The Subcontractor shall maintain an accounting system and controls adequate for the proper administration of this clause.

(g) REPORTS AND ACCESS TO RECORDS.

The Subcontractor shall promptly furnish reports, certificates, financial statements, and other pertinent information reasonably requested by Fermilab for the administration of this clause. Also, the Subcontractor shall give Fermilab reasonable opportunity to examine and verify the Subcontractor's books, records and accounts.

(h) SPECIAL TERMS REGARDING DEFAULT.

If this subcontract is terminated under the Default clause, (i) the Subcontractor shall, on demand, repay to Fermilab the amount of unliquidated progress payments and (ii) title shall vest in the Subcontractor, on full liquidation of progress payments, for all property for which Fermilab elects not to require delivery under the Default clause. Fermilab shall be liable for no payment except as provided by the Default clause.

(i) RESERVATIONS OF RIGHTS.

(1) No payment or vesting of title under this clause shall (i) excuse the Subcontractor from performance of obligations under this subcontract or (ii) constitute a waiver of any of the rights or remedies of the parties under the subcontract.

(2) Fermilab'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 subcontract 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 Fermilab.

(j) PROGRESS PAYMENTS
TO SUB-SUBCONTRACTORS.

The amounts mentioned in (a)(1)(ii) above shall be all progress payments to sub-subcontractors or divisions, if the following conditions are met:

(1) The amounts included are limited to (i) the unliquidated remainder of progress payments made plus (ii) for small business concerns any unpaid sub-subcontractor requests for progress payments that the Subcontractor has approved for current payment in the ordinary course of business.

(2) The sub-subcontract or interdivisional order is expected to involve a minimum of approximately 6 months between the beginning of work and the first delivery, or, if the sub-subcontractor is a small business concern, 4 months.

(3) The terms of the sub-subcontract or interdivisional order concerning progress payments

(i) Are substantially similar to the terms of the clause at 52.232-16, Progress Payments, of the Federal Acquisition Regulation (or that clause with its Alternate I for any sub-subcontractor that is a small business concern);

(ii) Are at least as favorable to Fermilab as the terms of this clause;

(iii) Are not more favorable to the sub-subcontractor or division than the terms of this clause are to the Subcontractor.

(iv) Are in conformance with the requirements of paragraph 32.504(e) of the Federal Acquisition Regulation; and

(v) Subordinate all sub-subcontractor rights concerning property to which the Government has title under the sub-subcontract to Fermilab's right to require delivery of the property to Fermilab if (A) the Subcontractor defaults or (B) the sub-subcontractor becomes bankrupt or insolvent.

(4) The progress payment rate in the sub-subcontract is the customary rate used by Fermilab depending on whether the sub-subcontractor is or is not a small business concern.

(5) The parties agree concerning any proceeds received by Fermilab for property to which title has vested in the Government under the sub-subcontract terms, that the proceeds shall be applied to reducing any unliquidated progress payments by Fermilab to the Subcontractor under this subcontract.

(6) If no unliquidated progress payments to the Subcontractor remain, but there are unliquidated progress payments that the Subcontractor has made to any sub-subcontractor, the Subcontractor shall be subrogated to all the rights Fermilab obtained through the terms required by this clause to be in any sub-subcontract as if all such rights had been assigned and transferred to the Subcontractor.

(7) The Subcontractor shall pay the sub-subcontractor's progress payment request under subdivision (j)(1)(ii) above, within a reasonable time after receiving Fermilab's progress payment covering those amounts.

(8) To facilitate small business participation in sub-subcontracting under this subcontract, the Subcontractor agrees to provide progress payments to small business concerns, in conformity with the standards for customary progress payments stated in Subpart 32.5 of the Federal Acquisition Regulation. The Subcontractor further agrees that the need for such progress payments shall not be considered as a handicap or adverse factor in the award of sub-subcontracts.