

DIVISION 1 GENERAL REQUIREMENTS

SECTION 01 2000

**MEASUREMENT AND PAYMENT**

**PART 1 – GENERAL**

**1.01 Summary**

- A. Section includes description of requirements and procedures for determining amount of Work performed and for obtaining payment for Work performed.

**1.02 References**

- A. California Public Contract Code.
- B. Code of Civil Procedures.
- C. Government Code.

**1.03 Composition and Scope of Contract Sum**

- A. Scope of Contract Sum
  - 1. The Contract Sum for performance of the Work under the Contract Documents, or under any allowance or Alternate, shall include full compensation for all Work required under the Contract Documents including, without limitation, all design, architecture, professional services, labor, materials, taxes, transport, handling, storage, supervision, administration, and all other items necessary for the satisfactory completion of the Work, whether or not expressly specified or indicated, incidental work and unexpected expenses, and all terms, conditions, requirements and limitations set forth in the Contract Documents.
  - 2. Contract Sum may be expressed as lump sum, unit price, GMP, allowance, or combination thereof. The Contract Sum, whether lump sum, unit price, or otherwise, shall be deemed to include all costs necessary to complete required Work, including Design-Build Team overhead and profit, all costs (if any) for loss or damage arising from nature of Work or prosecution of the Work, and from action of elements.
  - 3. Unless Contract Documents expressly provide otherwise, the Contract Sum shall be deemed to include:
    - a. Any and all costs arising from any unforeseen difficulties which may be encountered during, and all risks of any description connected with, prosecution of Work or any Work item (whether lump sum or unit price) until acceptance by Owner;
    - b. All expenses incurred due to suspension, or discontinuance of Work or any Work item (whether lump sum or unit price) as provided in Contract Documents;
    - c. Escalation to allow for cost increases between time of Contract Award and completion of Work or any Work item (whether lump sum or unit price).
- B. Unit Price Items
  - 1. (This paragraph applies only for unit price items which are (1) specifically not included within base Project scope, or (2) are specifically identified as being payable on a unit price basis.)
  - 2. Quantity of Work to be paid for under any item for which a unit price is fixed in Contract Documents shall be determined by Owner based on, so far as practicable, actual number of units satisfactorily completed, as determined by Owner and certified by Design-Design-Build Team, within prescribed or ordered limits, and no payment will be made for Work

- unsatisfactorily performed or done outside of limits.
3. Unit Prices shall apply to Work covered by unit prices regardless of actual quantities.

C. Lump Sum Items

1. When estimated quantity for specific portion of Work is not indicated and/or Work is designated as lump sum, payment will be on a lump sum basis for Work satisfactorily completed in accordance with Contract Documents.
2. Payment for lump sum Work, or items of Work subject to a lump sum (e.g., without limitation, change order work), shall be made on the basis of satisfactory completion of such Work or work item, earned in progressive stages in accordance with the Contract Documents, up to but not exceeding the Design-Design-Build Team's percentage completion of the Work or item.
3. Lump sum items shall be paid based upon the approved Schedule of Values, which shall be used to measure progressive payments based upon satisfactory progress towards completion of the item.
4. Lump Sum prices contained in Contract Documents reflect sole amounts payable on account of Lump Sum items, including all design, engineering, procurement, etc.

D. Allowance Items

1. Allowances: Allowance Work will be authorized by Owner in writing, following change order procedures to determine cost, supporting documentation and authorization to proceed. Unused allowance amounts at Contract completion shall reduce the Contract price accordingly.

**1.04 Payment Procedures**

A. Work Breakdown Structure/Schedule of Values

1. Within ten (10) Days after Document 00 5100 (Notice of Award), and prior to the Design-Design-Build Team's first Application for Payment, Design-Design-Build Team will participate in a meeting with the Owner to establish how Design-Build Team's Schedule of Values must be sequenced and costs distributed.
2. Within ten (10) days following the Schedule of Values meeting, Design-Build Team shall submit a detailed breakdown of its Proposal by scheduled Work items and/or activities, including coordination responsibilities and Project Record Documents responsibilities. Where more than one Subcontractor comprises the work of a Work item or activity, the Schedule of Values shall show a separate line item for each subcontract. Design-Build Team shall furnish such breakdown of the total Contract Sum by assigning dollar values (cost estimates) to each applicable Progress Schedule network activity, which cumulative sum equals the total Contract Sum. This breakdown may be referred to as the Schedule of Values, Work Breakdown Structure or both
3. Design-Build Team's overhead, profit, insurance, cost of bonds (except to the extent expressly identified in a Contract item) and/or other financing, as well as "general conditions costs," (e.g., Site cleanup and maintenance, temporary roads and access, off-Site access roads, temporary power and lighting, security, and the like), shall be prorated through all activities so that the sum of all the Schedule of Values line items equals Design-Build Team's total Contract Sum, less any allowances designated by Owner. Scheduling, record documents and quality assurance control shall be separate line items.
4. Owner will review the breakdown in conjunction with the Progress Schedule to ensure that the dollar amounts of this Schedule of Values are, in fact, reasonable cost allocations for the Work items listed. Upon favorable review by Owner, Owner will accept this Schedule of Values for use. Owner shall be the sole judge of fair market cost allocations.
5. Owner will reject any attempt to increase the cost of early activities, i.e., "front loading," resulting in a complete reallocation of moneys until such "front loading" is corrected. Repeated attempts at "front loading" may result in suspension or termination of the Work

for default, or refusal to process progress payments until such time as the Schedule of Values is acceptable to Owner.

B. Design-Build Team's Requests for Progress Payments

1. If requested by Design-Build Team, progress payments will be made monthly, under the following conditions:
2. On or before the 25th Day of each month, Design-Build Team shall submit to Owner two copies of an Application for Payment for the cost of the Work put in place during the period from the last Day of the previous month to the end of the current month, along with one copy of an updated Progress Schedule. Such Applications for Payment shall be for the expected total value of activities completed or partially completed, based upon Schedule of Values prices (or Contract item prices if unit price) of all labor and materials incorporated in the Work up until midnight of the last Day of that one month period, less the aggregate of previous payments. Accumulated retainage shall be shown as separate item in payment summary. Owner and Design-Build Team will reconcile any differences in the field, based on the reconciled monthly report sheets. If Design-Build Team is late submitting its Application for Payment, that Application may be processed at any time during the succeeding one-month period, resulting in processing of Design-Build Team's Application for Payment being delayed for more than a Day for Day basis.
3. Except as otherwise provided in a labor compliance program applicable to the Work (if any) or as otherwise required by Owner, concurrently with each Application for Payment, Design-Build Team shall submit to the Owner the Design-Build Team's and its Subcontractors' certified payroll records required to be maintained pursuant to Labor Code Section 1776 for all labor performed during pay periods ending during the period covered by the Application for Payment.
4. No progress payment will be processed prior to Owner receiving all requested, acceptable schedule update information and certified payrolls, and in Owner's sole and absolute discretion, Owner may deny the entire Application for Payment for noncompliance.
5. Each Application for Payment shall list each Change Order and Construction Change Directive ("CCD") executed prior to date of submission, including the Change Order/CCD Number, and a description of the Work activities, consistent with the descriptions of original Work activities. Design-Build Team shall submit a monthly Change Order/CCD status log to Owner.
6. If Owner requires substantiating data, Design-Build Team shall submit information requested by Owner, with cover letter identifying Project, Application for Payment number and date, and detailed list of enclosures. Design-Build Team shall submit one copy of substantiating data and cover letter for each copy of Application for Payment submitted.
7. If Design-Build Team fails or refuses to participate in monthly Work reconciliations or other construction progress evaluation with Owner, Design-Build Team shall not receive current payment until Design-Build Team has participated fully in providing construction progress information and schedule update information to Owner.

C. Owner's Review of Progress Payment Applications

1. Owner will review Design-Build Team's Application for Payment following receipt and during the Progress Schedule and Billing Meeting. If adjustments need to be made to percent of completion of each activity, Owner will make appropriate notations and return to Design-Build Team. Design-Build Team shall revise and resubmit. All parties shall update percentage of completion values in the same manner, i.e., express value of an accumulated percentage of completion to date.
2. If Owner determines that portions of the Application for Payment are not proper or not due under the Contract Documents, then Owner may approve the other portions of the Application for Payment, and in the case of disputed items or Defective Work not remedied, may withhold up to 150 percent of the disputed amount from the progress payment.

3. Pursuant to California Public Contract Code Section 20104.50, if Owner fails to make any progress payment within 30 Days after receipt of an undisputed and properly submitted Application for Payment from Design-Build Team, Owner shall pay interest to the Design-Build Team equivalent to the legal rates set forth in subdivision (a) of Section 685.010 of the California Code of Civil Procedure. The 30-Day period shall be reduced by the number of Days by which Owner exceeds the seven-Day return requirement set forth herein.
4. As soon as practicable after approval of each Application for Payment for progress payments, Owner will pay to Design-Build Team in manner provided by law, an amount equal to 95 percent of the amounts otherwise due as provided in the Contract Documents, or a lesser amount if so provided in Contract Documents, provided that payments may at any time be withheld if, in judgment of Owner, Work is not proceeding in accordance with Contract, or Design-Build Team is not complying with requirements of Contract, or to comply with stop notices or to offset liquidated damages accruing or expected. In Owner's sole discretion, if Design-Build Team has failed to comply with either its Progress Schedule update or project record documents requirements, Owner may retain an additional 5% of any earned amounts until such requirements are satisfied.
5. Before any progress payment or final payment is due or made, Design-Build Team shall submit satisfactory evidence that Design-Build Team is not delinquent in payments to employees, Subcontractors, suppliers, or creditors for labor and materials incorporated into Work. This specifically includes, without limitation, conditional lien release forms for the current progress payment and unconditional release forms for past progress payments. This also includes copies of certified payroll from Design-Build Team and subcontractors for the current payment period.

D. Payment for Material and Equipment Not Yet Incorporated Into the Work

1. No payment shall be made for materials or equipment not yet incorporated into the Work, except as specified elsewhere in the Contract Documents or as may be agreed to by Owner in its sole discretion. Where Design-Build Team requests payment on the basis of materials and equipment not incorporated in the Work, Design-Build Team must satisfy the following conditions:
2. The materials and/or equipment shall be delivered and suitably stored at the Site or at another local location agreed to in writing, for example, a mutually acceptable bonded and insured warehouse.
3. Full title to the materials and/or equipment shall vest in Owner at the time of delivery to the Site, warehouse or other storage location. Obtain a negotiable warehouse receipt, endorsed over to Owner for materials and/or equipment stored in an off-site warehouse. No payment will be made until such endorsed receipts are delivered to Owner.
4. Stockpiled materials and/or equipment shall be available for Owner inspection, but Owner shall have no obligation to inspect them and its inspection or failure to inspect shall not relieve Design-Build Team of any obligations under the Contract Documents. Materials and/or equipment shall be segregated and labeled or tagged to identify these specific Contract Documents.
5. After delivery of materials and/or equipment, if any inherent or acquired defects are discovered, defective materials and/or equipment shall be removed and replaced with suitable materials and/or equipment at Design-Build Team's expense.
6. At Design-Build Team's expense, insure the materials and/or equipment against theft, fire, flood, vandalism, and malicious mischief, as well as any other coverages required under the Contract Documents.
7. Design-Build Team's Application for Payment shall be accompanied by a bill of sale, invoice or other documentation warranting that Owner has received the materials and equipment free and clear of all liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect Owner interest therein, all of which must be satisfactory to Owner. This documentation shall include, without limitation, conditional releases of mechanics' liens and stop notices from

all those providing materials and equipment as to which the Application for Payment relates, as well as unconditional releases of the same from the same as to the previous Application for Payment for which they have not already been provided. Amounts previously paid for materials and equipment prior to incorporation into the Work shall be deducted from amounts otherwise due Design-Build Team as they are incorporated.

## **1.05 Final Payment**

### **A. Final Payment**

1. As soon as practicable after all required Work is completed in accordance with Contract Documents, including punchlist, testing, record documents and Design-Build Team maintenance after Final Acceptance, Design-Build Team shall submit its Application for Final Payment.
2. Provided Design-Build Team has met all conditions required for Final payment, Owner will pay to Design-Build Team, in manner provided by law, unpaid balance of Contract Sum of Work (including, without limitation, retentions), or whole Contract Sum of Work if no progress payment has been made, determined in accordance with terms of Contract Documents, less sums as may be lawfully retained under any provisions of Contract Documents or by law.

### **B. Final Accounting**

1. Prior progress payments and change orders shall be subject to audit and correction in the final payment.
2. Design-Build Team and each assignee under an assignment in effect at time of final payment shall execute and deliver at time of final payment, and as a condition precedent to final payment, Document 00 6530 (Agreement and Release of Any and All Claims).

## **1.06 Substitution of Securities**

### **A. Public Contract Code Section 22300. In accordance with the provisions of Public Contract Code Section 22300, substitution of securities for any moneys withheld under Contract Documents to ensure performance is permitted under following conditions:**

1. At request and expense of Design-Build Team, securities listed in Government Code Section 16430, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by Design-Build Team and Owner that are equivalent to the amount withheld under retention provisions of Contract shall be deposited with Controller or with a state or federally chartered bank in California, as the escrow agent. Upon satisfactory completion of Contract, securities shall be returned to Design-Build Team.
2. Alternatively, Design-Build Team may request and Owner shall make payment of retentions earned directly to the escrow agent at the expense of Design-Build Team. At the expense of Design-Build Team, Design-Build Team may direct the investment of the payments into securities and receive the interest earned on the investments upon the same terms provided for securities deposited by Design-Build Team. Upon satisfactory completion of the work of the Contract Documents, Design-Build Team shall receive from escrow agent all securities, interest, and payments received by the escrow agent from Owner. Design-Build Team shall then pay to each Subcontractor, not later than 20 Days after receipt of the payment, the respective amount of interest earned, net of costs attributed to retention withheld from each Subcontractor, on the amount of retention withheld to insure the performance of Design-Build Team.
3. Design-Build Team shall be beneficial owner of securities substituted for moneys withheld and shall receive any interest thereon.
4. Design-Build Team may enter into an escrow agreement, form included in Contract Documents, as authorized under Public Contract Code Section 22300, specifying amount

- of securities to be deposited, terms and conditions of conversion to cash in case of default of Design-Build Team, and termination of escrow upon completion of Contract Documents.
5. Public Contract Code Section 22300, in effect upon Design-Build Team's execution of Document 00 5200 (Agreement), is hereby incorporated in full by this reference and shall supersede anything inconsistent therewith.

#### **1.07 Basis and Effect of Payment**

- A. Payment will be made by Owner, based on Owner review of Design-Build Team prepared plans and specifications, observations at the Site and the data comprising the Application for Payment. Payment will not be a representation that Owner has:
  1. Made exhaustive or continuous on-Site inspections to check the quality or quantity of Work;
  2. Thoroughly checked Design-Build Team prepared Design Development and/or Contract Documents for compliance with Bridging Documents, code and other agency requirements;
  3. Reviewed construction means, methods, techniques, sequences, or procedures;
  4. Reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by Owner to substantiate Design-Build Team's right to payment; or
  5. Made examination to ascertain how or for what purpose Design-Build Team has used money previously paid on account of the Contract Sum.
- B. Owner does not expressly, or by implication, agree, warrant, or represent in any manner, that actual amount of Work will correspond with amount shown or estimated and reserves right to increase or decrease amount of any class or portion of Work, to leave out entire Work Item or Items, or to add work not originally included in Design-Build Team's Proposal or Contract Documents, when in its judgment such change is in best interest of Owner. No change in Work shall be considered a waiver of any other condition of Contract Documents. No claim shall be made for anticipated profit, for loss of profit, for damages, or for extra payment whatever, except as otherwise expressly provided for in Contract Documents, because of any differences between the amount of work actually done and estimated amount as set forth herein, or for elimination of Work Items.

#### **PART 2 – PRODUCTS – NOT USED**

#### **PART 3 – EXECUTION – NOT USED**

**END OF SECTION**