



**DOC 2S T&M
SUPPLEMENT FOR TIME AND MATERIAL OR LABOR HOUR PURCHASE ORDERS FOR
COMMERCIAL ITEMS UNDER A U.S. GOVERNMENT PRIME CONTRACT**

In a Time and Material or Labor Hour Contract, Doc 2 shall apply, with the following additions, modifications, and substitutions as identified by clause below. This document shall have precedence over ULA Doc 2 with regard to the clauses, or portions thereof, cited herein.

SECTION I: GENERAL PROVISIONS

35. PAYMENT, TAXES, AND DUTIES

Substitute the following clause for the clause in Doc 2 titled "Payment, Taxes, and Duties."

35. PAYMENT, TAXES, AND DUTIES

(a) Definitions: As used in this clause –

(i) Direct materials means 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 or service.

(ii) Hourly Rate means the rate(s) prescribed in the contract for payment for labor that meets the labor category qualifications of a labor category specified in the contract that are: performed by the contractor; performed by subcontractors; or transferred between divisions, subsidiaries, or affiliates of the contractor under a common control.

(iii) Materials means –

- (1) Direct materials, meaning 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 or service, including supplies transferred between divisions, subsidiaries, or affiliates of the contractor under a common control;
- (2) Subcontracts for supplies and incidental services for which there is not a labor category specified in the contract;
- (3) Other direct costs (e.g., incidental services for which there is not a labor category specified in the contract, travel, computer usage charges, etc.); and
- (4) Indirect costs specifically provided for in this Contract

(b) Invoicing ULA shall make payments to CONTRACTOR when requested as Work progresses, but (except for Small Business Concerns) not more often than once every two (2) weeks, in amounts determined to be allowable by ULA in accordance with the terms of this Contract. Payment to CONTRACTOR shall be made upon the basis of invoices submitted in the form and detail required by this Contract. Unless otherwise provided, ULA shall make payment within sixty (60) days after receipt and approval of such invoices. All invoices shall include the following information on either the invoice or in backup information provided at time of submittal: hours per labor rate, travel receipts (as applicable), invoices for material and documentation of any specific handling charges. CONTRACTOR may submit to the Procurement Representative, in such form and reasonable detail as the Procurement Representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this Contract. Costs claimed for outside services must be supported by the service contractor's invoice, which should be submitted with CONTRACTOR's invoice.

(c) Work Performed: ULA will pay CONTRACTOR as follows upon the submission of invoices approved by ULA:

(i) **Hourly rate.**

- (1) Payment for labor shall be computed by multiplying the appropriate hourly rate(s), set forth in this Contract by the number of direct labor hours performed. Rates shall include wages, overhead, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis.
- (2) The rates shall be paid for all labor performed on the contract that meets the labor qualifications specified in the contract. Labor hours incurred to perform tasks for which labor qualifications were specified in the contract will not be paid to the extent the work is performed by individuals that do not meet the qualifications specified in the contract, unless specifically authorized by the ULA Procurement Representative.
- (3) In the event additional classifications of labor are required in the performance of Work hereunder, which are not listed in the Contract, the CONTRACTOR shall notify ULA's Procurement Representative prior to start of work. Any changes to classifications and labor rates must be submitted to ULA for approval and will be effective only after issuance of a modification to the Contract documenting the rate changes.
- (4) When requested by ULA, CONTRACTOR shall substantiate invoices (including any subcontractor hours reimbursed at the hourly rate in the schedule) by evidence of actual payment, individual daily job timecards, records that verify the employees meet the qualifications for the labor categories specified in the contract, or other substantiation specified in the contract.
- (5) No overtime will be paid by ULA unless approved in advance by the Procurement Representative. If no overtime rates are provided in this Contract and ULA approves overtime work in advance, overtime rates will be negotiated. If the Contract provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by ULA.

(ii) **Materials.**

- (1) If CONTRACTOR furnishes Materials that meet the definition of a commercial item at FAR 2.101, the price to be paid for such Materials shall not exceed CONTRACTOR established catalog or market price, adjusted to reflect the quantities being acquired and any modifications necessary because of contract requirements.
- (2) Except as provided in paragraph (c)(ii)(1), (c)(iii) or (c)(iv) of this clause, ULA will reimburse the CONTRACTOR the actual cost of Materials (less any rebates, refunds, or discounts received by the contractor that are identifiable to the contract) provided CONTRACTOR has made payments for Materials in accordance with the terms and conditions of the agreement or invoice or makes these payments within 30 days of the submission of CONTRACTOR's payment request to ULA and such payment is in accordance with the terms and conditions of the agreement or invoice. ULA will not pay profit or fee to CONTRACTOR on materials.
- (3) To the extent able, CONTRACTOR shall obtain Materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials and give credit to ULA for cash and trade discounts, rebates, scrap, commissions, and other amounts that are identifiable to the contract.

(ii) **Travel Costs.** CONTRACTOR travel expenses shall be reimbursed by ULA for expenses that are authorized under this Contract and approved by ULA in advance of the requested travel. Travel reimbursement shall be in accordance with the GSA per diem guidelines as established on the GSA website at <http://www.gsa.gov/>. ULA shall not reimburse any of the following travel expenses: alcohol, entertainment, telephone bills, airfare other than coach airfare, rental cars larger than midsize, laundry or per diem expenses that exceed GSA per diem rates unless approved in advance by ULA. Any travel expenses that exceed per diem rates must be approved in advance under the 300% per diem rule by ULA. To be eligible for reimbursement, copies of travel expense receipts \$75 or greater must be submitted with invoices for payment. Reimbursement shall be for actual and reasonable expenses only without any markup rate.

(iii) **Subcontracts.** No subcontract placed under this Contract shall provide for payment on a cost-plus-a percentage-of-cost basis. Reimbursable costs in connection with lower-tier subcontracts shall be limited to the amounts actually paid by CONTRACTOR to lower-tier subcontractors.

(iv) **Other Costs.** Unless expressly identified in the Consideration provisions of this Contract, other direct costs and indirect costs will not be reimbursed.

- (d) **Total Cost.** It is estimated that the total cost to ULA for the performance of this Contract shall not exceed the ceiling price set forth in the Contract and CONTRACTOR agrees to use its best efforts to perform the Work and all obligations under this Contract within such ceiling price. If at any time 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 Contract, CONTRACTOR shall notify the Procurement Representative giving a revised estimate of the total cost to ULA for performing this Contract with supporting reasons and documentation. If at any time during the performance of this Contract, CONTRACTOR has reason to believe that the total cost to ULA for performing this Contract will be substantially greater or less than the then stated ceiling price, CONTRACTOR shall so notify the Procurement Representative, giving a revised estimate of the total price for performing this Contract, with supporting reasons and documentation. If at any time during performance of this Contract, ULA 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, ULA will so advise CONTRACTOR, giving the then revised estimate of the total amount of effort to be required under the Contract.
- (e) **Ceiling Price.** ULA will not be obligated to pay CONTRACTOR any amount in excess of the ceiling price in the Contract, and CONTRACTOR shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Contract, unless and until ULA notifies CONTRACTOR in writing that the ceiling price has been increased and specifies 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 Contract has been increased, any hours expended and material costs incurred by 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.
- (f) **Access to records** At any time before final payment under this Contract, ULA will have access to the following:
- (i) Records that verify that the employees whose time has been included in any invoice meet the qualifications for the labor categories specified in the contract;
 - (ii) For labor hours (including any subcontractor hours reimbursed at the hourly rate in the schedule), when timecards are required as substantiation for payment -
 - (1) The original timecards (paper-based or electronic);
 - (2) CONTRACTOR's timekeeping procedures;
 - (3) CONTRACTOR records that show the distribution of labor between jobs or contracts; and
 - (4) Employees whose time has been included in any invoice for the purpose of verifying that these employees have worked the hours shown on the invoices.
 - (iii) For material and subcontract costs that are reimbursed on the basis of actual cost -
 - (1) Any invoices or subcontract agreements substantiating material costs; and
 - (2) Any documents supporting payment of those invoices.
- (g) **Overpayments/Underpayments** Payment made shall be subject to reduction to the extent of amounts which are found by ULA or CONTRACTOR not to have been properly payable, and shall also be subject to reduction for overpayments. CONTRACTOR shall promptly notify ULA of any such overpayments identified by CONTRACTOR through any means.
- (h) **Final Invoice:** CONTRACTOR shall submit a final invoice, and supporting documentation, as promptly as practicable following completion of the Work under this Contract, but in no event later than six (6) months (or such longer period as ULA may approve in writing) from the date of completion.
- (i) **Release of claims.** 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 ULA, 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 to exact statement by CONTRACTOR, (2) claims, together with reasonable incidental expenses, based upon the liabilities of CONTRACTOR to third parties arising out of performing this Contract, that are not known to CONTRACTOR on the date of the execution of the release, and of which CONTRACTOR gives notice in writing to the ULA not more than five (5) years after the date of the release or the date of any notice to CONTRACTOR that ULA is prepared to make final payment, whichever is earlier, and (3) Claims for reimbursement of costs (other than expenses of CONTRACTOR by reason of its indemnification of ULA against patent liability), including reasonable incidental expenses incurred by CONTRACTOR under the terms of this Contract relating to patents.
- (j) Unless otherwise specified, prices include all applicable federal, state, local and foreign taxes, duties, tariffs, and similar fees imposed by any government, all of which shall be listed separately on the invoice. When taxable and non-taxable

items are invoiced under this Contract, taxable versus non-taxable items shall be separately stated. If Work purchased qualifies for tax exemption, then an exemption certificate will be presented from ULA to CONTRACTOR.

- (k)** ULA may at any time deduct or set off CONTRACTOR's claims for money due or to become due from ULA against any claims that ULA has or may have arising out of this Contract or any other Contract between the parties, including the value of any prepaid Work rejected or returned for nonconformance.
- (l)** Payment shall be deemed to have been made as of the date of mailing ULA's payment or electronic funds transfer.
- (m)** CONTRACTOR shall not include any export controlled information, covered defense information (if applicable), or any other information whose release is otherwise restricted by federal law or regulation in its invoices.