

BDS Terms and Conditions Guide

Clause Number: H906

Effective: 02/13/2017

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Undefinitized Purchase Contract Terms and Conditions – Fixed Price (Variable)

1. PERFORMANCE OF THE PARTIES

By Seller's acceptance of this Contract, Seller agrees to proceed immediately to procure the necessary materials and to commence the manufacture of the Goods/Services or the performance of the services called for by this Contract, and to pursue such work with all diligence to the end that the Goods/Services may be delivered or services performed in accordance with the schedules incorporated in this Contract. Subject to the terms of this clause, Buyer agrees to pay Seller in accordance with the terms of this Contract for conforming Goods/Services tendered in accordance with the schedules incorporated in this Contract.

2. NOT TO EXCEED PRICE

The not-to-exceed (NTE) price set forth in this clause is \$ _____ and is the maximum price of the contemplated definitized Contract. Seller agrees to negotiate promptly and in good faith with Buyer for the purpose of definitizing this Contract for the Goods/Services set forth herein. The total NTE price is subject to negotiation and downward adjustment only.

3. PROVISIONAL PAYMENT (DELIVERABLE GOODS/SERVICES)

If delivery of the Goods/Services is required prior to definitization, Buyer shall issue payment based upon the provisional unit price as implemented through clause F217 which is incorporated, by reference, into this Contract.

4. FUNDING LIMITATION

Seller's current funding limit(s) for any line item(s) subject to a funding limitation is stated on the Contract. These line item(s) are subject to that funding limitation through the date identified in F216. Seller shall notify Buyer in writing of any additional funding required to continue timely performance under this contract for sixty (60) days after the date specified in clause F216 as incorporated in this Contract or for any further period specified by Buyer. If Seller fails to give notice at least thirty (30) days before the date specified in clause F216, Seller agrees to continue performance of the work under this contract with no additional funding amount authorized for thirty (30) days from the date that the notice is received by Buyer in order to allow Buyer time to authorize the additional funding amount.

5. TERMINATION LIABILITY

The termination liability amount authorized by Buyer and Buyer's maximum liability is set forth in clause F218 as incorporated into this Contract.

6. TYPE OF CONTRACT

It is expected that the definitized Contract will be a _____ Contract.

7. TERMS AND CONDITIONS (applicable when contract terms are undefinitized)

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Seller and Buyer recognize that the parties are currently negotiating, in good faith, revised terms and conditions to definitize this Contract. Seller agrees to negotiate promptly and in good faith with Buyer for the purpose of definitizing the terms and conditions of this Contract. Upon conclusion of negotiations the parties agree to incorporate the resulting agreed upon revised terms and conditions, if any, so as to be made a part of a definitized Contract.

8. DEFINITIZATION SCHEDULE

The following is the schedule for definitization of this Contract:

Submission of Proposal _____

Fact Finding _____

Negotiation Start Date _____

Definitization Target Date _____

9. EXTENSION OF DEFINITIZATION SCHEDULE

Buyer's Authorized Procurement Representative may by written notice to Seller extend this definitization schedule if the parties are unable to begin or conclude negotiations in accordance with the definitization schedule set forth in this clause. Seller shall, subject to the maximum termination liability amount, continue performance hereunder in accordance with the terms of this Contract.

10. TERMINATION

In the event this Contract is not definitized by the definitization target date specified in this clause, or any extension of such date, because of the inability of the parties to agree upon the terms of a definitized Contract, Buyer may, at its sole discretion, terminate this Contract in accordance with the Termination for Convenience clause of this Contract and shall pay Seller's costs with no allowance for profit or fee and subject to the maximum termination liability amount.

11. CONTRACT DEFINITIZATION

Upon definitization of this Contract, this clause will be removed and replaced with clause F204.