

by its actions with the contractor, not negate the contractual protections and establish a de facto employer/employee relationship on the job. Clients should be so advised.

## **6. PAYMENT**

There are two important factors to be considered under payment of a contract: 1) Basis of Payment and 2) Method of Payment.

### **6.1 Basis of Payment:**

The contract should stipulate the use of either "Fixes Time Rate", or "Firm Price".

There must be a basis of payment included in a Contract for the Contract to be considered legally enforceable.

#### **6.1.1 Fixed Time Rate**

A fixed time rate provides for the payment to the Contractor for the actual amount of time spent in performance of the work, as confirmed by government audit, on the basis of a predetermined fixed time rate. The fixed time rate usually includes a direct labour rate, overhead rate(s) and profit. *Use this basis of payment when:*

a) it is not possible to estimate in advance the extent or duration of the work, but it is possible to determine within reasonable limits the applicable direct labour and overhead rates during the contract period; and

b) there is provision for adequate controls to ensure that inefficient or wasteful methods are not being used by the Contractor.

Contracts or part of contracts with a fixed time rate basis of payment may also provide for a ceiling price, by which the Contractor is bound to complete the prescribed work without additional payment whether or not the actual costs exceed the ceiling price. If a ceiling price is to be used, there must be full agreement between the parties as to what constitutes the prescribed work.

Before agreeing to the incorporation of a ceiling price in a fixed time rate contract, the contracting officer should consider whether a firm price contract would be more appropriate.

When contracts, or part of contracts, with a fixed time rate basis of payment do not include a ceiling price, a limitation of the Crown's liability should be made a term of the