

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 942—CONTRACT ADMINISTRATION

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AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 12026, Mar. 28, 1984, unless otherwise noted.

Subpart 942.7—Indirect Cost Rates

942.704 Billing rates.

(b) When the contracting officer or auditor responsible for establishing billing rates, in accordance with FAR 42.704, has not established such rates or such rates are not current for the performance periods (contractor FY) under contract, the DOE contracting officer responsible for administration of the contract shall establish an appropriate rate(s) for billing purposes. If the contractor holds more than one DOE contract covering that period of performance, the DOE office with the largest unliquidated obligations as of the beginning of that performance period shall take the lead in establishing the required billing rate for use on DOE contracts. Once appropriate billing rates are established by the responsible contracting officer designated by FAR 42.704, such rates shall be adopted by the contracting officer and all billings and payments shall be retroactively revised to reflect the agreed upon rate(s).

942.705-1 Contracting officer determination procedure. (DOE coverage—paragraphs (a) and (b))

(a)(3) The Department of Energy shall use the contracting officer determination procedure for all business

units for which it shall be required to negotiate final indirect cost rates. A list of such business units is maintained by the Office of Policy, within the Headquarters procurement organization.

(b)(1) Pursuant to FAR 52.216-7, Allowable Cost and Payment, contractors shall be requested to submit their final indirect cost rate proposals reflecting actual cost experience during the covered period to the cognizant contracting officer responsible for negotiating their final rates.

The DOE negotiating official shall request all needed audit service in accordance with internal procedures.

[61 FR 41710, Aug. 9, 1996]

942.705-3 Educational institutions. (DOE coverage—paragraph (a))

(a)(2) The negotiated rates established for the institutions cited in OMB Circular No. A-88 are distributed to the Cognizant DOE Office (CDO) assigned lead office responsibility for all DOE indirect cost matters relating to a particular contractor by the Office of Policy, within the Headquarters procurement organization.

[61 FR 41710, Aug. 9, 1996]

942.705-4 State and local governments.

A list of cognizant agencies for State/local government organizations is periodically published in the FEDERAL REGISTER by the Office of Management and Budget (OMB). The responsible agencies are notified of such assignments. The current negotiated rates for State/local government activities is distributed to each CDO by the Office of Policy, within the Headquarters procurement organization.

[61 FR 41710, Aug. 9, 1996]

942.705-5 Nonprofit organizations other than educational and state and local governments.

OMB Circular A-122 establishes the rules for assigning cognizant agencies for the negotiation and approval of indirect cost rates. The Federal agency with the largest dollar value of awards

(contracts plus federal financial assistance dollars) will be designated as the cognizant agency. There is no published list of assigned agencies. The Office of Policy, within the Headquarters procurement organization, distributes to each CDO the rates established by the cognizant agency.

[61 FR 41710, Aug. 9, 1996]

Subpart 942.8—Disallowance of Costs

942.803 Disallowing costs after incurrence.

(a) Contracting officer receipt of vouchers. Vouchers and invoices submitted to DOE shall be submitted to the contracting officer or designee for review and approval for payment. If the examination of a voucher or invoice raises a question regarding the allowability of a cost submitted therein, the contracting officer, shall:

(1) Hold informal discussion with the contractor as appropriate.

(2) Issue a notice (letter, memo, etc.) to the contractor advising of cost disallowed or to be disallowed and advising the contractor that it may:

(i) Submit a written claim as to why the cost should be reimbursed—if in disagreement with the disallowance.

(ii) File a claim under the disputes clause, which will be processed in accordance with disputes procedures in the event disagreements cannot be settled.

(3) Process the voucher or invoice for payment and advise the finance office to deduct the disallowed cost when scheduling the voucher for payment.

(c) *Auditor reports and other sources of questioned costs.* (1) From time to time reports are received from professional auditors that may question the allowability of an incurred cost. Such reports are received as the result of auditors, in their independent role under OMB Circular A-73 or their own charters, scheduling and conducting financial or compliance audits of government contracts or as the result of an independent request for auditor service, as discussed in 942.70 Audit Services.

(2) When auditor reports or other notifications question cost or consider

them unallowable, the contracting officer shall follow up such reports and resolve all such cost issues promptly by determining, through discussions with the contractor and/or auditor within six months of the audit report date, or date of receipt if a non-Federal audit. One of the following courses of action shall be pursued:

(i) Accept and implement audit recommendations as submitted.

(ii) Accept the principle of the audit recommendation but reject the cost questioned amount.

(iii) Reject audit findings and recommendations.

(3) When implementing the accepted course of action, the contracting officer shall—

(i) Hold discussions with the auditor and contractor as appropriate.

(ii) Issue a notice in writing advising the contractor of the government's intent to disallow the cost questioned, if the contracting officer agrees with the auditor concerning the questioned costs.

(iii) Negotiate a mutual settlement of questioned costs if they are agreed with in principle but there is a difference of opinion as to a proper amount.

(iv) Negotiate a mutual settlement of questioned costs if the auditor recommendations are acceptable to the contracting officer but the contractor does not accept the finding or disallowance.

(v) Issue a final decision of the contracting officer disallowing the questionable cost where differences cannot be resolved, advising of the contractor's right to appeal the decision, and advising the procedure to be followed if it is decided to make such an appeal.

(vi) Initiate immediate recoupment actions for all disallowed cost owed the government by:

(A) Requesting the contractor to provide a credit adjustment (offset) against amounts billed the government on the next or future invoice(s) if such shall be submitted under a contract for which the disallowed cost applies.

(B) Deducting (offset) the disallowed cost from the next or future invoice(s) submitted under the contract; if the contractor provides no adjustment

under the contract for which the disallowed cost applies; provided such reduction is deemed appropriate.

(C) Advising the contractor that a refund shall be directly payable to the government in situations where there are insufficient payments owed by the government to effect recovery via (A) or (B) above or an offset is otherwise inappropriate.

(vii) Promptly notify the appropriate finance office of refunds directly payable to the government to ensure proper billing and follow-up action for collection.

[49 FR 12026, Mar. 28, 1984, as amended at 59 FR 9107, Feb. 25, 1994]

PART 944—SUBCONTRACTING POLICIES AND PROCEDURES

Subpart 944.3—Contractors' Purchasing Systems Reviews

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AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 12031, Mar. 28, 1984, unless otherwise noted.

Subpart 944.3—Contractors' Purchasing Systems Reviews

944.302 Requirements.

(a) The Heads of Contracting Activities shall consider whether the best interest of DOE would be served by the initiation of a Contractor Purchasing System Review (CPSR) for those contractors whose sales to DOE are expected to exceed \$5,000,000 during the next 12 months and for which DOE is the cognizant Government agency for CPSR purposes. In exceptional circumstances, consideration of a CPSR may be warranted for contractors with sales to DOE of less than \$5,000,000. When considering the initiation of a CPSR, such a review should not be conducted if the extent of the contractor's subcontracting program does not appear to justify the review.

(b) DOE contracting officers, or designees, will conduct CPSRs of DOE cog-

nizant contractors. Other Federal Agencies/Departments may be requested to conduct CPSRs, as appropriate, for other than DOE cognizant contractors. DOE contracting officers shall normally recognize other Federal Agency/Department approvals of contractors' purchasing systems within the limitation identified by approving officials of such agencies.

(c) Initial, subsequent, and follow-up review teams should include appropriate representatives from DOE field offices; other Federal Agency participation may be additionally requested as appropriate. Generally, team composition should not consist exclusively of those who have a day-to-day relationship with the contractor regarding subcontract consent or approval.

(d) The Procurement Executive is responsible for the overall conduct of the DOE CPSR program.

[49 FR 12031, Mar. 28, 1984, as amended at 59 FR 9107, Feb. 25, 1994]

944.304 Surveillance.

(b) The surveillance plan required by FAR 44.304(b) shall be approved by the Head of the Contracting Activity.

944.305 Granting, withholding, or withdrawing approval.

944.305-1 Responsibilities.

(a) Team findings and recommendations contained in a CPSR Report shall be approved by the Head of the Contracting Activity before the contracting officer makes a determination to continue, grant, withhold, or withdraw approval.

[49 FR 12031, Mar. 28, 1984, as amended at 59 FR 9107, Feb. 25, 1994]

944.307 Reports.

(b) Copies of CPSR reports; notifications granting, continuing, withholding, or withdrawing approval of a contractor's purchasing system; copies of recommendations for improvement of an approved system; notifications (or contract modifications) altering the subcontract consent dollar thresholds; and information received from the contractor pursuant to FAR 44.305-3(b) shall be transmitted to the Director, Office of Contractor Management and