

SUBCHAPTER G—CONTRACT MANAGEMENT

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AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36437, July 31, 1991, unless otherwise noted.

242.002 Interagency agreements.

(b)(i) DoD requires reimbursement, at a rate set by the Under Secretary of Defense (Comptroller/Chief Financial Officer), from non-DoD organizations, except for—

(A) Quality assurance, contract administration, and audit services provided under a no-charge reciprocal agreement;

(B) Services performed under subcontracts awarded by the Small Business Administration under FAR subpart 19.8; and

(C) Quality assurance and pricing services performed for the Supply and Services Canada.

(ii) Departments and agencies may request an exception from the reimbursement policy in paragraph (b)(i) of this section from the Under Secretary of Defense (Comptroller/Chief Financial Officer). A request must show that an exception is in the best interest of the Government.

(iii) Departments and agencies must pay for services performed by non-DoD activities, foreign governments, or international organizations, unless otherwise provided by reciprocal agreements.

(S-70)(i) Foreign governments and international organizations may request contract administration services on their direct purchases from U.S. producers. Direct purchase is the purchase of defense supplies in the United States through commercial channels for use by the foreign government or international organization.

(ii) Supply and Services Canada (SSC) is permitted to submit its requests for contract administration services directly to the cognizant contract administration office.

(iii) Other foreign governments (including Canadian government organizations other than SSC) and international organizations send their requests for contract administration services to the DoD Central Control Point (CCP) at the Headquarters, Defense Contract Management Agency, International and Federal Team. Contract administration offices provide services only upon request from the CCP. The CCP shall—

(A) Determine whether the request is from a friendly foreign government or an international agency in which the United States is a participant;

(B) Determine whether the services are consistent with the DoD mutual security program policies (the Assistant Secretary of Defense (International Security Affairs) is the source of information for questions as to the eligibility of foreign governments to receive services);

(C) Ensure that the reimbursement arrangements are consistent with paragraph (b) of this section;

(D) Coordinate with appropriate contract administration offices to determine whether DoD can provide the services;

(E) Notify the requestor that the request is accepted, or provide reasons why it cannot be accepted;

(F) Distribute the acquisition documents and related materials to contract administration offices; and

(G) Receive statements of costs incurred by contract administration offices for reimbursable services and forward them for billing to the Security Assistance Accounting Center.

[64 FR 61029, Nov. 9, 1999, as amended at 65 FR 52952, Aug. 31, 2000]

Subpart 242.2—Contract Administration Services

SOURCE: 64 FR 61029, Nov. 9, 1999, unless otherwise noted.

242.200-70 Scope of subpart.

This subpart does not address the contract administration role of a contracting officer's representative (see 201.602).

242.202 Assignment of contract administration.

(a)(i) DoD activities shall not retain any contract for administration that requires performance of any contract administration function at or near contractor facilities, except contracts for—

- (A) The National Security Agency;
- (B) Research and development with universities;
- (C) Flight training;
- (D) Consultant support services;
- (E) Mapping, charting, and geodesy services;
- (F) Base, post, camp, and station purchases;
- (G) Operation or maintenance of, or installation of equipment at, radar or communication network sites;
- (H) Communications services;
- (I) Installation, operation, and maintenance of space-track sensors and relays;
- (J) Dependents Medicare program contracts;
- (K) Stevedoring contracts;
- (L) Construction and maintenance of military and civil public works, including harbors, docks, port facilities, military housing, development of recreational facilities, water resources, flood control, and public utilities;
- (M) Architect-engineer services;
- (N) Airlift and sealift services (Air Mobility Command and Military Sealift Command may perform contract administration services at contractor locations involved solely in performance of airlift or sealift contracts);
- (O) Subsistence supplies;
- (P) Ballistic missile sites (contract administration offices may perform supporting administration of these contracts at missile activation sites during the installation, test, and checkout of the missiles and associated equipment); and
- (Q) Operation and maintenance of, or installation of equipment at, military test ranges, facilities, and installations.

(ii) Contract administration functions for base, post, camp, and station contracts on a military installation are normally the responsibility of the installation or tenant commander. However, the Defense Contract Management Agency (DCMA) shall, upon request of the military department, and subject to prior agreement, perform contract administration services on a military installation.

(iii) DCMA shall provide preaward survey assistance for post, camp, and station work performed on a military installation. The contracting office and the DCMA preaward survey monitor should jointly determine the scope of the survey and individual responsibilities.

(iv) To avoid duplication, contracting offices shall not locate their personnel at contractor facilities, except—

(A) In support of contracts retained for administration in accordance with paragraph (a)(i) of this section; or

(B) As permitted under subpart 242.74.

(e)(1)(A) In special circumstances, a contract administration office may request support from a component not listed in the Federal Directory of Contract Administration Services Components (available via the Internet at <http://www.dcmc.hq.dla.mil/casbook/casbook.htm>). An example is a situation where the contractor's work site is on a military base and a base organization is asked to provide support. Before formally sending the request, coordinate with the office concerned to ensure that resources are available for, and capable of, providing the support.

(B) When requesting support on a subcontract that includes foreign contract military sale (FMS) requirements, the contract administration office shall—

(1) Mark "FMS Requirement" on the face of the documents; and

(2) For each FMS case involved, provide the FMS case identifier, associated item quantities, DoD prime contract number, and prime contract line/subline item number.

[64 FR 61029, Nov. 9, 1999, as amended at 65 FR 52953, Aug. 31, 2000]

Subpart 242.3—Contract Administration Office Functions

242.301 General.

Contract administration services performed outside the U.S. should be performed in accordance with FAR 42.301 unless there are no policies and procedures covering a given situation. In this case, coordinate proposed actions with the appropriate U.S. country teams or commanders of unified and specified commands.

242.302 Contract administration functions.

(a)(4) Also, review and evaluate—

(A) Contractor estimating systems (see FAR 15.407-5); and

(B) Contractor material management and accounting systems under subpart 242.72.

(7) See 242.7503 for ACO responsibilities with regard to receipt of an audit report identifying significant accounting system or related internal control deficiencies.

(9) For additional contract administration functions related to IR&D/B&P projects performed by major contractors, see 242.771-3(a).

(13)(A) Do not delegate the responsibility to make payments to the Defense Contract Management Agency (DCMA).

(B) For contracts assigned to DCMA for contract administration, designate as the payment office—

(1) The cognizant Defense Finance and Accounting Service (DFAS) payment office as specified in the Federal Directory of Contract Administration Services Components (available via the Internet at <http://www.dcmc.hq.dla.mil/casbook/casbook.htm>), for contracts funded with DoD funds;

(2) The department or agency payment office, if authorized by defense financial management regulations or if the contract is funded with non-DoD funds; or

(3) Multiple payment offices under paragraphs (a)(13)(B) (1) and (2) of this section, if the contract is funded with both DoD and non-DoD funds.

(C) For contracts not assigned to DCMA, select a payment office or of-

fices under department/agency procedures. DoD personnel may use the DFAS Reference Tool, available via the Internet at <http://referencetool.dfas.mil>, to identify cognizant DFAS payment offices.

(19) Also negotiate and issue contract modifications reducing contract prices in connection with the provisions of paragraph (c) of the clause at FAR 52.225-8, Duty-Free Entry.

(33) Also perform industrial readiness and mobilization production planning field surveys and negotiate schedules.

(39) See 223.370 for safety requirements on contracts for ammunition and explosives.

(41) DCMA has responsibility for reviewing earned value management system (EVMS) plans and verifying initial and continuing contractor compliance with DoD EVMS criteria.

(67) Also support program offices and buying activities in precontractual efforts leading to a solicitation or award.

(S-70) Serve as the single point of contact for all Single Process Initiative (SPI) Management Council activities. The ACO shall negotiate and execute facilitywide class modifications and agreements for SPI processes, when authorized by the affected components.

(b)(S-70) Issue, negotiate and execute orders under basic ordering agreements for overhaul, maintenance and repair.

[56 FR 36437, July 31, 1991, as amended at 57 FR 53601, Nov. 12, 1992; 60 FR 29500, June 5, 1995; 61 FR 50454, Sept. 26, 1996; 62 FR 9991, Mar. 5, 1997; 62 FR 44224, Aug. 20, 1997; 63 FR 11541, Mar. 9, 1998; 64 FR 61030, Nov. 9, 1999; 65 FR 19857, Apr. 13, 2000; 65 FR 52953, Aug. 31, 2000; 65 FR 58607, Sept. 29, 2000]

Subpart 242.4—Correspondence and Visits

242.402 Visits to contractors' facilities.

(a) If a visit to a contractor facility will require access to classified information, the visitors must give the contractor advance written notice (DoD 5220.22-R, Industrial Security Regulation).

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Subpart 242.5—Postaward Orientation

242.503 Postaward conferences.

242.503-2 Postaward conference procedure.

Use the conference program outlined on the DD Form 1484, Post-Award Conference Record, in conducting the conference.

242.503-3 Postaward conference report.

The DD Form 1484, Post-Award Conference Record, may be used for this report.

242.570 Contract clause.

Use the clause at 252.242-7000, Postaward Conference, in solicitations and contracts.

Subpart 242.6—Corporate Administrative Contracting Officer

242.602 Assignment and location.

(c)(2) If the agencies cannot agree, refer the matter to the Director of Defense Procurement.

Subpart 242.7—Indirect Cost Rates

242.704 Billing rates.

(c) The administrative contracting officer or auditor shall periodically review billing rates for continued applicability. Billing rates should be established on a year-to-year basis.

242.705 Final indirect cost rates.

242.705-1 Contracting officer determination procedure.

(a) *Applicability and responsibility.* (1) The corporate administrative contracting officer (CACO) and individual administrative contracting officers (ACOs) shall jointly decide whether negotiations will be conducted on a coordinated or centralized basis. When they are conducted on a coordinated basis, individual ACOs are responsible for coordinating with the CACO to en-

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sure consistency of cost determinations.

[56 FR 36437, July 31, 1991, as amended at 60 FR 61599, Nov. 30, 1995; 64 FR 61030, Nov. 9, 1999]

242.705-2 Auditor determination procedure.

(b) *Procedures.*

(2)(iii) When agreement cannot be reached with the contractor, the auditor will issue a DCAA Form 1, Notice of Contract Costs Suspended and/or Disapproved, in addition to the advisory report to the administrative contracting officer. The DCAA Form 1 details the items of exception and advises the contractor that requests for reconsideration should be submitted in writing to the administrative contracting officer.

[56 FR 36437, July 31, 1991, as amended at 60 FR 61599, Nov. 30, 1995; 64 FR 61030, Nov. 9, 1999]

242.705-3 Educational institutions.

(b) *Predetermined final indirect cost rates.* (4)(i) Predetermined indirect cost rate proposals may cover a period of two to four years when the cognizant Contracting Officer determines that the educational institution's cost experience and other pertinent facts available are sufficient to enable the parties to reach an informed judgment on the probable levels of indirect costs and allocation base costs for the applicable future accounting periods. Predetermined rates covering two to four year periods are expected to be the norm in those situations.

(6) Predetermined indirect cost rates may be established to cover up to four years.

[59 FR 53116, Oct. 21, 1994]

242.771 Independent research and development and bid and proposal costs.

242.771-1 Scope.

This section implements 10 U.S.C. 2372, Independent research and development and bid and proposal costs: Payments to contractors.

[64 FR 8730, Feb. 23, 1999]

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242.771-2 Policy.

Defense contractors are encouraged to engage in independent research and development and bid and proposal (IR&D/B&P) activities of potential interest to DoD, including activities cited in 231.205-18(c)(iii)(B).

[64 FR 8730, Feb. 23, 1999]

242.771-3 Responsibilities.

(a) The cognizant administrative contracting officer (ACO) or corporate ACO shall—

(1) Determine cost allowability of IR&D/B&P costs as set forth in 231.205-18 and FAR 31.205-18.

(2) Determine whether IR&D/B&P projects performed by major contractors (see 231.205-18(a)) are of potential interest to DoD; and

(3) Notify the contractor promptly of any IR&D/B&P activities that are not of potential interest to DoD.

(b) The Defense Contract Management Agency or the military department responsible for performing contract administration functions is responsible for providing the Defense Contract Audit Agency (DCAA) with IR&D/B&P statistical information, as necessary, to assist DCAA in the annual report required by paragraph (c) of this subsection.

(c) DCAA is responsible for submitting an annual report to the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics (OUSD (AT&L))) setting forth required statistical information relating to the DoD-wide IR&D/B&P program.

(d) The Director, Defense Research and Engineering (OUSD(AT&L)DDR&E), is responsible for establishing a regular method for communication—

(1) From DoD to contractors, of timely and comprehensive information regarding planned or expected DoD future needs; and

(2) From contractors to DoD, of brief technical descriptions of contractor IR&D projects.

[64 FR 8730, Feb. 23, 1999, as amended at 65 FR 39706, June 27, 2000; 65 FR 52953, Aug. 31, 2000]

Subpart 242.8—Disallowance of Costs

242.801 Notice of intent to disallow costs.

(e) A corporate administrative contracting officer need not obtain the approval of the individual administrative contracting officers to disallow items of corporate expense.

242.803 Disallowing costs after incurrence.

(a) *Contracting officer receipt of vouchers.* Contracting officer receipt of vouchers is applicable only for cost-reimbursement contracts with the Canadian Commercial Corporation. See 225.870-5(b) for invoice procedures.

(b) *Auditor receipt of voucher.*

(i) The contract auditor is the authorized representative of the contracting officer for—

(A) Receiving vouchers from contractors;

(B) Approving interim vouchers for provisional payment (this includes approving the fee portion of vouchers in accordance with the contract schedule and administrative contracting officer instructions) and sending them to the disbursing office;

(C) Authorizing direct submission of interim vouchers for provisional payment to the disbursing office for contractors with approved billing systems;

(D) Reviewing completion/final vouchers and sending them to the administrative contracting officer; and

(E) Issuing DCAA Forms 1, Notice of Contract Costs Suspended and/or Disapproved, to deduct costs where allowability is questionable.

(ii) The administrative contracting officer—

(A) Approves all completion/final vouchers and sends them to the disbursing officer; and

(B) May issue or direct the issuance of DCAA Form 1 on any cost when there is reason to believe it should be suspended or disallowed.

[61 FR 25409, May 21, 1996, as amended at 61 FR 25409, May 21, 1996; 61 FR 50454, Sept. 26, 1996]

Subpart 242.11—Production Surveillance and Reporting

242.1104 Surveillance requirements.

(a) The cognizant contract administration office (CAO) must—

(i) Conduct a periodic risk assessment of each contractor to determine the degree of production surveillance needed for contracts awarded to that contractor. The risk assessment must consider information provided by the contractor and the contracting officer;

(ii) Develop a production surveillance plan based on the risk level determined during the risk assessment;

(iii) Modify the production surveillance plan to incorporate any special surveillance requirements for individual contracts, including any requirements identified by the contracting officer; and

(iv) Monitor contract progress and identify potential contract delinquencies in accordance with the production surveillance plan.

[65 FR 39723, June 27, 2000]

242.1105 Assignment of criticality designator.

(1) Contracting officers shall—

(i) Assign criticality designator A to items with a priority 01, 02, 03, or 06 (if emergency supply of clothing) under DoD Directive 4410.6, Uniform Materiel Movement and Issue Priority System; and

(ii) Ordinarily assign criticality designator C to unilateral purchase orders.

(2) Only the contracting officer shall change the assigned designator.

242.1106 Reporting requirements.

(a) See DoD 5000.2-R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System (MAIS) Acquisition Programs.

(b)(i) Within four working days after receipt of the contractor's report, the CAO must provide the report and any required comments to the contracting officer and, unless otherwise specified in the contract, the inventory control manager.

(ii) If the contractor's report indicates that the contract is on schedule

and the CAO agrees, the CAO does not need to add further comments. In all other cases, the CAO must add comments and recommend a course of action.

[65 FR 39723, June 27, 2000]

242.1107 Contract clause.

(b) When using the clause at FAR 52.242-2, include the following instructions in the contract schedule—

(i) Frequency and timing of reporting (normally 5 working days after each reporting period);

(ii) Contract line items, exhibits, or exhibit line items requiring reports;

(iii) Offices (with addressees/codes) where reports should be sent (always include the contracting office and contract administration office); and

(iv) The following requirements for report content—

(A) The problem, actual or potential, and its cause;

(B) Items and quantities affected;

(C) When the delinquency started or will start;

(D) Actions taken to overcome the delinquency;

(E) Estimated recovery date; and/or

(F) Proposed schedule revision.

242.1107-70 Solicitation provision and contract clause.

(a) Use the clause at 252.242-7005, Cost/Schedule Status Report, in solicitations and contracts for other than major systems that require cost/schedule status reports (i.e., when the Contract Data Requirements List includes DI-MGMT-81467 in accordance with DoD 5000.2-R).

(b) Use the provision at 252.242-7006, Cost/Schedule Status Report Plans, in solicitation for other than major systems that require cost/schedule status reports.

[63 FR 11541, Mar. 9, 1998]

Subpart 242.12—Novation and Change-of-Name Agreements

242.1202 Responsibility for executing agreements.

The contracting officer responsible for processing and executing novation and change-of-name agreements shall

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ensure agreements are executed promptly.

[60 FR 1749, Jan. 5, 1995]

242.1203 Processing agreements.

(b)(1) For contracts awarded by the Military Departments, provide notices to the following addressees instead of individual contracting or contract administration offices—

| | |
|--|---|
| Army | HQ, U.S. Army Materiel Command, ATTN: AMCCC-P, 5001 Eisenhower Avenue, Alexandria, VA 22333-0001. |
| Navy | Office of the Assistant Secretary of the Navy (RDA) Procurement Policy, Washington, DC 20350-1000. |
| Air Force ... | HQ, Air Force Materiel Command, Attn: HQ AFMC/PKP, 4375 Chidlaw Road, suite 6, Wright Patterson AFB, OH 45443-5006. |
| National Aeronautics and Space Administration. | National Aeronautics and Space Administration, Assistant Administrator for Procurement, ATTN: HP, Washington, DC 20546. |

| | |
|--------------------------------------|--------------------------------------|
| Commander | Commander. |
| Eastern Area | Western Area. |
| Military Traffic Management Command. | Military Traffic Management Command. |
| ATTN: MTE-LO | Oakland Army Base. |
| Bayonne, NJ 07002 | ATTN: MTW-LO, Oakland, CA 94626. |

(f)(4) Additional distribution instructions—

(A) Send two copies to the address in paragraph (b)(1) of this section. The list of contracts may be confined to those issued by that department.

(B) Do not send copies to NASA or the MTMC commands in paragraph (e)(ii). They will issue their own modifications.

[56 FR 36437, July 31, 1991, as amended at 59 FR 27674, May 27, 1994; 64 FR 51076, Sept. 21, 1999; 65 FR 39706, June 27, 2000]

242.1204 Agreement to recognize a successor in interest (novation agreement).

(e) When a novation agreement is required and the transferee intends to incur restructuring costs as defined at 213.205-70, the cognizant contracting officer shall include the following provision as paragraph (b)(7) of the novation agreement instead of the paragraph (b)(7) provided in the sample format at FAR 42.1204(e):

“(7)(i) Except as set forth in subparagraph (7)(ii) below, the Transferor and the Transferee agree that the Government is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer or this Agreement, other than those that the Government in the absence of this transfer or Agreement would have been obligated to pay or reimburse under the terms of the contracts.

(ii) The Government recognizes that restructuring by the Transferee incidental to the acquisition/merger may be in the best interests of the Government. Restructuring costs that are allowable under Part 31 of the Federal Acquisition Regulation (FAR) or Part 231 of the Defense Federal Acquisition Regulation Supplement (DFARS) may be reimbursed under flexibly-priced novated contracts, provided the Transferee demonstrates that the restructuring will reduce overall costs to the Department of Defense (DoD) (and to the National Aeronautics and Space Administration (NASA), where there is a mix of DoD and NASA contracts), and the requirements included in DFARS 231.205-70 are met. Restructuring costs shall not be allowed on novated contracts unless there is

(2)(A) Lists for notices of a successor in interest should include the information at FAR 42.1204(e)(2).

(B) Lists for notices of a name change should include the information at FAR 42.1205(a)(3).

(C) On notices sent to the addressees in paragraph (b)(1) of this section, include a consolidated list for all subordinate contracting offices of the addressee.

(d)(i) Before making any substantial alterations or additions to the novation agreement format at FAR 42.1204(e), coordinate with those addressees in paragraph (b)(1) of this section that have contracts with the contractor. Resolve any objections before executing the agreement.

(ii) If the National Aeronautics and Space Administration (NASA) wants a separate agreement with the contractor, continue to process the agreement only for DoD.

(e) Also, make distribution to—

(i) The addressees in paragraph (b)(1) of this section—two copies; and

(ii) The appropriate Military Traffic Management Command (MTMC) area command for agreements affecting contracts and basic agreements for storage and related services for personal property of military and civilian personnel—two copies—

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an audit of the restructuring proposal; a determination by the contracting officer of overall reduced costs to DoD/NASA; and an Advance Agreement setting forth a cumulative cost ceiling for restructuring projects and the period to which such costs shall be assigned."

[60 FR 1749, Jan. 5, 1995, as amended at 61 FR 16882, Apr. 18, 1996]

Subpart 242.14—Traffic and Transportation Management

242.1402 Volume movements within the continental United States.

(a)(2) In reporting planned and actual volume movements—

(A) The contracting officer—

(1) Provides production schedules and planned destinations to the servicing transportation office as soon as the information is available to permit the transportation office to determine if volume movements will occur. If a volume movement appears likely, the transportation office reports a planned volume movement in accordance with DoD 4500.9-R, Defense Transportation Regulation, Part II, Chapter 201.

(2) Sends a copy of the volume movement report to the contract administration office.

(B) The contract administration office submits a volume movement report when—

(1) Significant changes are made to the movement requirements; or

(2) The contracting office did not submit a report.

(C) Include the destination country, freight forwarder, and, if known, port of embarkation on volume movement reports for foreign military sale shipments.

[56 FR 36437, July 31, 1991, as amended at 65 FR 50143, Aug. 17, 2000]

242.1403 Shipping documents covering f.o.b. origin shipments.

(a)(i) Procedures for the contractor to obtain Government bills of lading are in the clause at 252.242-7003, Application for U.S. Government Shipping Documentation/Instructions.

(ii) The term "commercial bills of lading" includes the use of any commercial form or procedure.

[56 FR 36437, July 31, 1991, as amended at 65 FR 50144, Aug. 17, 2000]

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242.1404 Shipments by parcel post or other classes of mail.

242.1404-1 Parcel post eligible shipments.

(b)(1) See DoD 4525.8-M, DoD Official Mail Manual.

[56 FR 67220, Dec. 30, 1991]

242.1404-2 Contract clauses.

When using FAR 52.213-1, Fast Payment Procedures, do not use FAR clauses 52.242-10, F.o.b. Origin—Government Bills of Lading or Prepaid Postage, or 52.242-11, F.o.b. Origin—Government Bills of Lading or Indicia Mail.

242.1404-2-70 Additional clause.

Use the clause at 252.242-7003, Application for U.S. Government Shipping Documentation/Instructions, when using the clause at FAR 52.242-10, F.o.b. Origin—Government Bills of Lading or Prepaid Postage, or FAR 52.242-11, F.o.b. Origin—Government Bills of Lading or Indicia Mail.

[62 FR 34127, June 24, 1997]

242.1405 Discrepancies incident to shipment of supplies.

(a) See also DoD 4500.9-R, Defense Transportation Regulation, Part II, Chapter 210, for discrepancy procedures.

[65 FR 50144, Aug. 17, 2000]

242.1470 Demurrage and detention charges.

(a) Carrier demurrage rules usually allow for a "free time" for loading or unloading cars or for any other purpose, and impose charges for cars held beyond this period. If a contractor detains railroad cars beyond the "free time," the contractor has to pay the carrier's published tariff charges for demurrage.

(b) Detention results when a shipper or consignee holds motor carrier equipment beyond a reasonable period for loading, unloading, forwarding directions, or any other reason. Detention rules and charges are not uniform; they

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are published in individual carrier or agency tenders.

[56 FR 36437, July 31, 1991, as amended at 65 FR 50144, Aug. 17, 2000]

Subpart 242.15—Contractor Performance Information

242.1503 Procedures.

Evaluations should consider any notifications submitted under paragraph (g) of the clause at 252.219-7003, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts).

[61 FR 18688, Apr. 29, 1996]

Subpart 242.70 [Reserved]

Subpart 242.71—Voluntary Refunds

242.7100 General.

(a) A voluntary refund is a payment or credit (adjustment under one or more contracts or subcontracts) to the Government from a contractor or subcontractor which is not required by any contractual or other legal obligation.

(b) A voluntary refund may be solicited (requested by the Government) or unsolicited.

(1) Generally, request voluntary refunds only after determining that no contractual remedy is readily available to recover the amount sought.

(2) Acceptance of unsolicited refunds does not prejudice remedies otherwise available to the Government.

(c) Before soliciting a voluntary refund or accepting an unsolicited one, the contracting officer should have legal counsel review the contract and related data to—

(1) Confirm that there are no readily available contractual remedies; and

(2) Advise whether the proposed action would jeopardize or impair the Government's rights.

242.7101 Solicited refunds.

(a) Request voluntary refunds only when—

(1) The contracting officer concludes that the contractor overcharged under a contract, or inadequately com-

pensated the Government for the use of Government-owned property, or inadequately compensated the Government in the disposition of contractor inventory; and

(2) Retention of the amount in question by the contractor or subcontractor would be contrary to good conscience and equity.

(b) Do not solicit voluntary refunds without approval of the head of the contracting activity, or as provided in department/agency regulations.

(c) Voluntary refunds may be requested during or after contract performance.

242.7102 Disposition of voluntary refunds.

A contract modification, rather than a check, is the preferred means of effecting a solicited or unsolicited refund transacted before final payment.

(a) For modifications, adjust the price for the refund and credit the refund to the applicable appropriation cited in the contract.

(b) For checks—

(1) Advise the contractor to—

(i) Make the check payable to the agency which awarded the contract;

(ii) Forward the check to the contracting officer or when the contract is assigned to another office for administration, to that office; and

(iii) Include a letter with the check—

(A) Identifying it as a voluntary refund;

(B) Giving the contract number involved; and

(C) Where possible, giving the appropriation and account number to be credited.

(2) Forward the check to the office responsible for control of funds.

Subpart 242.72—Contractor Material Management and Accounting System

242.7200 Scope of subpart.

This subpart provides policies, procedures, and standards for use in the evaluation of a contractor's material management and accounting system (MMAS).

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242.7201 Definitions.

Material management and accounting system and *valid time-phased requirements* are defined in the clause at 252.242-7004, Material Management and Accounting System.

242.7202 Policy.

DoD policy is for all contractors to have an MMAS that—

- (a) Reasonably forecasts material requirements;
- (b) Ensures the costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements;
- (c) Maintains a consistent, equitable, and unbiased logic for costing of material transactions; and
- (d) Conforms to the standards at 252.242-7004(f) when the contractor has cost-reimbursement or fixed-price contracts exceeding the simplified acquisition threshold, with progress or other contract financing provisions, except when all of the contracts and subcontracts are awarded under the set-aside or Section 8(a) procedures of FAR part 19.

[56 FR 36437, July 31, 1991, as amended at 57 FR 42632, Sept. 15, 1992; 61 FR 50455, Sept. 26, 1996]

242.7203 MMAS disclosure, demonstration, and maintenance requirements.

(a) A large business contractor is subject to MMAS disclosure, demonstration, and maintenance if in its preceding fiscal year the contractor received DoD prime contracts or subcontracts (including modifications) totaling—

- (1) \$70 million or more; or
- (2) \$30 million or more (but less than \$70 million), and the contracting officer determines it to be in the best interests of the Government (e.g., contractor disclosure, demonstration, or other activities indicate significant MMAS problems exist).

(b) After the administrative contracting officer determines the contractor's MMAS is adequate (see 242.7204(b)), written disclosure will not be required for the next MMAS review unless the contractor's policies, procedures, or practices have changed in the interim period(s). Similarly, once the

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contractor demonstrates that its MMAS contains no significant deficiencies, demonstration requirements for subsequent reviews may be satisfied if internal audits are reasonably current and contain sufficient transaction tests to demonstrate MMAS compliance with each standard.

[61 FR 50455, Sept. 26, 1996]

242.7204 Responsibilities.

- (a) The contracting officer shall—
- (1) Through use of the clause at 252.242-7004, Material Management and Accounting System, apply the disclosure, demonstration, and maintenance requirements to large business contractors meeting the criteria in 242.7203(a);
 - (2) Consider whether to apply the disclosure, demonstration, and maintenance requirements to other large business contractors under 242.7203(a)(2) after concurrence from, or at the request of, the administrative contracting officer; and
 - (3) Not apply the disclosure, demonstration, and maintenance requirements to small businesses, educational institutions, or nonprofit organizations.

(b) For contractors subject to the disclosure, demonstration, and maintenance requirements, the administrative contracting officer (ACO) determines the adequacy of the contractor's MMAS and pursues correction of deficiencies.

- (c) The contract auditor shall—
- (1) Assist the ACO in evaluating the contractor's MMAS;
 - (2) Assess the significance of contractor deficiencies and provide the ACO an estimate of the resulting adverse material impact to the Government; and
 - (3) Assist the ACO in evaluating the contractor's correction of deficiencies.

[56 FR 36437, July 31, 1991, as amended at 61 FR 50455, Sept. 26, 1996]

242.7205 Review procedures.

(a) *System Evaluation.* Cognizant contract administration and audit activities shall jointly establish and manage programs for evaluating the MMAS

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systems of contractors subject to disclosure, demonstration, and maintenance requirements and annually establish a schedule of contractors to be reviewed. They shall—

(1) Conduct reviews as a team effort.

(i) The administrative contracting officer—

(A) Appoints a team leader; and

(B) Ensures that the team includes appropriate functional specialists (i.e., industrial specialists, engineer, property administrator, auditor, etc.).

(ii) The team leader—

(A) Advises the ACO and contractor of findings during the review and at the exit conference.

(B) Makes every effort to resolve differences regarding questions of fact during the review.

(2) Tailor reviews to take full advantage of the day-to-day work done by both organizations.

(3) Prepare a review report.

(4) Conduct a review every 3 years. The ACO, with advice from the auditor, may lengthen or shorten the 3 year period based on a risk assessment of the contractor's past experience and current vulnerability.

(b) *Disposition of evaluation team findings.* The team leader shall document the evaluation team findings and recommendations in a report to the ACO. If there are significant MMAS deficiencies, the report must provide an estimate of the adverse impact on the Government resulting from those deficiencies.

(1) *Initial notification to the contractor.* The ACO shall immediately provide a copy of the report to the contractor upon receipt from the team leader.

(i) The ACO shall notify the contractor in a timely manner if there are no deficiencies.

(ii) If there are deficiencies, the ACO shall request the contractor to provide a written response within 30 days from the date of initial notification.

(iii) If the contractor agrees with the report, the contractor has 60 days to correct any identified deficiencies or submit a corrective action plan showing milestones and actions to eliminate the deficiencies.

(iv) If the contractor disagrees, request rationale in the written response.

(2) *Evaluation of the contractor's response.* The administrative contracting officer, in consultation with the auditor, evaluates the contractor's response and determines whether—

(i) The MMAS contains deficiencies which need correction;

(ii) The deficiencies are significant enough to result in the reduction or suspension of progress payments or of payments under public vouchers; and

(iii) Proposed corrective actions (if the contractor submitted them) are adequate to correct the deficiencies.

(3) *Reduction or Suspension of payments.* (i) When the administrative contracting officer (ACO) determines that there is a significant MMAS deficiency, the ACO shall reduce progress payment claims by an appropriate percentage based on affected costs (in accordance with FAR 32.503-6) and/or suspend questionable costs on public vouchers in accordance with FAR 42.803). The reductions or suspensions shall remain in effect until the ACO determines that—

(A) The deficiencies are corrected; or

(B) The amount of the impact is immaterial.

(ii) The maximum payment adjustment is the adverse material impact to the Government as specified in the team's report. The ACO should use the maximum adjustment when the contractor did not submit a corrective action plan with its response, or the plan is unacceptable. In other cases, the ACO should consider the quality of the contractor's self-assessment, demonstration, and corrective action plan in determining the appropriate percentage.

(iii) As the contractor implements its accepted corrective action plan, the ACO should reinstate a portion of withheld amounts commensurate with the contractor's progress in making corrections. However, the ACO shall not fully reinstate withheld amounts until the contractor corrects the deficiency, or until the impact of the deficiency becomes immaterial.

(4) *Notification of administrative contracting officer determination.* (i) The administrative contracting officer (ACO) shall notify the contractor in writing (copy to auditor and functional specialists) of—

(A) Deficiencies needing correction;

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(B) Acceptability of the contractor's corrective action plan (if one was submitted) or the need for a corrective action plan; and

(C) Any decision to reduce or suspend progress payments or public vouchers because of significant deficiencies.

(ii) The Government does not approve or disapprove the contractor's MMAS system. ACO notifications should avoid any such implications.

(iii) From the time the ACO determines that there is a significant material management and accounting system deficiency until the time the deficiency is corrected, all field pricing reports for that contractor shall contain a recommendation relating to proposed cost or pricing data adjustments necessary to protect the Government's interests.

(iv) The ACO should consider the effect of significant MMAS deficiencies in reviews of the contractor's estimating system (see 215.407-5).

(5) *Monitoring contractor's corrective action.* The administrative contracting officer (ACO) and auditor shall monitor the contractor's progress in correcting deficiencies. If the contractor fails to make adequate progress, the ACO shall take further action. Actions for consideration may include—

(i) Elevate the issue to higher level management;

(ii) Further reduce or suspend progress payments;

(iii) Notify the contractor of the inadequacy of the contractor's cost estimating system and/or cost accounting system.

(iv) Take appropriate contractual action, i.e., disallow charges as unreasonable; and

(v) Issue cautions to contracting activities regarding the award of future contracts.

[56 FR 36437, July 31, 1991, as amended at 63 FR 55052, Oct. 14, 1998]

242.7206 Contract clause.

Use the clause at 252.242-7004, Material Management and Accounting System, in all solicitations and contracts exceeding the simplified acquisition threshold that are not for the acquisition of commercial items and—

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(a) Are not awarded under the set-aside or section 8(a) procedures of FAR part 19; and

(b) Are either—

(1) Cost-reimbursement contracts; or

(2) Fixed-price contracts with progress payments or other Government financing.

[56 FR 36437, July 31, 1991, as amended at 60 FR 61599, Nov. 30, 1995; 61 FR 50455, Sept. 26, 1996]

Subpart 242.73—Contractor Insurance/Pension Review

242.7300 Scope of subpart.

This subpart provides the requirements for conducting a Contractor Insurance/Pension Review (CIPR).

242.7301 General.

(a) The administrative contracting officer (ACO) is responsible for determining the allowability of insurance/pension costs in Government contracts. Defense Contract Management Agency (DCMA) insurance/pension specialists and Defense Contract Audit Agency (DCAA) auditors assist ACOs in making these determinations by conducting CIPRs.

(1) A CIPR is an in-depth evaluation of a contractor's—

(i) Insurance program;

(ii) Pension plans;

(iii) Other deferred compensation plans; and

(iv) Related policies, procedures, practices, and costs.

(2) A special CIPR is a joint DCMA/DCAA review that concentrates on specific areas of the contractor's insurance program, pension plan, or other deferred compensation plan.

(b) DCMA is the DoD Executive Agency for the performance of all CIPRs conducted under 242.7302.

[63 FR 40374, July 29, 1998, as amended at 65 FR 52953, Aug. 31, 2000]

242.7302 Requirements.

(a)(1) A CIPR shall be conducted only when—

(i) A contractor has \$40 million of qualifying sales to the Government during the contractor's preceding fiscal year; and

(ii) The ACO, with advice from DCMA insurance/pension specialists and DCAA auditors, determines a CIPR is needed based on a risk assessment of the contractor's past experience and current vulnerability.

(2) Qualifying sales are sales for which cost or pricing data were required under 10 U.S.C. 2306a, as implemented in FAR 15.403, or that are contracts priced on other than a firm-fixed-price or fixed-price with economic price adjustment basis. Sales include prime contracts, subcontracts, and modifications to such contracts and subcontracts.

(b) A special CIPR shall be performed for a contractor (including, but not limited to, a contractor meeting the requirements in paragraph (a) of this section) when any of the following circumstances exists, but only if the circumstance(s) may result in a material impact on Government contract costs:

(1) Information reveals a deficiency in the contractor's insurance/pension program.

(2) The contractor proposes or implements changes in its insurance, pension, or deferred compensation plans.

(3) The contractor is involved in a merger, acquisition, or divestiture.

(4) The Government needs to follow up on contractor implementation of prior CIPR recommendations.

(c) The DCAA auditor shall use relevant findings and recommendations of previously performed CIPRs in determining the scope of any audits of insurance and pension costs.

(d) When a Government organization believes that a review of the contractor's insurance/pension program should be performed, that organization should provide a recommendation for a review to the ACO. If the ACO concurs, the review should be performed as part of an ACO-initiated special CIPR or as part of a CIPR already scheduled for the near future.

[63 FR 40374, July 29, 1998, as amended at 65 FR 52953, Aug. 31, 2000]

242.7303 Responsibilities.

(a) The ACO is responsible for—

(1) Determining the need for a CIPR under 242.7302;

(2) Requesting and scheduling the reviews with the appropriate DCMA activity;

(3) Notifying the contractor of the proposed date and purpose of the review, and obtaining any preliminary data needed by the DCMA insurance/pension specialist or the DCAA auditor;

(4) Reviewing the CIPR report, advising the contractor of the recommendations contained therein, considering contractor comments, and rendering a decision on those recommendations;

(5) Providing other interested contracting officers copies of documents related to the CIPR;

(6) Ensuring adequate follow-up on all CIPR recommendations; and

(7) Performing contract administration responsibilities related to Cost Accounting Standards administration as described in FAR Subparts 30.2 and 30.6.

(b) The DCMA insurance/pension specialist is responsible for—

(1) Preparing and maintaining the schedule of CIPRs to be performed during the next 12 months and providing the military departments and DCAA a copy of the schedule;

(2) Issuing a technical report on the contractor's insurance/pension plans for incorporation into the final CIPR report based on an analysis of the contractor's pension program, insurance program, and other related data;

(3) Leading the team that conducts the review. Another individual may serve as the team leader when both the insurance/pension specialist and the individual agree. The team leader is responsible for—

(i) Maintaining complete documentation for CIPR reports;

(ii) To the extent possible, resolving discrepancies between audit reports and CIPR draft reports prior to releasing the final CIPR report;

(iii) Preparing and distributing the final CIPR report;

(iv) Providing the final audit report and/or the insurance/pension specialist's report as an attachment to the CIPR report; and

(v) Preparing a draft letter for the administrative contracting officer's use in notifying the contractor of CIPR results; and

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(4) When requested, advising administrative contracting officers and other Government representatives concerning contractor insurance/pension matters.

(c) The DCAA auditor is responsible for—

(1) Participating as a member of the CIPR team or serving as the team leader (see paragraph (b)(3) of this section);

(2) Issuing an audit report for incorporation into the final CIPR report based on an analysis of the contractor's books, accounting records, and other related data; and

(3) Performing contract audit responsibilities related to Cost Accounting Standards administration as described in FAR Subparts 30.2 and 30.6.

[63 FR 40375, July 29, 1998, as amended at 65 FR 52953, Aug. 31, 2000]

Subpart 242.74—Technical Representation at Contractor Facilities

242.7400 General.

(a) Contract administration offices (CAOs) are the designated representatives of DoD for the administration of contracts (see FAR 42.202 and 42.302). DoD activities shall use CAOs to perform contract administration service functions at or near contractor facilities (see 242.202(a)).

(b) Program managers may conclude that they need technical representation in contractor facilities to perform non-contract administration service (CAS) technical duties and to provide liaison, guidance, and assistance on systems and programs. In these cases, the program manager may assign technical representatives under the procedures in 242.7401.

(c) Program managers should carefully assess the number of technical representatives required to perform the non-CAS technical functions so as to keep the total assigned in-plant to the minimum necessary.

(d) A technical representative is a representative of a DoD program, project, or system office performing non-CAS technical duties at or near a contractor facility. A technical representative is not—

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(1) A representative of a contract administration or contract audit component; or

(2) A contracting officer's representative (COR) (see 201.602).

[56 FR 36437, July 31, 1999, as amended at 64 FR 61030, Nov. 9, 1999]

242.7401 Procedures.

(a) When the program, project, or system manager determines that a technical representative is required, the manager shall issue a letter of intent to the contract administration office commander listing the assignment location, starting and ending assignment dates, technical duties assigned, delegated authority, and support required from the contract administration office. Any issues regarding the assignment of a technical representative should be resolved promptly. However, final decision on the assignment remains with the program manager. Issues regarding the assignment of technical duties which cannot be resolved between the program office and the defense plant representative office will be escalated.

(b) The program, project, or system manager shall furnish the designated technical representative a letter of assignment of delegated technical duties, with copies to the contract administration office, the contracting officer, and contractor, at least 30 days before the assignment date (or termination date). Any changes to the requirements of the assignment letter will be made by a new letter of intent and processed in accordance with paragraph (a) of this section.

(c) The contract administration office normally provides the technical representative with office space, equipment, supplies, and part-time clerical support. The program, project, or system manager provides supervision, technical direction, administrative services (e.g., pay, travel, maintenance of personnel records), and, when required, full-time clerical support.

(d) The program manager or designee and the contract administration office, at the local level, shall negotiate a memorandum of agreement (MOA) delineating their functional administrative interrelationships, with annual updates as necessary. The agreements

may be included in an existing MOA, if one exists, or as a separate MOA.

(e) The technical representative shall keep the contract administration office commander fully informed of matters discussed with the contractor. The contract administration office shall also keep the technical representative fully informed of contractor discussions which relate to technical matters within the purview of the technical representative's assigned duties.

Subpart 242.75—Contractor Accounting Systems and Related Controls

SOURCE: 60 FR 29500, June 5, 1995, unless otherwise noted.

242.7500 Scope of subpart.

This subpart provides policies and procedures applicable to contractor accounting systems and related internal controls.

242.7501 Definition.

Internal controls means those policies and procedures established by contractor management to provide reasonable assurance that applicable laws and regulations are complied with and that actual and estimated costs are equitably allocated within the accounting system.

242.7502 Policy.

Contractors receiving cost-reimbursement or incentive type contracts, or contracts which provide for progress payments based on costs or on a percentage or stage of completion, shall maintain an accounting system and related internal controls throughout contract performance which provide reasonable assurance that—

- (a) Applicable laws and regulations are complied with;
- (b) The accounting system and cost data are reliable;
- (c) Risk of misallocations and mischarges are minimized; and
- (d) Contract allocations and charges are consistent with invoice procedures.

242.7503 Procedures.

(a) Upon receipt of an audit report identifying significant accounting sys-

tem or related internal control deficiencies, the ACO will—

- (1) Provide a copy of the report to the contractor and allow 30 days, or a reasonable extension, for the contractor to respond;
- (2) If the contractor agrees with the report, the contractor has 60 days from the date of initial notification to correct any identified deficiencies or submit a corrective action plan showing milestones and actions to eliminate the deficiencies.
- (3) If the contractor disagrees, the contractor should provide rationale in its written response.
- (4) The ACO will consider whether it is appropriate to suspend a percentage of progress payments or reimbursement of costs proportionate to the estimated cost risk to the Government, considering audit reports or other relevant input, until the contractor submits a corrective action plan acceptable to the ACO and corrects the deficiencies. (See FAR 32.503-6 (a) and (b) and FAR 42.302(a)(7)).

PART 243—CONTRACT MODIFICATIONS

Subpart 243.1—General

- Sec.
- 243.102 Policy.
- 243.105 Availability of funds.
- 243.107 Contract clause.
- 243.107-70 Notification of substantial impact on employment.
- 243.170 Identification of foreign military sale (FMS) requirements.
- 243.171 Obligation or deobligation of funds.

Subpart 243.2—Change Orders

- 243.204 Administration.
- 243.204-70 Certification of requests for equitable adjustment.
- 243.205 Contract clauses.
- 243.205-70 Engineering change proposals.
- 243.205-71 Pricing of contract modifications.
- 243.205-72 Requests for equitable adjustment.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36446, July 31, 1991, unless otherwise noted.