

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 742—CONTRACT ADMINISTRATION

Subpart 742.7—Indirect Cost Rates

Sec.

742.770 Negotiated indirect cost rate agreement.

Subpart 742.11—Production, Surveillance, and Reporting

742.1170 Performance monitoring and progress reporting.

742.1170-1 General.

742.1170-2 Applicability.

742.1170-3 Policy.

742.1170-4 Progress reporting requirements and contract clause.

Subpart 742.15—Contractor Performance Information

742.1501 [Reserved]

742.1502 Policy.

742.1503 Procedures.

AUTHORITY: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR, 1979 Comp., p. 435.

Subpart 742.7—Indirect Cost Rates

742.770 Negotiated indirect cost rate agreement.

Except for educational institutions having a cognizant agency (as defined in OMB Circular A-88, 44 FR 70094, 12/5/79) other than USAID, USAID may establish negotiated overhead rates in a Negotiated Indirect Cost Rate Agreement, executed by both parties. The Negotiated Indirect Cost Rate Agreement is automatically incorporated in each contract between the parties and shall specify: (a) The final rate(s), (b) the base(s) to which the rate(s) apply, (c) the period(s) for which the rate(s) apply, (d) the items treated as direct costs, and (e) the contract(s) to which the rate(s) apply. The Negotiated Indirect Cost Rate Agreement shall not change any monetary ceiling, obligation, or specific cost allowance or disallowance provided for in each contract between the parties.

[49 FR 13256, Apr. 3, 1984; 53 FR 50631, Dec. 16, 1988]

Subpart 742.11—Production, Surveillance, and Reporting

SOURCE: 72 FR 53163, Sept. 18, 2007, unless otherwise noted.

742.1170 Performance monitoring and progress reporting.

742.1170-1 General.

Performance monitoring is a function of contract administration used to determine contractor progress towards achieving the goals and objectives of the contract and to identify any factors that may delay or prevent the accomplishment of those goals and objectives. Performance monitoring requires USAID personnel, particularly the cognizant technical officer, to maintain adequate knowledge of the contractor's activities and progress in order to ensure that USAID's objectives, as stated in the contract's Statement of Work, will be achieved.

742.1170-2 Applicability.

(a) This section applies to USAID non-personal, professional/technical services contracts exceeding the simplified acquisition threshold, but may be applied to other USAID contracts, if the contracting officer and requiring office determine that doing so is in the best interests of the Agency. The contracting officer must ensure that this determination is documented in the contract file. This section does not apply to personal services contracts.

(b) The underlying principles of FAR 48 CFR subpart 42.11 apply to USAID contracts and are inherent to this section. However, not all of the specific requirements and terminology in FAR 48 CFR subpart 42.11 are compatible with the types of technical assistance contracts usually awarded by USAID. Therefore, this section 742.1170 applies when the requirements of FAR 48 CFR subpart 42.11 do not meet USAID requirements or are otherwise not appropriate.

(c) The progress reports discussed in this section are separate from the performance evaluation reports prepared

Agency for International Development

742.1502

in accordance with FAR 48 CFR subpart 42.15 and internal Agency procedures, although they may be used by USAID personnel or their authorized representatives when evaluating the contractor's performance. Furthermore, the policies, procedures, and limitations of this section do not apply to technical reports, studies, papers, etc., the acquisition of which may be part of or even the sole purpose of the contract.

742.1170-3 Policy.

(a) The contractor is responsible for timely contract performance. Performance monitoring by USAID does not obviate this responsibility.

(b) The requiring office, particularly the cognizant technical officer and the contracting officer, will determine how to monitor the contractor's performance to protect the Government's interests, by considering:

(1) The contract requirements for reporting progress;

(2) The contract performance schedule;

(3) The contractor's implementation plan or workplan;

(4) The contractor's history of contract performance;

(5) The contractor's experience with the services or supplies being provided under the contract;

(6) The contractor's financial capability;

(7) Any other factors the requiring office, particularly the cognizant technical officer and the contracting officer, considers appropriate and necessary to adequately monitor contractor performance (for example, the day-to-day working proximity of the cognizant technical officer or contracting officer to the contractor's place of performance).

(c) In monitoring contractor performance, the requiring office (particularly the cognizant technical officer and contracting officer) must utilize any of the contractor's existing systems or processes for monitoring progress, provided that doing so is not contrary to the terms of the contract. The requiring officer or cognizant technical officer must not require anything from the contractor that is outside the scope or terms of the contract or may

result in claims of waivers, of changes, or of other contract modifications. Further, progress reports shall not require information already available from other sources.

742.1170-4 Progress reporting requirements and contract clause.

(a) When the requiring office needs information on contract performance status on a regular basis, the contracting officer may require the contractor to submit periodic progress reports, tailored to address specific contract requirements but limited to only that information essential to USAID's needs in monitoring the contractor's progress.

(b) Because the cognizant technical officer is the individual most familiar with the contractor's performance, the contractor must submit the progress reports directly to the cognizant technical officer. The cognizant technical officer must review the reports and advise the contracting officer, in writing, of any recommended action, including any action needed to address potential or actual delays in performance. The cognizant technical officer must so advise the contracting officer in sufficient time, typically thirty days, for him or her to take any action that the contracting officer determines is appropriate. The requirements of this paragraph do not relieve the contractor of notification requirements identified elsewhere in the contract.

(c) The contracting officer must insert the clause at 752.242-70, Periodic Progress Reports, in solicitations and contracts that require progress reporting, as specified in this section. The contracting officer must include specific reporting instructions in the Schedule.

Subpart 742.15—Contractor Performance Information

SOURCE: 65 FR 36642, June 9, 2000, unless otherwise noted.

742.1501 [Reserved]

742.1502 Policy.

(a) USAID contracting officers shall report contractor performance information at least annually, employing

742.1503

the procedures prescribed by the NIH Contractor Performance System. (Access to the system by USAID contracting office personnel is authorized by the USAID Past Performance Coordinator, E-mail address: *AIDNET: Past Performance@op.spu@aidw/Internet: pastperformance@usaid.gov.*)

(b) Performance for personal services contracts awarded under AIDAR Appendices D and J shall not be evaluated under the contractor performance reporting procedures prescribed in FAR subpart 42.15.

[65 FR 36642, June 9, 2000; 65 FR 39470, June 26, 2000]

742.1503 Procedures.

(a) [Reserved]

(b) Personal services contractors shall be recognized as Government personnel for the purposes of the restriction on access to contractor performance information in FAR 42.1503(b).

PART 745—GOVERNMENT PROPERTY

AUTHORITY: Sec. 621, Pub. L. 787-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

Subpart 745.1—General

745.106 Contract clauses.

(a) The contracting officer shall insert the clause at 752.245-71 in all contracts under which the contractor will acquire property for use overseas and the contract funds were obligated under a Strategic Objective agreement (or similar agreement) with the cooperating country.

(b) The contracting officer shall insert the applicable clause as required in (48 CFR) FAR 45.106 in all contracts under which the contractor will acquire property with funds not already obligated under a Strategic Objective agreement (or similar agreement) with the cooperating country.

[64 FR 5008, Feb. 2, 1999]

48 CFR Ch. 7 (10-1-10 Edition)

PART 747—TRANSPORTATION

AUTHORITY: Sec. 621, Pub. L. 98-195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

Subpart 747.5—Ocean Transportation by U.S.-Flag Vessels

747.507 Contract clauses.

Contracting officers shall insert the clause at 752.247-70 in solicitations and contracts solely for ocean transportation services, and in solicitations and contracts for goods and ocean transportation services when the ocean transportation will be fixed at the time the contract is awarded. Contracting Officers shall use (48 CFR) FAR 52.247-64 as prescribed in (48 CFR) FAR 27.507(a) in other situations.

[64 FR 5008, Feb. 2, 1999]

PART 749—TERMINATION OF CONTRACTS

Subpart 749.1—General Principles

Sec.

749.100 Scope of subpart.

749.111 Review of proposed settlements.

749.111-70 Termination settlement review boards.

749.111-71 Required review and approval.

AUTHORITY: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR, 1979 Comp., p. 435.

SOURCE: 49 FR 13256, Apr. 3, 1984, unless otherwise noted.

Subpart 749.1—General Principles

749.100 Scope of subpart.

The Foreign Aid and Related Agencies Appropriation Act, 1963, and subsequent appropriation Acts, have imposed the following requirement:

None of the funds appropriated or made available pursuant to this Act for carrying out the Foreign Assistance Act of 1961, as amended, may be used for making payments on any contract for procurement to which the United States is a party entered into after the date of enactment of this Act which