

Health and Human Services

342.7101-2

342.7003-2 Procedures to be followed when withholding payments.

(a) When appropriate, the Contracting Officer shall withhold any contract payment when a required report is overdue or the contractor fails to perform or deliver required work or services. When making the determination to withhold contract payments in accordance with the Withholding of Contract Payments clause, the Contracting Officer shall immediately notify the servicing finance office in writing of the determination to withhold payments. The notice of suspension shall contain all information necessary for the finance office to identify the contract—*i.e.*, contract number, task/delivery order number, and contractor name and address.

(b) The Contracting Officer shall immediately notify the contractor in writing that payments have been suspended until the default or failure is cured.

(c) When the contractor cures the default or failure, the Contracting Officer shall immediately notify, in writing, all recipients of the notice of withholding that the withholding is to be lifted and contract payments are to be resumed.

(d) When taking any actions regarding the withholding of payments, the Contracting Officer shall not waive any of the Government's rights when corresponding with the contractor.

Subpart 342.71—Administrative Actions for Cost Overruns

342.7100 Scope of subpart.

This subpart sets forth the procedures to follow when a cost overrun is anticipated. A cost overrun occurs when the allowable actual cost of performing a cost-reimbursement type contract exceeds the total estimated cost specified in the contract.

342.7101 Contract administration.

342.7101-1 General.

Upon receipt of information that a contractor's accumulated cost and projected expenditures will exceed the limit of funds obligated by the contract, the Contracting Officer shall coordinate immediately with the appro-

priate program office to determine whether the contract should be modified or terminated. If the Contracting Officer receives information from a source other than the contractor that a cost overrun is anticipated, the Contracting Officer shall verify the information with the contractor and remind the contractor of the notification requirements of the Limitation of Cost clause.

342.7101-2 Procedures.

(a) Upon notification that a cost overrun is anticipated, the Contracting Officer shall inform the contractor to submit a request for additional funds, which shall include the following:

- (1) Name and address of contractor.
- (2) Contract number and expiration date.
- (3) Contract item(s) and amount(s) creating overrun.
- (4) The elements of cost which changed from the original estimate—*i.e.*, labor, material, travel, and overhead, to be furnished in the following format:
 - (i) Original estimate.
 - (ii) Costs incurred to date.
 - (iii) Estimated cost to completion.
 - (iv) Revised estimate.
 - (v) Amount of adjustment.
- (5) The factors responsible for the increase (e.g., error in estimate, changed conditions).

(6) The latest date by which funds must be available for commitment to avoid contract slippage, work stoppage, or other program impairment.

(b) When the contractor submits a notice of a projected overrun, the Contracting Officer shall—

- (1) Immediately advise the appropriate program office and furnish the office a copy of the notice and any other data received;
- (2) Request audit or cost advisory services, and technical support, as necessary, for evaluation of information and data received; and
- (3) Maintain continuous communications with the program office to obtain: a timely written decision and justification to continue the contract with additional funds (including verification of funds availability); or a timely written decision and request to terminate the contract.

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(c) After receiving the decision by the program office, the Contracting Officer shall promptly notify the contractor in writing of the following:

(1) The specified amount of additional funds allotted to the contract.

(2) Work shall be discontinued when the allotted funds are exhausted, and any work performed after that date is at the contractor's risk.

(3) The Government is considering whether to allot additional funds to the contract and will notify the contractor as soon as possible, but that any work performed after the currently allotted funds are exhausted is at the contractor's risk. (Timely, formal notification of the Government's intention is essential to preclude loss of contractual rights in the event of dispute, termination, or litigation.)

(d) If the program office permits, the Contracting Officer shall refrain from issuing any contractual documents that require new work or an extension

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of time, pending resolution of the projected overrun.

342.7102 Contract modifications.

(a) Modifications to contracts containing the Limitation of Cost clause shall include either—

(1) A provision which: Increases the estimated or ceiling amount in the Limitation of Cost clause of the contract; and states that such clause will thereafter apply to the increased amount; or

(2) A provision stating that the estimated or ceiling amount in the Limitation of Cost clause is not changed by the modification.

(b) The Contracting Officer shall not change a fixed-fee in a contract when funding a cost overrun. The Contracting Officer shall make changes in fixed-fee only to reflect changes in the SOW/PWS that justify an increase or decrease in fee.