

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

Sec.

242.002 Interagency agreements.

Subpart 242.2—Contract Administration Services

242.200–70 Scope of subpart.

242.202 Assignment of contract administration.

Subpart 242.3—Contract Administration Office Functions

242.301 General.

242.302 Contract administration functions.

Subpart 242.5—Postaward Orientation

242.503 Postaward conferences.

242.503–2 Post-award conference procedure.

Subpart 242.6—Corporate Administrative Contracting Officer

242.602 Assignment and location.

Subpart 242.7—Indirect Cost Rates

242.705 Final indirect cost rates.

242.705–1 Contracting officer determination procedure.

242.705–2 Auditor determination procedure.

242.771 Independent research and development and bid and proposal costs.

242.771–1 Scope.

242.771–2 Policy.

242.771–3 Responsibilities.

Subpart 242.8—Disallowance of Costs

242.803 Disallowing costs after incurrence.

Subpart 242.11—Production Surveillance and Reporting

242.1104 Surveillance requirements.

242.1105 Assignment of criticality designator.

242.1106 Reporting requirements.

242.1107 Contract clause.

Subpart 242.12—Novation and Change-of-Name Agreements

242.1203 Processing agreements.

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

SUBPART 242.70—CONTRACTOR BUSINESS SYSTEMS

Sec.

242.7000 Contractor business system deficiencies.

242.7001 Contract clause.

Subpart 242.71—Voluntary Refunds

242.7100 General.

Subpart 242.72—Contractor Material Management and Accounting System

242.7200 Scope of subpart.

242.7201 Definitions.

242.7202 Policy.

242.7203 Review procedures.

242.7204 Contract clause.

Subpart 242.73—Contractor Insurance/Pension Review

242.7301 General.

242.7302 Requirements.

242.7303 Responsibilities.

Subpart 242.74—Technical Representation at Contractor Facilities

242.7400 General.

242.7401 Procedures.

Subpart 242.75—Contractor Accounting Systems and Related Controls

242.7501 Definitions.

242.7502 Policy.

242.7503 Contract clause.

AUTHORITY: 41 U.S.C. 1303 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

242.200-70

(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 Business Team. Contract administration offices provide services only upon request from the CCP. The CCP shall follow the procedures at PGI 242.002(S-70)(iii).

[64 FR 61029, Nov. 9, 1999, as amended at 65 FR 52952, Aug. 31, 2000; 65 FR 63804, Oct. 25, 2000; 70 FR 67920, Nov. 9, 2005]

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 con-

48 CFR Ch. 2 (10-1-12 Edition)

tracting 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) Management and professional 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);
- (Q) Operation and maintenance of, or installation of equipment at, military test ranges, facilities, and installations; and
- (R) The Defense Energy Support Center, Defense Logistics Agency.

(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 <https://pubapp.dema.mil/CASD/main.jsp>). 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; 66 FR 49861, Oct. 1, 2001; 66 FR 63335, Dec. 6, 2001; 70 FR 52034, Sept. 1, 2005; 70 FR 67920, Nov. 9, 2005; 77 FR 23632, Apr. 20, 2012]

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) (7) See 242.7502 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).

(12) Also perform all payment administration in accordance with any applicable payment clauses.

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

(B) Follow the procedures at PGI 242.302(a)(13)(B) for designation of payment offices.

(39) See 223.370 for contract administration responsibilities on contracts for ammunition and explosives.

(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.

(S-71) DCMA has responsibility for reviewing earned value management system (EVMS) plans and for verifying initial and continuing contractor compliance with DoD EVMS criteria. The contracting officer shall not retain this function.

242.503

(S-72) Ensure implementation of the Synchronized Predeployment and Operational Tracker (SPOT) by the contractor and maintain surveillance over contractor compliance with SPOT business rules available at the Web site provided at PGI 225.7402-5(a)(iv) for contracts incorporating the clause at 252.225-7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States.

(S-73) Maintain surveillance over contractor compliance with trafficking in persons requirements for all DoD contracts for services incorporating the clause at FAR 52.222-50, Combating Trafficking in Persons, and, when necessary, its Alternate I, as identified in the clause prescription at FAR 22.1705. (See PGI 222.1703.)

(S-74) Approve or disapprove contractor business systems, as identified in the clause at 252.242-7005, Contractor Business Systems.

(S-75) See PGI 242.302(a)(S-75) for guidelines for monitoring contractor costs.

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

[71 FR 44928, Aug. 8, 2006, as amended at 76 FR 36884, June 23, 2011; 76 FR 71830, Nov. 18, 2011; 77 FR 11365, Feb. 24, 2012; 77 FR 23632, Apr. 20, 2012]

Subpart 242.5—Postaward Orientation

242.503 Postaward conferences.

242.503-2 Post-award conference procedure.

(a) DD Form 1484, Post-Award Conference Record, may be used in conducting the conference and in preparing the conference report.

(b) For contracts that include the clause at 252.234-7004, Cost and Software Data Reporting, postaward conferences shall include a discussion of the contractor's standard cost and software data reporting (CSDR) process that satisfies the guidelines contained in the DoD 5000.04-M-1, CSDR Manual, and the requirements in the Government-approved CSDR plan for the con-

48 CFR Ch. 2 (10-1-12 Edition)

tract, DD Form 2794, and related Resource Distribution Table.

[70 FR 67920, Nov. 9, 2005, as amended at 75 FR 71562, Nov. 24, 2010]

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 and Acquisition Policy.

[56 FR 36437, July 31, 1991, as amended at 68 FR 7440, Feb. 14, 2003]

Subpart 242.7—Indirect Cost Rates

242.705 Final indirect cost rates.

242.705-1 Contracting officer determination procedure.

(a) *Applicability and responsibility.* (1) The corporate administrative contracting officer and individual administrative contracting officers shall jointly decide how to conduct negotiations. Follow the procedures at PGI 242.705-1(a)(1) when negotiations are conducted on a coordinated basis.

[70 FR 67920, Nov. 9, 2005]

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.

[56 FR 36437, July 31, 1991, as amended at 60 FR 61599, Nov. 30, 1995; 64 FR 61030, Nov. 9, 1999; 70 FR 67920, Nov. 9, 2005]

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]

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 and Acquisition Policy, 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; 68 FR 7440, Feb. 14, 2003]

Subpart 242.8—Disallowance of Costs

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 electronically or by other delivery methods as directed by the terms of the contract;

(B) Approving interim vouchers that were selected using sampling methodologies for provisional payment and sending them to the disbursing office after a pre-payment review. Interim vouchers not selected for a pre-payment review will be considered to be provisionally approved and will be sent directly to the disbursing office. All provisionally approved interim vouchers are subject to a later audit of actual costs incurred;

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

(D) 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; 77 FR 52259, Aug. 29, 2012]

Subpart 242.11—Production Surveillance and Reporting

242.1104 Surveillance requirements.

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

242.1105

(i) Shall perform production surveillance on all contractors that have Criticality Designator A or B contracts;

(ii) Shall not perform production surveillance on contractors that have only Criticality Designator C contracts, unless specifically requested by the contracting officer; and

(iii) When production surveillance is required, shall—

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

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

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

(D) Monitor contract progress and identify potential contract delinquencies in accordance with the production surveillance plan. Contracts with Criticality Designator C are exempt from this requirement unless specifically requested by the contracting officer.

[69 FR 31912, June 8, 2004]

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 4140.1-R, DoD Materiel Management Regulation; and

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

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

[56 FR 36437, July 31, 1991, as amended at 67 FR 61516, Oct. 1, 2002]

242.1106 Reporting requirements.

(a) See DoDI 5000.2, Operation of the Defense Acquisition System, for reporting requirements for defense tech-

48 CFR Ch. 2 (10–1–12 Edition)

nology projects and 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, as amended at 70 FR 14575, Mar. 23, 2005; 73 FR 21848, Apr. 23, 2008]

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.

Subpart 242.12—Novation and Change-of-Name Agreements

242.1203 Processing agreements.

The responsible contracting officer shall process and execute novation and change-of-name agreements in accordance with the procedures at PGI 242.1203.

[70 FR 67920, Nov. 9, 2005]

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

(i) 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(i):

“(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 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; 65 FR 63805, Oct. 25, 2000]

SUBPART 242.70—CONTRACTOR BUSINESS SYSTEMS

SOURCE: 76 FR 28868, May 18, 2011, unless otherwise noted.

242.7000 Contractor business system deficiencies.

(a) *Definitions.* As used in this subpart—

Acceptable contractor business systems and *contractor business systems* are defined in the clause at 252.242-7005, Contractor Business Systems.

Covered contract means a contract that is subject to the Cost Accounting Standards under 41 U.S.C. chapter 15, as implemented in regulations found at 48 CFR 9903.201-1 (see the FAR Appendix) (10 U.S.C. 2302 note, as amended by section 816 of Pub. L. 112-81).

Significant deficiency is defined in the clause at 252.242-7005, Contractor Business Systems.

(b) *Determination to withhold payments.* If the contracting officer makes a final determination to disapprove a contractor’s business system in accordance with the clause at 252.242-7005, Contractor Business Systems, the contracting officer shall—

(1) In accordance with agency procedures, identify one or more covered contracts containing the clause at 252.242-7005, Contractor Business Systems, from which payments will be withheld. When identifying the covered contracts from which to withhold payments, the contracting officer shall ensure that the total amount of payment withholding under 252.242-7005, does not exceed 10 percent of progress payments, performance-based payments, and interim payments under cost-reimbursement, labor-hour, and time-and-materials contracts billed under each of the identified covered contracts. Similarly, the contracting officer shall ensure that the total amount of payment withholding under the clause at 252.242-7005, Contractor Business Systems, for each business system does not exceed five percent of progress payments, performance-based payments, and interim payments under cost-reimbursement, labor-hour, and time-and-materials contracts billed under each of the identified covered contracts. The contracting officer has the sole discretion to identify the covered contracts from which to withhold payments.

(2) Promptly notify the contractor, in writing, of the contracting officer’s determination to implement payment withholding in accordance with the clause at 252.242-7005, Contractor Business Systems. The notice of payment withholding shall be included in the

contracting officer's written final determination for the contractor business system and shall inform the contractor that—

(i) Payments shall be withheld from the contract or contracts identified in the written determination in accordance with the clause at 252.242-7005, Contractor Business Systems, until the contracting officer determines that there are no remaining significant deficiencies; and

(ii) The contracting officer reserves the right to take other actions within the terms and conditions of the contract.

(3) Provide all contracting officers administering the selected contracts from which payments will be withheld, a copy of the determination. The contracting officer shall also provide a copy of the determination to the auditor; payment office; affected contracting officers at the buying activities; and cognizant contracting officers in contract administration activities.

(c) *Monitoring contractor's corrective action.* The contracting officer, in consultation with the auditor or functional specialist, shall monitor the contractor's progress in correcting the deficiencies. The contracting officer shall notify the contractor of any decision to decrease or increase the amount of payment withholding in accordance with the clause at 252.242-7005, Contractor Business Systems.

(d) *Correction of significant deficiencies.* (1) If the contractor notifies the contracting officer that the contractor has corrected the significant deficiencies, the contracting officer shall request the auditor or functional specialist to review the correction to verify that the deficiencies have been corrected. If, after receipt of verification, the contracting officer determines that the contractor has corrected all significant deficiencies as directed by the contracting officer's final determination, the contracting officer shall discontinue the withholding of payments, release any payments previously withheld, and approve the system, unless other significant deficiencies remain.

(2) Prior to the receipt of verification, the contracting officer may discontinue withholding payments

pending receipt of verification, and release any payments previously withheld, if the contractor submits evidence that the significant deficiencies have been corrected, and the contracting officer, in consultation with the auditor or functional specialist, determines that there is a reasonable expectation that the corrective actions have been implemented and are expected to correct the significant deficiencies.

(3) Within 90 days of receipt of the contractor notification that the contractor has corrected the significant deficiencies, the contracting officer shall—

(i) Make a determination that—

(A) The contractor has corrected all significant deficiencies as directed by the contracting officer's final determination in accordance with paragraph (d)(1) of this section;

(B) There is a reasonable expectation that the corrective actions have been implemented in accordance with paragraph (d)(2) of this section; or

(C) The contractor has not corrected all significant deficiencies as directed by the contracting officer's final determination in accordance with paragraph (d)(1) of this section, or there is not a reasonable expectation that the corrective actions have been implemented in accordance with paragraph (d)(2) of this section; or

(ii) Reduce withholding directly related to the significant deficiencies covered under the corrective action plan by at least 50 percent of the amount being withheld from progress payments and performance-based payments, and direct the contractor, in writing, to reduce the percentage withheld on interim cost vouchers by at least 50 percent, until the contracting officer makes a determination in accordance with paragraph (d)(3)(i) of this section.

(4) If, at any time, the contracting officer determines that the contractor has failed to correct the significant deficiencies identified in the contractor's notification, the contracting officer will continue, reinstate, or increase withholding from progress payments and performance-based payments, and direct the contractor, in writing, to continue, reinstate, or increase the

percentage withheld on interim cost vouchers to the percentage initially withheld, until the contracting officer determines that the contractor has corrected all significant deficiencies as directed by the contracting officer's final determination.

(e) For sample formats for written notifications of contracting officer determinations to initiate payment withholding, reduce payment withholding, and discontinue payment withholding in accordance with the clause at DFARS 252.242-7005, Contractor Business Systems, see PGI 242.7000.

[76 FR 28868, May 18, 2011, as amended at 77 FR 11365, Feb. 24, 2012]

242.7001 Contract clause.

Use the clause at 252.242-7005, Contractor Business Systems, in solicitations and contracts (other than in contracts with educational institutions, Federally Funded Research and Development Centers (FFRDCs), or University Associated Research Centers (UARCs) operated by educational institutions) when—

(a) The resulting contract will be a covered contract as defined in 242.7000(a); and

(b) The solicitation or contract includes any of the following clauses:

- (1) 252.215-7002, Cost Estimating System Requirements.
- (2) 252.234-7002, Earned Value Management System.
- (3) 252.242-7004, Material Management and Accounting System.
- (4) 252.242-7006, Accounting System Administration.
- (5) 252.244-7001, Contractor Purchasing System Administration.
- (6) 252.245-7003, Contractor Property Management System Administration.

[76 FR 28868, May 18, 2011, as amended at 77 FR 11366, Feb. 24, 2012]

Subpart 242.71—Voluntary Refunds

242.7100 General.

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

low the procedures at PGI 242.7100 for voluntary refunds.

[70 FR 67920, Nov. 9, 2005]

Subpart 242.72—Contractor Material Management and Accounting System

SOURCE: 65 FR 77833, Dec. 13, 2000, unless otherwise noted.

242.7200 Scope of subpart.

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

(b) The policies, procedures, and standards in this subpart—

(1) Apply only when the contractor has contracts exceeding the simplified acquisition threshold that are not for the acquisition of commercial items and are either—

- (i) Cost-reimbursement contracts; or
- (ii) Fixed-price contracts with progress payments made on the basis of costs incurred by the contractor as work progresses under the contract; and

(2) Do not apply to small businesses, educational institutions, or nonprofit organizations.

242.7201 Definitions.

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

Significant deficiency is defined in the clause at 252.242.7004, Material Management and Accounting System.

[76 FR 28869, May 18, 2011]

242.7202 Policy.

(a) DoD policy is for its contractors to have an MMAS that conforms to the standards in paragraph (e) of the clause at 252.242-7004, Material Management and Accounting System, so that the system—

- (1) Reasonably forecasts material requirements;

(2) Ensures the costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements; and

(3) Maintains a consistent, equitable, and unbiased logic for costing of material transactions.

(b) The cognizant contracting officer, in consultation with the auditor and functional specialist, if appropriate, shall—

(1) Determine the acceptability of the contractor's MMAS and approve or disapprove the system; and

(2) Pursue correction of any deficiencies.

(c) In evaluating the acceptability of the contractor's MMAS, the contracting officer, in consultation with the auditor and functional specialist, if appropriate, shall determine whether the contractor's MMAS complies with the system criteria for an acceptable MMAS as prescribed in the clause at 252.242-7004, Material Management and Accounting System.

[76 FR 28869, May 18, 2011]

242.7203 Review procedures.

(a) *Criteria for conducting reviews.* Conduct an MMAS review when—

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

(2) The administrative contracting officer (ACO), with advice from the auditor, determines an MMAS review is needed based on a risk assessment of the contractor's past experience and current vulnerability.

(b) *Qualifying sales.* 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.

(c) *Disposition of findings—(1) Reporting of findings.* The auditor or functional specialist shall document findings and recommendations in a report to the contracting officer. If the auditor or functional specialist identifies any significant MMAS deficiencies, the report shall describe the deficiencies in

sufficient detail to allow the contracting officer to understand the deficiencies.

(2) *Initial determination.* (i) The contracting officer shall review findings and recommendations and, if there are no significant deficiencies, shall promptly notify the contractor, in writing, that the contractor's MMAS is acceptable and approved; or

(ii) If the contracting officer finds that there are one or more significant deficiencies (as defined in the clause at 252.242-7004, Material Management and Accounting System) due to the contractor's failure to meet one or more of the MMAS system criteria in the clause at 252.242-7004, Material Management and Accounting System, the contracting officer shall—

(A) Promptly make an initial written determination on any significant deficiencies and notify the contractor, in writing, providing a description of each significant deficiency in sufficient detail to allow the contractor to understand the deficiency;

(B) Request the contractor to respond, in writing, to the initial determination within 30 days; and

(C) Promptly evaluate the contractor's response to the initial determination in consultation with the auditor or functional specialist, and make a final determination.

(3) *Final determination.* (i) The ACO shall make a final determination and notify the contractor that—

(A) The contractor's MMAS is acceptable and approved, and no deficiencies remain, or

(B) Significant deficiencies remain. The notice shall identify any remaining significant deficiencies, and indicate the adequacy of any proposed or completed corrective action. The contracting officer shall—

(1) Request that the contractor, within 45 days of receipt of the final determination, either correct the deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the deficiencies;

(2) Disapprove the system in accordance with the clause at 252.242-7004, Material Management and Accounting System; and

(3) Withhold payments in accordance with the clause at 252.242-7005, Contractor Business Systems, if the clause is included in the contract.

(ii) Follow the procedures relating to monitoring a contractor's corrective action and the correction of significant deficiencies in PGI 242.7203.

(d) *System approval.* The contracting officer shall promptly approve a previously disapproved MMAS and notify the contractor when the contracting officer determines that there are no remaining significant deficiencies.

(e) *Contracting officer notifications.* The cognizant contracting officer shall promptly distribute copies of a determination to approve a system, disapprove a system and withhold payments, or approve a previously disapproved system and release withheld payments to the auditor; payment office; affected contracting officers at the buying activities; and cognizant contracting officers in contract administration activities.

[65 FR 77833, Dec. 13, 2000, as amended at 76 FR 28869, May 18, 2011]

242.7204 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—

(a) Are not awarded to small businesses, educational institutions, or nonprofit organizations; and

(b) Are either—

(1) Cost-reimbursement contracts; or

(2) Fixed-price contracts with progress payments made on the basis of costs incurred by the contractor as work progresses under the contract.

Subpart 242.73—Contractor Insurance/Pension Review

242.7301 General.

(a) The administrative contracting officer (ACO) is responsible for determining the allowability of insurance/pension costs in Government contracts and for determining the need for a Contractor/Insurance Pension Review (CIPR). Defense Contract Management Agency (DCMA) insurance/pension spe-

cialists and Defense Contract Audit Agency (DCAA) auditors assist ACOs in making these determinations, conduct CIPRs when needed, and perform other routine audits as authorized under FAR 42.705 and 52.215-2. A CIPR is a DCMA/DCAA joint review that—

(1) Provides an in-depth evaluation of a contractor's—

(i) Insurance programs;

(ii) Pension plans;

(iii) Other deferred compensation plans; and

(iv) Related policies, procedures, practices, and costs; or

(2) Concentrates on specific areas of the contractor's insurance programs, pension plans, or other deferred compensation plans.

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

(c) DCAA is the DoD agency designated for the performance of contract audit responsibilities related to Cost Accounting Standards administration as described in FAR Subparts 30.2 and 30.6 as they relate to a contractor's insurance programs, pension plans, and other deferred compensation plans.

[71 FR 9273, Feb. 23, 2006]

242.7302 Requirements.

(a)(1) An in-depth CIPR as described at DFARS 242.7301(a)(1) shall be conducted only when—

(i) A contractor has \$50 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 that concentrates on specific areas of a contractor's insurance programs, pension plans, or

242.7303

other deferred compensation plans 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.

[75 FR 71565, Nov. 24, 2010]

242.7303 Responsibilities.

Follow the procedures at PGI 242.7303 when conducting a CIPR.

[71 FR 9273, Feb. 23, 2006]

Subpart 242.74—Technical Representation at Contractor Facilities

242.7400 General.

(a) 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.

(b) 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—

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

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

[70 FR 67921, Nov. 9, 2005]

242.7401 Procedures.

When the program, project, or system manager determines that a technical representative is required, follow the procedures at PGI 242.7401.

[70 FR 67921, Nov. 9, 2005]

48 CFR Ch. 2 (10–1–12 Edition)

Subpart 242.75—Contractor Accounting Systems and Related Controls

SOURCE: 76 FR 28870, May 18, 2011, unless otherwise noted.

242.7501 Definitions.

As used in this subpart—

Acceptable accounting system, and *accounting system* are defined in the clause at 252.242-7006, Accounting System Administration.

Significant deficiency is defined in the clause at 252.242-7006, Accounting System Administration.

242.7502 Policy.

(a) Contractors receiving cost-reimbursement, incentive type, time-and-materials, or labor-hour contracts, or contracts which provide for progress payments based on costs or on a percentage or stage of completion, shall maintain an accounting system.

(b) The cognizant contracting officer, in consultation with the auditor or functional specialist, shall—

(1) Determine the acceptability of a contractor's accounting system and approve or disapprove the system; and

(2) Pursue correction of any deficiencies.

(c) In evaluating the acceptability of a contractor's accounting system, the contracting officer, in consultation with the auditor or functional specialist, shall determine whether the contractor's accounting system complies with the system criteria for an acceptable accounting system as prescribed in the clause at 252.242-7006, Accounting System Administration.

(d) *Disposition of findings*— (1) *Reporting of findings*. The auditor shall document findings and recommendations in a report to the contracting officer. If the auditor identifies any significant accounting system deficiencies, the report shall describe the deficiencies in sufficient detail to allow the contracting officer to understand the deficiencies. Follow the procedures at PGI 242.7502 for reporting of deficiencies.

(2) *Initial determination*. (i) The contracting officer shall review findings and recommendations and, if there are no significant deficiencies, shall

promptly notify the contractor, in writing, that the contractor's accounting system is acceptable and approved; or

(ii) If the contracting officer finds that there are one or more significant deficiencies (as defined in the clause at 252.242-7006, Accounting System Administration) due to the contractor's failure to meet one or more of the accounting system criteria in the clause at 252.242-7006, the contracting officer shall—

(A) Promptly make an initial written determination on any significant deficiencies and notify the contractor, in writing, providing a description of each significant deficiency in sufficient detail to allow the contractor to understand the deficiency;

(B) Request the contractor to respond, in writing, to the initial determination within 30 days; and

(C) Promptly evaluate the contractor's response to the initial determination, in consultation with the auditor or functional specialist, and make a final determination.

(3) *Final determination.* (i) The contracting officer shall make a final determination and notify the contractor, in writing, that—

(A) The contractor's accounting system is acceptable and approved, and no significant deficiencies remain, or

(B) Significant deficiencies remain. The notice shall identify any remaining significant deficiencies, and indicate the adequacy of any proposed or completed corrective action. The contracting officer shall—

(1) Request that the contractor, within 45 days of receipt of the final determination, either correct the deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the deficiencies;

(2) Make a determination to disapprove the system in accordance with the clause at 252.242-7006, Accounting System Administration; and

(3) Withhold payments in accordance with the clause at 252.242-7005, Contractor Business Systems, if the clause is included in the contract.

(ii) Follow the procedures relating to monitoring a contractor's corrective

action and the correction of significant deficiencies in PGI 242.7502.

(e) *System approval.* The contracting officer shall promptly approve a previously disapproved accounting system and notify the contractor when the contracting officer determines that there are no remaining significant deficiencies.

(f) *Contracting officer notifications.* The cognizant contracting officer shall promptly distribute copies of a determination to approve a system, disapprove a system and withhold payments, or approve a previously disapproved system and release withheld payments to the auditor; payment office; affected contracting officers at the buying activities; and cognizant contracting officers in contract administration activities.

(g) *Mitigating the risk of accounting system deficiencies on specific proposals.*

(1) Field pricing teams shall discuss identified accounting system deficiencies and their impact in all reports on contractor proposals until the deficiencies are resolved.

(2) The contracting officer responsible for negotiation of a proposal generated by an accounting system with an identified deficiency shall evaluate whether the deficiency impacts the negotiations. If it does not, the contracting officer should proceed with negotiations. If it does, the contracting officer should consider other alternatives, *e.g.*—

(i) Allowing the contractor additional time to correct the accounting system deficiency and submit a corrected proposal;

(ii) Considering another type of contract;

(iii) Using additional cost analysis techniques to determine the reasonableness of the cost elements affected by the accounting system's deficiency;

(iv) Reducing the negotiation objective for profit or fee; or

(v) Including a contract (reopener) clause that provides for adjustment of the contract amount after award.

(3) The contracting officer who incorporates a reopener clause into the contract is responsible for negotiating price adjustments required by the

242.7503

clause. Any reopener clause necessitated by an accounting system deficiency should—

(i) Clearly identify the amounts and items that are in question at the time of negotiation;

(ii) Indicate a specific time or subsequent event by which the contractor will submit a supplemental proposal, including certified cost or pricing data, identifying the cost impact adjustment necessitated by the deficient accounting system;

(iii) Provide for the contracting officer to adjust the contract price unilaterally if the contractor fails to submit the supplemental proposal; and

(iv) Provide that failure of the Government and the contractor to agree to the price adjustment shall be a dispute under the Disputes clause.

[76 FR 28870, May 18, 2011, as amended at 77 FR 11366, Feb. 24, 2012]

242.7503 Contract clause.

Use the clause at 252.242-7006, Accounting System Administration, in solicitations and contracts when contemplating—

(a) A cost-reimbursement, incentive type, time-and-materials, or labor-hour contract;

(b) A contract with progress payments made on the basis of costs incurred by the contractor or on a percentage or stage of completion.]

[76 FR 28870, May 18, 2011, as amended at 77 FR 11366, Feb. 24, 2012]

PART 243—CONTRACT MODIFICATIONS

Subpart 243.1—General

Sec.

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.

243.172 Application of modifications.

Subpart 243.2—Change Orders

243.204 Administration.

243.204-70 Definitization of change orders

243.204-70-2 Price ceiling.

243.204-70-4 Limitations on obligations.

243.204-70-5 Exceptions.

243.204-70-6 Allowable profit.

243.204-70-7 Plans and reports.

48 CFR Ch. 2 (10-1-12 Edition)

243.204-71 Certification of requests for equitable adjustment.

243.205 Contract clauses.

243.205-70 Pricing of contract modifications.

243.205-71 Requests for equitable adjustment.

243.205-72 Unpriced change orders.

AUTHORITY: 41 U.S.C. 1303 and 48 CFR chapter 1.

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

Subpart 243.1—General

243.107-70 Notification of substantial impact on employment.

The Secretary of Defense is required to notify the Secretary of Labor if a modification of a major defense contract or subcontract will have a substantial impact on employment. The clause prescribed at 249.7003(c) requires that the contractor notify its employees, its subcontractors, and State and local officials when a contract modification will have a substantial impact on employment.

[56 FR 67220, Dec. 30, 1991, as amended at 70 FR 67922, Nov. 9, 2005]

243.170 Identification of foreign military sale (FMS) requirements.

Follow the procedures at PGI 243.170 for identifying contract modifications that add FMS requirements.

[70 FR 67922, Nov. 9, 2005]

243.171 Obligation or deobligation of funds.

Follow the procedures at PGI 243.171 when obligating or deobligating funds.

[70 FR 67922, Nov. 9, 2005]

243.172 Application of modifications.

Follow the procedures in 204.7007 for determining the sequence for application of modifications to a contract or order.

[77 FR 30368, May 22, 2012]

Subpart 243.2—Change Orders

243.204 Administration.

Follow the procedures at PGI 243.204 for administration of change orders.

[75 FR 48277, Aug. 10, 2010]