

## SUBCHAPTER G—CONTRACT MANAGEMENT

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SOURCE: 74 FR 62398, Nov. 27, 2009, unless otherwise noted.

#### Subpart 342.3—Contract Administration Office Functions

##### 342.302 Contract administration functions.

(c)(1) In multiple-year contracts or orders, the OPDIV's Section 508 Official or designee, as well as the Contracting Officer and COTR, shall review and approve all Section 508 Annual Reports before the Contracting Officer makes final payment or any option is exercised under any applicable contract/order. In contracts/orders of 1 year or less in duration, the aforementioned officials shall review and approve the Section 508 conformance certification before final payment is made. The Contracting Officer also shall ensure that the report and all related approvals are

made a part of the official contract/order file.

(2) The Contracting Officer shall insert the clause in 352.242-70, Key Personnel, in solicitations and contracts when the Contracting Officer will designate contractor key personnel. *See FAR 35.015* for additional information regarding key personnel when contracting for R & D.

(3) The Contracting Officer shall insert the clause in 352.242-71, Tobacco-free Facilities, in solicitations, contracts, and orders when some or all of the contractor's performance (including construction services), will take place on HHS-owned or controlled properties. The clause shall not be included if performance requires only that contractor staff attend occasional meetings on HHS properties. In that case, contractor employees are considered "visitors." Further, for any proposed or existing construction contract or order, the Contracting Officer shall coordinate any exceptions to the policy, raised by an incumbent or potential contractor based on union or collective bargaining agreements, with the designated OPDIV tobacco-free policy contact point for final disposition.

(4) The Contracting Officer shall insert the clause in 352.242-72, Native American Graves Protection and Repatriation Act, in solicitations, contracts, and orders that require performance on Tribal lands or are for construction on Federal or Tribal lands.

#### Subpart 342.7—Indirect Cost Rates

##### 342.705 Final indirect cost rates.

(a) The Division of Cost Allocation, PSC, shall establish indirect cost rates, research patient care rates, and, as necessary, fringe benefit, computer, and other special costing rates for use in contracts awarded to State and local governments, colleges and universities, hospitals, and other nonprofit organizations.

(b) The Division of Financial Advisory Services, NIH, shall establish indirect cost rates, fringe benefit rates,

and similar rates for use in contracts awarded to commercial organizations.

### **Subpart 342.70—Contract Monitoring**

#### **342.7000 Purpose.**

Contract monitoring is an essential element of contract administration that the Contracting Officer and the COTR perform jointly. This subpart describes HHS' operating concepts.

#### **342.7001 Contract monitoring responsibilities.**

(a) The contract establishes the obligations of both the Government and the contractor. The Contracting Officer is the only person authorized to modify the contract and shall confirm all modifications in writing.

(b) The Contracting Officer shall ensure the contractor's compliance with all the terms and conditions of the contract. The Contracting Officer shall inform the contractor by letter (if not already stipulated in the contract) of the authorities and responsibilities of the Government personnel involved with the contract.

(c) The Contracting Officer shall use program, technical, and other personnel for assistance and advice in monitoring the contractor's performance and in other areas of post-award administration. The Contracting Officer shall ensure that these individuals understand and carry out their assigned responsibilities. The individual roles and corresponding responsibilities typically involve, but are not limited to, the following:

(1) The role of program and technical personnel in monitoring the contract is to assist and advise the Contracting Officer, and act as the COTR when so designated by the Contracting Officer. COTR activities include—

(i) Providing technical monitoring during contract performance and advising the Contracting Officer relating to delivery, acceptance, or rejection of deliverables in accordance with the terms of the contract;

(ii) Assessing contractor performance;

(iii) Recommending necessary changes to the schedule of work and period of performance to accomplish

the objectives of the contract (The COTR shall provide the Contracting Officer a written request along with an appropriate justification and a funding document, if additional funds are needed.);

(iv) Reviewing invoices/vouchers and recommending approval/disapproval by the Contracting Officer, including providing comments regarding anything unusual discovered in the review (*Note:* If a contract contains the Salary Rate Limitation clause specified in 352.231–70, the Contracting Officer, in conjunction with the COTR, shall monitor the contractor's invoices to ensure that the contractor is billing salaries, including those of subcontractors, at rates no higher than the Federal Executive Schedule salary rate limitation in effect on the date(s) the expense(s) was/were incurred.);

(v) Reviewing and recommending approval or disapproval of subcontractors, overtime, travel, and key personnel changes; and

(vi) Participating, as necessary, in various phases of the contract closeout process.

(2) The roles of the contract administrator, auditor, cost analyst, and property administrator are to assist or advise the Contracting Officer in post-award administration. Such activities include—

(i) Evaluating contractor systems and procedures, including accounting policies and procedures, purchasing policies and practices, property accounting and control, wage and salary plans and rate structures, personnel policies and practices, *etc.*;

(ii) Processing disputes under the Disputes clause and any resultant appeals;

(iii) Modifying or terminating the contract; and

(iv) Determining the allowability of: costs charged in incentive or cost-reimbursement type contracts, and progress payments under fixed-price contracts. This is important for awards to new organizations or those with financial weaknesses.

(d) The Contracting Officer shall ensure that contractor performance and contract monitoring conform with contract terms and conditions. If performance is not satisfactory or if problems