

# **PART 942—CONTRACT ADMINISTRATION AND AUDIT SERVICES**

Authority: 42 U.S.C. 7101 and 50 U.S.C. 2401

Source: 49 FR 12026, Mar. 28, 1984, unless otherwise noted.

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### 942.7100 Conditional payment of fee, profit, and other incentives.

**Parent topic:** SUBCHAPTER G—CONTRACT MANAGEMENT

## **Subpart 942.2—Contract Administration Services**

Source: 65 FR 81007, Dec. 22, 2000, unless otherwise noted.

### **942.270-1 Contracting Officer's Representatives.**

In accordance with internal agency procedures, a contracting officer may designate other qualified personnel to be the Contracting Officer's Representative (COR) for the purpose of performing certain technical functions in administering a contract. These functions include, but are not limited to, technical monitoring, inspection, approval of shop drawings, testing, and approval of samples. The COR acts solely as a technical representative of the contracting officer and is not authorized to perform any function that results in a change in the scope, price, terms or conditions of the contract. COR designations must be made in writing by the contracting officer, and shall identify the responsibilities and limitations of the designation. A copy of the COR designation must be furnished to the contractor and the contract administration office.

## **942.270-2 Contract clause.**

The clause at 952.242-70, Technical Direction, or a clause substantially the same, may be inserted in solicitations and contracts when a designated Contracting Officer's Representative will issue technical direction to the contractor under the contract.

## **Subpart 942.7—Indirect Cost Rates**

### **942.704 Billing rates.**

(b) When the contracting officer or auditor responsible for establishing billing rates, in accordance with 48 CFR 42.704, has not established such rates or such rates are not current for the performance periods (contractor FY) under contract, the DOE contracting officer responsible for administration of the contract shall establish an appropriate rate(s) for billing purposes. If the contractor holds more than one DOE contract covering that period of performance, the DOE office with the largest unliquidated obligations as of the beginning of that performance period shall take the lead in establishing the required billing rate for use on DOE contracts. Once appropriate billing rates are established by the responsible contracting officer designated by 48 CFR 42.704, such rates shall be adopted by the contracting officer and all billings and payments shall be retroactively revised to reflect the agreed upon rate(s).

### **942.705 Final indirect cost rates.**

#### **942.705-1 Contracting officer determination procedure.**

(b)

(1) Pursuant to 48 CFR 52.216-7, Allowable Cost and Payment, contractors shall be requested to submit their final indirect cost rate proposals reflecting actual cost experience during the covered period to the cognizant contracting officer responsible for negotiating their final rates.

The DOE negotiating official shall request all needed audit service in accordance with internal procedures.

## **Subpart 942.8—Disallowance of Costs**

### **942.803 Disallowing costs after incurrence.**

(a) *Contracting officer receipt of vouchers.* Vouchers and invoices submitted to DOE shall be submitted to the contracting officer or designee for review and approval for payment. If the examination of a voucher or invoice raises a question regarding the allowability of a cost submitted therein, the contracting officer, shall:

(1) Hold informal discussion with the contractor as appropriate.

(2) Issue a notice (letter, memo, etc.) to the contractor advising of cost disallowed or to be disallowed and advising the contractor that it may:

(i) Submit a written claim as to why the cost should be reimbursed—if in disagreement with the disallowance.

(ii) File a claim under the disputes clause, which will be processed in accordance with disputes procedures in the event disagreements cannot be settled.

(3) Process the voucher or invoice for payment and advise the finance office to deduct the disallowed cost when scheduling the voucher for payment.

*(c) Auditor reports and other sources of questioned costs.*

(1) From time to time reports are received from professional auditors that may question the allowability of an incurred cost. Such reports are received as the result of auditors, in their independent role under OMB Circular A-73 or their own charters, scheduling and conducting financial or compliance audits of government contracts or as the result of an independent request for auditor service.

(2) When auditor reports or other notifications question cost or consider them unallowable, the contracting officer shall follow up such reports and resolve all such cost issues promptly by determining, through discussions with the contractor and/or auditor within six months of the audit report date, or date of receipt if a non-Federal audit. One of the following courses of action shall be pursued:

(i) Accept and implement audit recommendations as submitted.

(ii) Accept the principle of the audit recommendation but reject the cost questioned amount.

(iii) Reject audit findings and recommendations.

(3) When implementing the accepted course of action, the contracting officer shall—

(i) Hold discussions with the auditor and contractor as appropriate.

(ii) Issue a notice in writing advising the contractor of the government's intent to disallow the cost questioned, if the contracting officer agrees with the auditor concerning the questioned costs.

(iii) Negotiate a mutual settlement of questioned costs if they are agreed with in principle but there is a difference of opinion as to a proper amount.

(iv) Negotiate a mutual settlement of questioned costs if the auditor recommendations are acceptable to the contracting officer but the contractor does not accept the finding or disallowance.

(v) Issue a final decision of the contracting officer disallowing the questionable cost where differences cannot be resolved, advising of the contractor's right to appeal the decision, and advising the procedure to be followed if it is decided to make such an appeal.

(vi) Initiate immediate recoupment actions for all disallowed cost owed the government by:

(A) Requesting the contractor to provide a credit adjustment (offset) against amounts billed the government on the next or future invoice(s) if such shall be submitted under a contract for which the disallowed cost applies.

(B) Deducting (offset) the disallowed cost from the next or future invoice(s) submitted under the contract; if the contractor provides no adjustment under the contract for which the disallowed cost applies; provided such reduction is deemed appropriate.

(C) Advising the contractor that a refund shall be directly payable to the government in situations where there are insufficient payments owed by the government to effect recovery via (A) or (B) above or an offset is otherwise inappropriate.

(vii) Promptly notify the appropriate finance office of refunds directly payable to the government to ensure proper billing and follow-up action for collection.

## **Subpart 942.71—Conditional Payment of Fee, Profit, and Other Incentives**

Source: 89 FR 89759, Nov. 13, 2024, unless otherwise noted.

### **942.7100 Conditional payment of fee, profit, and other incentives.**

(a) If the contractor does not meet the contract's requirements relating to environment, safety and health (ES&H) (see subpart [923.70](#)), or security or safeguarding of Restricted Data and other classified information (see subpart [904.4](#)), the Contracting Officer may unilaterally reduce otherwise earned fee, fixed fee, profit, or other incentives in accordance with the clause at 952.242-71, Conditional Payment of Fee, Profit, and Other Incentives.

(b) When reviewing performance failures that would warrant a reduction of otherwise earned fee, the Contracting Officer must consider mitigating factors that may warrant a reduction below the applicable range specified in the clause. The mitigating factors are specified in the clause. The Contracting Officer must obtain the concurrence of the Head of the Contracting Activity—

(1) Prior to effecting any reduction of fee, profit or other incentives otherwise payable under the clause at 952.242-71, Conditional Payment of Fee, Profit, or Other Incentives; and

(2) Prior to determining that no reduction is warranted for performance failure(s) that would otherwise warrant a reduction.

(c) Before pursuing a reduction in the event of a violation by the contractor or any contractor employee of any Department regulation relating to worker safety and health concerns, the Contracting Officer must coordinate with the Office of Enforcement within the Office of Enterprise Assessments (or designated successor office).

(d) Unless the clause for management and operating contracts is prescribed (see 970.1504-3(b)), insert the clause at 952.242-71, Conditional Payment of Fee, Profit, and Other Incentives, in all contracts that contain the clause at 952.204-2, Security Requirements, the clause at 952.250-70, Nuclear Hazards Indemnity Agreement, or both clauses.