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~~Parent topic: Federal Acquisition Regulation~~

42.000 Scope of part.

This part prescribes policies and procedures for assigning and performing contract administration and contract audit services.

42.001 ~~[Reserved]~~Interagency agreements.

~~42.002~~(a) Agencies must use interagency agreements:

~~(a) Agencies shall avoid~~to prevent duplicate audits, reviews, inspections, and examinations of contractors or subcontractors, by more than one agency,~~through the use of interagency agreements.~~

(b) Subject to the fiscal regulations of the agencies and applicable interagency agreements, the requesting agency ~~shall reimburse~~ must pay the servicing agency for ~~rendered~~ services rendered, in accordance with the Economy Act (31 U.S.C. 1535).

~~(c) When an interagency agreement is established, the agencies are encouraged to consider establishing procedures for the resolution of issues that may arise under the agreement.~~

42.003002 Cognizant Federal agency.

(a) ~~For contractors other than educational institutions and nonprofit organizations,~~ The cognizant Federal agency ~~normally will be~~ is the agency with the largest dollar amount ~~of~~ in negotiated contracts, including options. ~~For, for each contractor business unit, except for educational institutions and nonprofits. The cognizant Federal agency for~~ educational institutions (defined as institutions of higher education ~~in the OMB Uniform Guidance~~ at 2 CFR part 200, subpart A, and 20 U.S.C. 1001) and nonprofit organizations (as defined in ~~the OMB Uniform Guidance at~~ 2 CFR part 200), the cognizant Federal agency for indirect costs is ~~established according to~~ determined by using the OMB Uniform Guidance at 2 CFR part 200, appendices III and IV, respectively.

(b) Once a Federal agency assumes cognizance for a contractor, it should remain the cognizant Federal agency for at least 5 years to ensure continuity and ease of administration. ~~If, at the end of the 5-year period, another agency has the largest dollar amount of negotiated contracts, including options, the two agencies shall coordinate and determine which will assume cognizance. However, if circumstances warrant it and the affected agencies agree, cognizance may transfer prior to the expiration of the 5-year period.~~

Subpart 42.1 - Contract Audit Services

42.101 Contract audit responsibilities.

(a) The auditor is responsible for-

(1) ~~Submitting information and advice to the requesting activity, based on the auditor's analysis of the contractor's~~ Analyzing contractor financial ~~and accounting~~ records or other related data ~~as to~~ and advising the requesting activity on the acceptability of the contractor's incurred and estimated costs;

(2) Reviewing the financial and accounting aspects of the contractor's cost control systems; and

(3) Performing other analyses and reviews that require access to the contractor's financial and accounting records supporting proposed and incurred costs.

(b) Normally, ~~for contractors other than educational institutions and nonprofit organizations,~~ the Defense Contract Audit Agency (DCAA) is the responsible Government audit agency. However, there may be instances where an agency other than DCAA desires cognizance of a particular contractor. In those instances, the two agencies ~~shall~~ must agree on the most efficient and economical approach to meet contract audit requirements. For educational institutions (defined as institutions of higher education in the OMB Uniform Guidance at 2 CFR part 200, subpart A,

and 20 U.S.C. 1001) and nonprofit organizations (as defined in the OMB Uniform Guidance at 2 CFR part 200), audit cognizance will be determined according to the provisions of the OMB Uniform Guidance at 2 CFR part 200, ~~subpart F~~.

42.102 Assignment of contract audit services.

~~(a) As provided in agency procedures or interagency agreements,~~ (a) Contracting officers may request audit services directly from the responsible audit agency ~~cited~~ listed in the Directory of Federal Contract Audit Offices. ~~The audit request should~~ Requests must include a suspense date and ~~should~~ identify any information needed by the contracting officer.

(b) The responsible audit agency may decline requests for services on a case-by-case basis; if ~~they lack adequate~~ resources ~~of the audit agency are inadequate to accomplish the tasks.~~ Declinations ~~shall~~ must be in writing.

42.103 Contract audit services directory.

(a) DCAA maintains ~~and distributes~~ the Directory of Federal Contract Audit Offices. The directory identifies cognizant audit offices and the ~~assigned~~ contractors ~~over which~~ they have cognizance. ~~Changes to over. Contract Audit Offices must provide~~ audit cognizance ~~shall be provided~~ changes to DCAA ~~so that the for~~ directory ~~can be updated~~ updates.

(b) ~~Agencies may~~ To obtain ~~a copy of~~ the directory or information ~~concerning cognizant~~ about audit offices ~~by contacting the~~

~~, contact:~~ Defense Contract Audit Agency, ATTN: CMO, Publications Officer, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060-6219.

Subpart 42.2 - Contract Administration Services

42.201 Contract administration responsibilities.

~~(a) For each contract assigned for administration, the contract administration office (CAO) (see 2.101) shall~~ will -

~~(1a)~~ Perform the functions listed in 42.302(a) to the extent that they apply to the contract, except for the functions specifically withheld;

~~(2b)~~ Perform the functions listed in 42.302(b) only when and to the extent specifically authorized by the contracting officer; and

~~(3c)~~ Request supporting contract administration under 42.202(e) and (f) ~~when it is~~ as required.

~~(b) The Defense Contract Management Agency and other agencies offer a wide variety of contract administration and support services.~~

42.202 Assignment of contract administration.

(a) Delegating functions. ~~As provided in agency procedures,~~ Contracting officers may delegate contract administration or specialized support services, ~~either~~ through interagency agreements or

by direct request to the cognizant CAO listed in the ~~Federal Directory of~~ Contract Administration Services ~~Components~~ Directory (CASD). The delegation should include-

(1) The name and address of the CAO designated to perform the administration (this information must ~~also shall~~ be entered in the contract);

(2) Any ~~special~~ specials instructions, including any functions withheld or any specific authorization to perform functions listed in 42.302 (b);

(3) A copy of the contract to be administered; and

(4) Copies of all contracting agency regulations or directives that are-

(i) Incorporated into the contract by reference; or

(ii) Otherwise, necessary to administer the contract, unless copies have been provided previously.

(b) Special instructions. As necessary, the contracting officer ~~also shall~~ must advise the contractor (and other activities as appropriate) of any functions withheld from or additional functions delegated to the CAO.

(c) Delegating additional functions. For individual contracts or groups of contracts, the contracting ~~officer~~ officer may delegate ~~to the CAO~~ additional functions ~~not beyond those~~ listed in 42.302 to the CAO, provided that-

(1) Prior coordination with the CAO ensures the availability of required resources;

(2) In the case of authority to issue orders under provisioning procedures in existing contracts and under basic ordering agreements for items and services identified in the schedule, the head of the contracting activity or designee approves the delegation; and

(3) The delegation does not require the CAO to undertake new or follow-on acquisitions.

(d) Rescinding functions. The contracting officer at the requesting agency may rescind or recall a delegation to administer a contract or perform a contract administration function, except for the cognizant Federal agency functions ~~pertaining to cost accounting standards and negotiation of forward pricing rates and indirect cost rates (also see identified in 42.003302(a))~~. The requesting agency must coordinate with the ~~ACO~~ CAO to establish a reasonable transition period prior to rescinding or recalling the delegation.

(e) Secondary delegations of contract administration.

(1) A CAO that has been delegated administration of a contract ~~under paragraph (a) or (c) of this section, or a contracting office retaining contract administration,~~ function may request supporting contract administration from the ~~CAO~~ cognizant of CAO at the ~~contractor~~ location ~~where performance of specific contract administration functions is required.~~ The request ~~shall~~ must-

(i) Be in writing;

(ii) Clearly state the specific [administration](#) functions to be performed; and

(iii) Be accompanied by a copy of pertinent contractual and other necessary documents.

(2) The prime contractor is responsible for managing its subcontracts. The CAO's review of subcontracts is normally limited to evaluating the prime contractor's management of the subcontracts (see part 44). Therefore, supporting contract administration ~~shall not~~ [may only](#) be used for subcontracts ~~unless~~ [when](#)-

(i) The Government otherwise would incur undue cost;

(ii) Successful completion of the prime contract is threatened; or

(iii) It is authorized under paragraph (f) of this section or elsewhere in this regulation.

(f) Special surveillance. For major system acquisitions (see part 34), the contracting officer may designate certain high risk or critical subsystems or components for special surveillance in addition to requesting supporting contract administration. This surveillance ~~shall~~ [must](#) be conducted in a manner consistent with the policy of requesting that the cognizant CAO perform contract administration functions at a contractor's facility (see 42.002).

(g) Refusing delegation of contract administration. An agency may decline a request for contract administration services on a case-by-case basis if [they lack adequate](#) resources ~~of the agency are inadequate~~ to accomplish the tasks. Declinations ~~shall~~ [must](#) be in writing.

42.203 Contract administration services directory.

The Defense Contract Management Agency (DCMA) maintains the ~~Federal Directory of Contract Administration Services Components~~ [CASD](#). The directory lists the ~~names and telephone numbers~~ [contact information](#) of those DCMA and other agency offices that offer contract administration services within designated geographic areas and at specified contractor ~~plants~~ [locations](#). Federal agencies may access ~~it~~ [CASD](#) on the Internet at <https://piee.eb.mil/pcm/xhtml/unauth/index.xhtml>. ~~For additional information contact-~~

~~Defense Contract Management Agency 3901 A Avenue Building 10500 Ft. Lee, VA 23801-1809.~~

Subpart 42.3 - Contract Administration Office Functions

42.301 General.

When a contract is assigned for administration under subpart 42.2, the contract administration office (CAO) ~~shall~~ [will](#) perform contract administration functions in accordance with 48 CFR Chapter 1, the contract terms, and, unless otherwise agreed to in an interagency agreement (see ~~42.002~~ [42.001](#)), the applicable regulations of the servicing agency.

42.302 Contract administration functions.

(a) The contracting officer normally delegates the following contract administration functions to a CAO. The contracting officer may retain any of these functions, except those in paragraphs (a)(5), (a)(9), (a)(11), and (a)(12) of this section, ~~unless which must be performed by the cognizant Federal agency (see 2.101) has designated the contracting officer to perform these functions.~~

(1) Review the contractor's compensation structure.

(2) Review the contractor's insurance plans.

(3) Conduct post-award orientation conferences.

(4) Review and evaluate contractors' proposals under subpart 15.4 and, when ~~negotiation will be accomplished by~~ the contracting officer will conduct negotiations, furnish comments and recommendations to that officer.

(5) Negotiate forward pricing rate agreements (see ~~15.407-3~~ part 15 and subpart 42.13).

(6) Negotiate advance agreements applicable pursuant to ~~treatment of costs under contracts currently assigned for administration (see~~ the contract cost principles in part 31.109).

(7) Determine the allowability of costs suspended or disapproved as required (see subpart 42.86), direct the suspension or disapproval of costs when there is reason to believe they should be suspended or disapproved, and approve final vouchers.

(8) Issue Notices of Intent to Disallow or not Recognize Costs (see subpart 42.86).

(9) Establish final indirect cost rates and billing rates for ~~those~~ contractors meeting the criteria for contracting officer determination in subpart 42.75.

(10) Attempt to resolve issues in controversy, using alternative dispute resolution (ADR) procedures when appropriate (see ~~subpart-part~~ part 33.2); prepare findings of fact; and issue decisions under the Disputes clause on matters in which the administrative contracting officer (ACO) has the authority to take definitive action.

(11) In connection with Cost Accounting Standards (CAS) (see ~~part 30.601~~ and 48 CFR chapter 99)-

(i) Determine the adequacy of the contractor's disclosure statements;

(ii) Determine whether disclosure statements are in compliance with ~~Cost Accounting Standards~~ CAS and part 31;

(iii) Determine the contractor's compliance with ~~Cost Accounting Standards~~ CAS and disclosure statements, if applicable; and

(iv) Negotiate price adjustments and execute supplemental agreements under the ~~Cost Accounting Standards~~ CAS clauses at 52.230-2, 52.230-3, 52.230-4, 52.230-5, and 52.230-6.

(12) Determine the adequacy of the contractor's accounting system. The contractor's accounting system should be adequate during the entire period of contract performance. The adequacy of the contractor's accounting system and its associated internal control system, as well as contractor compliance with the ~~Cost Accounting Standards (CAS)~~, ~~affect~~, affects the quality and validity of the contractor data ~~upon which the Government must rely~~ relies on for ~~its management oversight of the contractor and contract performance~~ oversight.

(13) Review and approve or disapprove ~~the contractor's~~ contractor requests for financing payments ~~under the progress payments or performance-based payments clauses.~~ (see part 32).

(14) Make payments on assigned contracts when prescribed in agency acquisition regulations.

(15) Manage special bank accounts.

(16) Ensure ~~timely notification by~~ the contractor notifies the contracting officer in a timely manner of any anticipated overrun or underrun of the estimated cost under cost-reimbursement contracts.

(17) Monitor the contractor's financial condition and advise the contracting officer when it jeopardizes contract performance.

(18) Analyze quarterly limitation on payments statements and ~~take action~~ act in accordance with ~~subpart~~ part 32.6 to recover overpayments from the contractor.

(19) Issue tax exemption forms.

(20) Ensure processing and execution of duty-free entry certificates.

(21) For classified contracts, administer ~~those~~ delegated portions of the ~~applicable~~ industrial security program delegated to the CAO (see ~~subpart~~ part 4.4 part 40).

(22) ~~Issue~~ Review and negotiate supplemental agreements in response to contractor work requests under maintenance, overhaul, ~~and~~ modification, and repair contracts.

(23) Negotiate prices and execute supplemental agreements for spare parts and other items selected through provisioning procedures when prescribed by agency acquisition regulations.

(24) Negotiate and execute ~~contractual documents for~~ settlement of partial and complete contract terminations for convenience, ~~except as~~ unless stated otherwise ~~prescribed~~ by part 49.

(25) Negotiate and execute ~~contractual documents settling~~ settlements of cancellation charges under multiyear contracts.

(26) Process and execute novation and change of name agreements under subpart 42.129.

(27) Perform property administration (see part 45).

(28) Perform necessary screening, redistribution, and disposal of contractor inventory.

(29) Issue contract modifications requiring the contractor to provide packing, crating, and handling services on excess Government property. ~~When the ACO determines it to be in the Government's interests, the services may be secured from a contractor other than the contractor in possession of the property.~~

(30) When contractors request Government property-

(i) Evaluate ~~the~~ contractor's requests for Government property and for changes to existing Government property, and provide appropriate recommendations to the contracting officer;

(ii) Ensure required screening of Government property before acquisition by the contractor;

(iii) Evaluate the use of Government property on a non-interference basis in accordance with the clause at 52.245-9, Use and Charges;

(iv) Ensure ~~payment by the~~ contractor payment of any rental due; and

(v) Modify contracts to reflect the addition of Government-furnished property and ensure appropriate consideration.

(31) Perform production support, surveillance, and status reporting, including timely reporting of potential and actual slippages in contract delivery schedules.

(32) Perform preaward surveys (see ~~subpart~~ part 9.1).

(33) Advise and assist contractors regarding their priorities and allocations responsibilities and assist contracting offices in processing requests for special assistance and for priority ratings for privately owned capital equipment. (see part 11).

(34) Monitor contractor industrial labor relations matters under the contract; apprise the contracting officer and, if designated by the agency, the cognizant labor relations advisor, of actual or potential labor disputes; and coordinate the removal of urgently required material from the strikebound contractor's plant upon instruction from, and authorization of, the contracting officer.

(35) Perform traffic management services, including issuance and control of Government bills of lading and other transportation documents.

(36) Review the adequacy of the contractor's traffic operations.

- (37) Review and evaluate preservation, packaging, and packing.
- (38) Ensure contractor compliance with contractual quality assurance requirements (see part 46).
- (39) Ensure contractor compliance with contractual safety requirements.
- (40) Perform engineering surveillance to assess compliance with contractual terms for schedule, cost, and technical performance in the areas of design, development, and production.
- (41) Evaluate for adequacy and perform surveillance of contractor engineering efforts and management systems that relate to design, development, production, engineering changes, subcontractors, tests, management of engineering resources, reliability and maintainability, data control systems, configuration management, and independent research and development.
- (42) Review and evaluate for technical adequacy, the contractor's logistics support, maintenance, and modification programs.
- (43) Report to the contracting office any inadequacies noted in specifications.
- (44) Perform engineering analyses of contractor cost proposals.
- (45) Review and analyze contractor-proposed engineering and design studies and submit comments and recommendations to the contracting office, as required.
- (46) Review engineering change proposals for proper classification, and when required, for need, technical adequacy of design, producibility, and impact on quality, reliability, schedule, and cost; submit comments to the contracting office.
- (47) Assist in evaluating and make recommendations for acceptance or rejection of waivers and deviations.
- (48) Evaluate and monitor the contractor's procedures for complying with procedures regarding restrictive markings on data.
- (49) Monitor the contractor's value engineering program.
- (50) Review, approve or disapprove, and maintain surveillance of the contractor's purchasing system (see part 44).
- (51) Consent to the placement of subcontracts: [\(see part 44\)](#).
- (52) Review, evaluate, and approve plant or division-wide small, small disadvantaged, women-owned, veteran-owned, HUBZone, and service-disabled veteran-owned small business master subcontracting plans.

(53) Obtain the contractor's currently approved company- or division-wide plans for small, small disadvantaged, women-owned, veteran-owned, HUBZone, and service-disabled veteran-owned small business subcontracting for its commercial products, ~~or~~. If there is no currently approved plan, assist the contracting officer in evaluating the plans for those products.

(54) Assist the contracting officer, upon request, in evaluating an offeror's proposed small, small disadvantaged women-owned, veteran-owned, HUBZone, and service-disabled veteran-owned small business subcontracting plans, including documentation of compliance with similar plans under prior contracts.

(55) By periodic surveillance, ensure the contractor's compliance with small, small disadvantaged, women-owned, veteran-owned, HUBZone, and service-disabled veteran-owned small business subcontracting plans and any labor surplus area contractual requirements; maintain documentation of the contractor's performance under and compliance with these plans and requirements; and provide advice and assistance to the firms involved, as appropriate.

(56) Maintain surveillance of flight operations.

(57) Assign and perform supporting contract administration.

(58) Ensure timely submission of required reports.

(59) Issue administrative changes, correcting errors or omissions in typing, contractor address, facility or activity code, remittance address, computations which do not require additional contract funds, and other such changes (see [part 43.101](#)).

(60) ~~Cause~~ [Administer and](#) release ~~of~~ shipments from [the](#) contractor's plants according to the shipping instructions. When applicable, the order of assigned priority ~~shall~~ [must](#) be followed; shipments within the same priority ~~shall~~ [will](#) be determined by date of the instruction.

(61) Obtain contractor proposals for any contract price adjustments resulting from amended shipping instructions. Review all amended shipping instructions on a periodic, consolidated basis to ensure that adjustments are timely ~~made~~. Except when the ACO has settlement authority, the ACO ~~shall~~ [will](#) forward the proposal to the contracting officer for contract modification. The ACO ~~shall~~ [will](#) not delay shipments pending completion and formalization of negotiations of revised shipping instructions.

(62) Negotiate and/or execute supplemental agreements, ~~as required~~, making changes in packaging subcontractors or contract shipping points.

(63) Cancel unilateral purchase orders when ~~notified of nonacceptance~~ [rejected](#) by the contractor. The CAO ~~shall~~ [must](#) notify the contracting officer when the purchase order is canceled.

(64) Negotiate and execute one-time supplemental agreements providing for the extension of contract delivery schedules up to 90 days on contracts with an assigned Criticality Designator of C (see 42. ~~105~~ [804](#)). [The CAO must provide](#) notification that the contract delivery schedule is

being extended ~~shall be provided~~ to the contracting office. Subsequent extensions on any individual contract ~~shall be authorized only upon~~ must have concurrence of the contracting office.

(65) ~~Accomplish~~ Perform administrative closeout procedures (see part 4.804-5).

(66) Determine that the contractor has a drug-free workplace program and drug-free awareness program (see ~~subpart~~ part 26.5).

(67) Support the program, product, and project offices ~~regarding~~ for program reviews, program status, program performance and actual or anticipated program problems.

(68) Monitor the contractor's environmental practices for adverse impact on contract performance or contract cost, and for compliance with environmental requirements specified in the contract. ACO responsibilities include-

(i) Requesting environmental technical assistance, if needed;

(ii) Monitoring contractor compliance with specifications or other contractual requirements requiring the delivery, use, or furnishing of sustainable products ~~and services (as defined in 2.101)~~ in accordance with the clause at 52.223-23. This ~~must occur~~ occurs as part of the quality assurance procedures set forth in part 46; and

(iii) As required in the contract, ensuring that the contractor complies with the reporting requirements relating to recovered material content (see 52.223-9) and biobased products (see 52.223-2) utilized in contract performance.

(69) Administer commercial financing provisions and monitor contractor security to ensure its continued adequacy to cover outstanding payments, when on-site review is required- (see part 32).

(70) Deobligate excess funds after final price determination.

(71) Ensure that the contractor has implemented the requirements of 52.203-13, Contractor Code of Business Ethics and Conduct.

(b) The CAO ~~shall~~ may perform the following functions only when and to the extent specifically authorized by the contracting office:

(1) Negotiate ~~or negotiate~~ and execute ~~supplemental~~ supplementals agreements incorporating contractor proposals resulting from change orders issued under the Changes clause. Before completing negotiations, coordinate any delivery schedule change with the contracting office.

(2) Negotiate prices and execute priced exhibits for unpriced orders issued by the contracting officer under basic ordering agreements.

(3) Negotiate ~~or negotiate~~ and execute ~~supplemental~~supplementals agreements changing contract delivery schedules.

(4) ~~Negotiate or~~ Negotiate and execute supplemental agreements providing for the deobligation of unexpended dollar balances considered excess to known contract requirements.

(5) Issue amended shipping instructions and, when necessary, negotiate and execute resultant supplemental agreements incorporating contractor proposals ~~resulting from these instructions~~.

(6) Negotiate changes to interim billing prices.

(7) Negotiate and definitize adjustments to contract prices resulting from exercise of an economic price adjustment clause (see ~~subpart~~part 16.2).

(8) Issue change orders and negotiate and execute resulting supplemental agreements under contracts for ship construction, conversion, and repair.

(9) Execute ~~supplemental~~supplementals agreements on firm-fixed-price supply contracts to reduce required line item quantities and deobligate excess funds when notified by the contractor of an inconsequential delivery shortage, ~~and it is determined that such action is in the best interests of the Government, notwithstanding the default provisions of the contract. Such action will be taken only upon the written request of the contractor and, in no event, shall the total downward contract price adjustment resulting from an inconsequential delivery shortage exceed \$250.00 or 5 percent of the contract price, whichever is less.~~but only when the action is—

(i) Determined to be in the best interests of the Government;

(ii) Supported by a written request of the contractor; and

(iii) A total downward contract price adjustment resulting from an inconsequential delivery shortage. This action must not exceed \$250.00 or 5 percent of the contract price, whichever is less.

(10) Execute ~~supplemental~~supplementals agreements to permit a change in place of inspection at origin specified in firm-fixed-price supply contracts awarded to nonmanufacturers, as deemed necessary to protect the Government's interests.

(11) Prepare evaluations of contractor performance in accordance with subpart 42.1511.

(c) Any additional contract administration functions not listed in 42.302(a) and (b), or not otherwise delegated, remain the responsibility of the contracting office: unless in accordance with 42.202 Assignment of contract administration(c).

Subpart 42.4 - ~~Correspondence and Visits~~
~~42.401 Contract correspondence.~~

~~(a) The contracting officer (or other contracting agency personnel) normally shall (1) forward correspondence relating to assigned contract administration functions through the cognizant contract administration office (CAO) to the contractor, and (2) provide a copy for the CAO's file. When urgency requires sending such correspondence directly to the contractor, a copy shall be sent concurrently to the CAO.~~

~~(b) The CAO shall send the contracting office a copy of pertinent correspondence conducted between the CAO and the contractor.~~

~~42.402 Visits to contractors' facilities.~~

~~(a) Government personnel planning to visit a contractor's facility in connection with one or more Government contracts shall provide the cognizant CAO with the following information, sufficiently in advance to permit the CAO to make necessary arrangements. Such notification is for the purpose of eliminating duplicative reviews, requests, investigations, and audits relating to the contract administration functions in subpart 42.3 delegated to CAO's and shall, as a minimum, include the following (see also paragraph (b) of this section):~~

~~(1) Visitors' names, official positions, and security clearances.~~

~~(2) Date and duration of visit.~~

~~(3) Name and address of contractor and personnel to be contacted.~~

~~(4) Contract number, program involved, and purpose of visit.~~

~~(5) If desired, visitors to a contractor's plant may request that a representative of the CAO accompany them. In any event, the CAO has final authority to decide whether a representative shall accompany a visitor.~~

~~(b) If the visit will result in reviewing, auditing, or obtaining any information from the contractor relating to contract administration functions, the prospective visitor shall identify the information in sufficient detail so as to permit the CAO, after consultation with the contractor and the cognizant audit office, to determine whether such information, adequate to fulfill the requirement, has recently been reviewed by or is available within the Government. If so, the CAO will discourage the visit and refer the prospective visitor to the Government office where such information is located. Where the office is the CAO, such information will be immediately forwarded or otherwise made available to the requestor.~~

~~(c) Visitors shall fully inform the CAO of any agreements reached with the contractor or other results of the visit that may affect the CAO.~~

~~42.403 Evaluation of contract administration offices.~~

~~Onsite inspections or evaluations of the performance of the assigned functions of a contract administration office shall be accomplished only by or under the direction of the agency of which that office is a part.~~

~~Subpart 42.5—Postaward Orientation~~

~~42.500 Scope of subpart.~~

~~This subpart prescribes policies and procedures for the postaward orientation of contractors and subcontractors through—~~

- ~~(a) A conference; or~~
- ~~(b) A letter or other form of written communication.~~

~~42.501 General.~~

~~(a) A postaward orientation aids both Government and contractor personnel to (1) achieve a clear and mutual understanding of all contract requirements, and (2) identify and resolve potential problems. However, it is not a substitute for the contractor's fully understanding the work requirements at the time offers are submitted, nor is it to be used to alter the final agreement arrived at in any negotiations leading to contract award.~~

~~(b) Postaward orientation is encouraged to assist (see part 19)–~~

- ~~(1) Small business concerns;~~
- ~~(2) Small disadvantaged business concerns;~~
- ~~(3) Veteran-owned small business concerns;~~
- ~~(4) Service-disabled veteran-owned small business concerns;~~
- ~~(5) HUBZone small business concerns; and~~
- ~~(6) Women-owned small business concerns (including economically disadvantaged women-owned small business concerns and women-owned small business concerns eligible under the Women-Owned Small Business Program).~~

~~(c) While cognizant Government or contractor personnel may request the contracting officer to arrange for orientation, it is up to the contracting officer to decide whether a postaward orientation in any form is necessary.~~

~~(d) Maximum benefits will be realized when orientation is conducted promptly after award.~~

~~42.502 Selecting contracts for postaward orientation.~~

~~When deciding whether postaward orientation is necessary and, if so, what form it shall take, the contracting officer shall consider, as a minimum, the–~~

- ~~(a) Nature and extent of the preaward survey and any other prior discussions with the contractor;~~
- ~~(b) Type, value, and complexity of the contract;~~

- ~~(c) Complexity and acquisition history of the product or service;~~
- ~~(d) Requirements for spare parts and related equipment;~~
- ~~(e) Urgency of the delivery schedule and relationship of the product or service to critical programs;~~
- ~~(f) Length of the planned production cycle;~~
- ~~(g) Extent of subcontracting;~~
- ~~(h) Contractor's performance history and experience with the product or service;~~
- ~~(i) Contractor's status, if any, as a small business, small disadvantaged, women-owned, veteran-owned, HUBZone, or service-disabled veteran-owned small business concern;~~
- ~~(j) Contractor's performance history with small, small disadvantaged, women-owned, veteran-owned, HUBZone, and service-disabled veteran-owned small business subcontracting programs;~~
- ~~(k) Safety precautions required for hazardous materials or operations; and~~
- ~~(l) Complex financing arrangements, such as progress payments, advance payments, or guaranteed loans.~~

~~42.503 Postaward conferences.~~

~~42.503-1 Postaward conference arrangements.~~

~~(a) The contracting officer who decides that a conference is needed is responsible for-~~

- ~~(1) Establishing the time and place of the conference;~~
- ~~(2) Preparing the agenda, when necessary;~~
- ~~(3) Notifying appropriate Government representatives (e.g., contracting/contract administration office) and the contractor;~~
- ~~(4) Designating or acting as the chairperson;~~
- ~~(5) Conducting a preliminary meeting of Government personnel; and~~
- ~~(6) Preparing a summary report of the conference.~~

~~(b) When the contracting office initiates a conference, the arrangements may be made by that office or, at its request, by the contract administration office.~~

~~42.503-2 Postaward conference procedure.~~

~~The chairperson of the conference shall conduct the meeting. Unless a contract change is contemplated, the chairperson shall emphasize that it is not the purpose of the meeting to change the contract. The contracting officer may make commitments or give directions within the scope of the contracting officer's authority and shall put in writing and sign any commitment or direction, whether or not it changes the contract. Any change to the contract that results from the postaward conference shall be made only by a contract modification referencing the applicable terms of the contract. Participants without authority to bind the Government shall not take action that in any way alters the contract. The chairperson shall include in the summary report (see 42.503-3) all information and guidance provided to the contractor.~~

~~42.503-3 Postaward conference report.~~

~~The chairperson shall prepare and sign a report of the postaward conference. The report shall cover all items discussed, including areas requiring resolution, controversial matters, the names of the participants assigned responsibility for further actions, and the due dates for the actions. The chairperson shall furnish copies of the report to the contracting office, the contract administration office, the contractor, and others who require the information.~~

~~42.504 Postaward letters.~~

~~In some circumstances, a letter or other written form of communication to the contractor may be adequate postaward orientation (in lieu of a conference). The letter should identify the Government representative responsible for administering the contract and cite any unusual or significant contract requirements. The rules on changes to the contract in 42.503-2 also apply here.~~

~~42.505 Postaward subcontractor conferences.~~

~~(a) The prime contractor is generally responsible for conducting postaward conferences with subcontractors. However, the prime contractor may invite Government representatives to a conference with subcontractors, or the Government may request that the prime contractor initiate a conference with subcontractors. The prime contractor should ensure that representatives from involved contract administration offices are invited.~~

~~(b) Government representatives-~~

- ~~(1) Must recognize the lack of privity of contract between the Government and subcontractors;~~
- ~~(2) Shall not take action that is inconsistent with or alters subcontracts; and~~
- ~~(3) Shall ensure that any changes in direction or commitment affecting the prime contract or contractor resulting from a subcontractor conference are made by written direction of the contracting officer to the prime contractor in the same manner as described in 42.503-2.~~

~~Subpart 42.6—Corporate Administrative Contracting Officer~~

~~42.601~~[401](#) General.

Contractors with more than one operational location (e.g., division, plant, or subsidiary) often have corporate-wide policies, procedures, and activities requiring Government review and approval and affecting the work of more than one administrative contracting officer (ACO). In

these circumstances, ~~effective and consistent contract administration~~ the CFA may ~~require the assignment of~~ assign a corporate administrative contracting officer (CACO) to deal with corporate management and to perform selected contract administration functions on a corporate-wide basis.

42. ~~602~~ 402 Assignment and location.

(a) A CACO may be assigned only when ~~(1)~~ the —

(1) Contractor has at least two locations with resident ~~ACO's~~ ACOs; or

(2) Agency head or designee approves the ~~need for a CACO is approved by the agency head or designee (assignment.~~ For this purpose, ~~((a)(2) of this paragraph),~~ a nonresident ACO ~~will be~~ is considered as resident if at least 75 percent of the ACO's effort is devoted to a single contractor); ~~One of the. The agency head or designee may also designate a~~ resident ~~ACO's may be designated~~ ACO to perform the CACO functions, ~~or a full-time CACO may be assigned. In determining the location of the CACO, the responsible agency shall take into account such factors as the location(s) of the corporate records, corporate office, major plant, cognizant government auditor, and overall cost effectiveness.~~

~~(b) A decision~~ Agencies must base decisions to initiate or discontinue a CACO assignment ~~should be based~~ on such factors as the-

(1) Benefits of coordination and liaison at the corporate level;

(2) Volume of Government sales;

(3) Degree of control exercised by the contractor's corporate office over Government-oriented lower-tier operating elements; and

(4) Impact of corporate policies and procedures on those elements.

~~(c) Responsibility for assigning a CACO shall be determined as follows:~~

~~(1) When all locations of a corporate entity are under the contract administration cognizance of a single agency, that agency is responsible.~~

~~(2) When the locations are under the contract administration cognizance of more than one agency, the agencies concerned shall agree on the responsible agency (normally on the basis of the agency with the largest dollar balance, including options, of affected contracts). In such cases, agencies may also consider geographic location.~~

~~(d) The directory of contract administration services components~~ CASD referenced in 42.203 includes a listing of ~~CACO's~~ CACOs and the contractors ~~for which~~ to whom they are assigned responsibility.

42. ~~603~~ 403 Responsibilities.

(a) The CACO ~~shall~~will perform, on a corporate-wide basis, the contract administration functions as designated by the responsible agency. Typical CACO functions include-

- (1) The determination of final indirect cost rates for cost-reimbursement contracts;
- (2) Establishment of advance agreements or recommendations on corporate/home office expense allocations; and
- (3) Administration of ~~Cost Accounting Standards (CAS)~~ applicable to corporate-level and corporate-directed accounting practices.

(b) The CACO ~~shall~~must-

- (1) Fully utilize the responsible contract audit agency financial and advisory accounting services, including-
 - (i) Advice regarding the acceptability of corporate-wide policies; and
 - (ii) Advisory audit reports;
- (2) Keep cognizant ~~ACO's~~ACOs and auditors informed of important matters under consideration and determinations made; and
- (3) Solicit ~~their~~ advice and participation from cognizant ACOs and auditors as appropriate.

Subpart 42.~~75~~ - Indirect Cost Rates

42.500 Scope of subpart.

~~42.700 Scope of subpart.~~

This subpart prescribes policies and procedures for establishing-

- (a) Billing rates; and
- (b) Final indirect cost rates.

42.~~701~~501 Definition.

Billing rate, as used in this subpart, means an indirect cost rate-

- (1) Established temporarily for interim reimbursement of incurred indirect costs; and
- (2) Adjusted as necessary ~~pending establishment of~~until final indirect cost rates are established.

42.~~702~~502 Purpose.

(a) Establishing final indirect cost rates under this subpart provides-

- (1) Uniformity of approach with a contractor when more than one contract or agency is involved;

(2) Economy of administration; and

(3) Timely settlement under cost-reimbursement contracts.

(b) Establishing billing rates provides a method for interim reimbursement of indirect costs at estimated rates subject to adjustment during contract performance and at the time the final indirect cost rates are established.

42.703503 General.

42.703503-1 Policy.

(a) A single agency (see 42.705505-1) ~~shall be~~ is responsible for establishing final indirect cost rates for each business unit. These rates ~~shall be~~ are binding on all agencies and their contracting offices, unless ~~otherwise~~ specifically prohibited by statute. ~~An agency shall not perform an~~ Agencies cannot audit ~~of~~ indirect cost rates when the ~~contracting officer determines that the audit objectives of the audit~~ can reasonably be met by accepting the results of an audit ~~that was conducted by any other~~ by another department or agency of the Federal Government (10 U.S.C. 3841(e) and 41 U.S.C. 4706(e)).

~~(b)~~ (b) Contracting officers must use billing rates and final indirect cost rates ~~shall be used in reimbursing to reimburse~~ indirect costs under cost-reimbursement contracts and ~~in determining~~ make progress payments under fixed-price contracts.

(c) To ensure compliance with 10 U.S.C. 3743(a) and 41 U.S.C. 4303(a) ~~use~~ final indirect cost rates for -

~~(1) Final indirect cost rates shall be used for~~ (1) Contract closeout for a business unit, unless the quick-closeout procedure in 42.708507 is used. These final rates ~~shall be~~ are binding for all cost-reimbursement contracts at the business unit, subject to any specific limitation in a contract or advance agreement; and

~~(2) Established final indirect cost rates shall be used in~~ (2) Negotiating the final price of fixed-price incentive and fixed-price redeterminable contracts and in other situations requiring that indirect costs be settled before contract prices are established, unless the quick-closeout procedure in 42.708507 is used.

42.703503-2 Certificate of indirect costs.

(a) General. In accordance with 10 U.S.C. 3747 and 41 U.S.C. 4307, the Government must not accept a proposal ~~shall not be accepted and no agreement shall be made or agree~~ to establish final indirect cost rates unless the ~~costs have been certified by the~~ contractor certifies the costs are allowable.

(b) Waiver of certification.

(1) The agency head, or designee, may waive the certification requirement when-

(i) It is determined to be in the interest of the United States; and

(ii) The reasons for the determination are put in writing and made available to the public.

(2) A waiver may be appropriate for a contract with-

(i) A foreign government or international organization, such as a subsidiary body of the North Atlantic Treaty Organization;

(ii) A State or local government subject to the OMB Uniform Guidance at 2 CFR part 200, subpart E and appendices V and VII;

(iii) An educational institution (defined as an institution of higher education in the OMB Uniform Guidance at 2 CFR part 200, subpart A, and 20 U.S.C. 1001) subject to the OMB Uniform Guidance at 2 CFR part 200, subpart E and appendix III; and

(iv) A nonprofit organization (as defined in the OMB Uniform Guidance at 2 CFR part 200) subject to the OMB Uniform Guidance at 2 CFR part 200, subpart E and appendix IV.

(c) Failure to certify.

(1) If the contractor has not certified its proposal for final indirect cost rates and a waiver is not appropriate, the contracting officer may unilaterally establish the rates.

(2) ~~Rates established unilaterally~~ Unilateral rates should be-

(i) Based on audited historical data or other available data ~~as long as~~ if unallowable costs are excluded; and

(ii) Set low enough to ensure that unallowable costs ~~will~~ are not ~~be~~-reimbursed.

(d) False certification. ~~The contracting officer should~~ Consult with legal counsel to determine appropriate action when a contractor's certificate of final indirect costs is thought to be false.

(e) Penalties for unallowable costs. 10 U.S.C. 3743 and 41 U.S.C. 4303 prescribe penalties for submission of unallowable costs in final indirect cost rate proposals (see 42. ~~709~~ 508 for penalties and contracting officer responsibilities).

(f) Contract clause.

(1) Except as provided in paragraph (f)(2) of this ~~subsection~~ section, use the clause at 52.242-4, Certification of Final Indirect Costs, ~~shall be incorporated into~~ in all solicitations and contracts which provide for establishment of final indirect cost rates.

(2) The Department of Energy may provide an alternate clause in its agency supplement for its Management and Operating contracts.

42.704504 Billing rates.

(a) The contracting officer (or cognizant Federal agency official) or auditor responsible under 42.705505 for establishing the final indirect cost rates must also ~~shall be responsible for determining~~determine the billing rates.

(b) The contracting officer (or cognizant Federal agency official) or auditor ~~shall~~must establish billing rates on the basis of information resulting from recent review, previous rate audits or experience, or similar reliable data or experience of other contracting activities. ~~In~~When establishing billing rates, ~~the contracting officer (or cognizant Federal agency official) or auditor should~~ ensure that the billing rates are as close as possible to the final indirect cost rates anticipated for the contractor's fiscal period, as adjusted for any unallowable costs. When the contracting officer (or cognizant Federal agency official) or auditor determines that the dollar value of contracts requiring use of billing rates does not warrant submission of a detailed billing rate proposal, the billing rates may be established by making appropriate adjustments from the prior year's indirect cost experience to eliminate unallowable and nonrecurring costs and to reflect new or changed conditions.

(c) Once established, billing rates may be prospectively or retroactively revised by mutual agreement of the contracting officer (or cognizant Federal agency official) or auditor and the contractor at either party's request, to prevent substantial overpayment or underpayment. When agreement cannot be reached, the ~~billing rates may be unilaterally determined by the~~ contracting officer (or cognizant Federal agency official) ~~;~~ may unilaterally determine the billing rates.

(d) Do not construe the elements of indirect cost and the base or bases used in computing billing rates ~~shall not be construed~~ as determinative of the indirect costs to be distributed or of the bases of distribution to be used in the final settlement.

(e) When the contractor provides to the cognizant contracting officer the certified final indirect cost rate proposal in accordance with 42.705505-1(b) or 42.705505-2(b), the contractor and the Government may mutually agree to revise billing rates to reflect the proposed indirect cost rates, as approved by the Government to reflect historically disallowed amounts from prior years' audits, until the proposal has been audited and settled. ~~The historical decrement will be determined by either the~~ The cognizant contracting officer (see 42.705505-1(b)) or ~~the cognizant auditor (see 42.705505-2(b)).~~ will determine the historical decrement.

42.705505 Final indirect cost rates.

(a) Establish final indirect cost rates ~~shall be established~~based on ~~the basis of~~

(1) Contracting officer determination procedure (see 42.705505-1), or

(2) Auditor determination procedure (see 42.705505-2).

(b) Within 120 days (or longer period, if approved in writing by the contracting officer,) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the contractor must submit a completion invoice or voucher reflecting the settled amounts and

rates. To determine whether a period longer than 120 days is appropriate, the contracting officer should consider whether there are extenuating circumstances, such as the following:

- (1) Pending closeout of subcontracts awaiting Government audit.
 - (2) Pending contractor, subcontractor, or Government claims.
 - (3) Delays in the disposition of Government property.
 - (4) Delays in contract reconciliation.
 - (5) Any other pertinent factors.
- (c)

(1) If the contractor ~~fails to~~does not submit a completion invoice or voucher within the time specified in paragraph (b) of this section, the contracting officer may-

- (i) Determine the amounts due to the contractor under the contract; and
- (ii) Record this determination in a unilateral modification to the contract.

(2) This contracting officer determination must be issued as a final decision in accordance with part 33.211.

42.~~705~~505-1 Contracting officer determination procedure.

(a) Applicability and responsibility. Contracting officer determination ~~shall~~will be used for the following, with the indicated cognizant contracting officer (or cognizant Federal agency official) responsible for establishing the final indirect cost rates:

(1) Business units of a multidivisional corporation under the cognizance of a corporate administrative contracting officer (CACO) (see subpart 42.~~64~~), with that officer responsible for the determination, assisted, as required, by the administrative contracting officers, assigned to the individual business units. Negotiations may be conducted on a coordinated or centralized basis, depending upon the degree of centralization within the contractor's organization.

(2) Business units not under the cognizance of a ~~corporate administrative contracting officer, CACO~~ but having a resident ~~administrative contracting officer~~ACO (see subpart 42.6024), with that officer responsible for the determination. For this purpose, a nonresident ~~administrative contracting officer~~ACO is considered as resident if they spend at least 75 percent of ~~the administrative contracting officer's~~their time ~~is~~ devoted to a single contractor.

(3) For business units not included in paragraph (a)(1) or (a)(2) of this subsection, the contracting officer (or cognizant Federal agency official) will determine whether the rates will be contracting officer or auditor determined.

(4) Educational institutions (see 42.~~705~~505-3).

(5) State and local governments (see 42.~~705~~505-4).

(6) Nonprofit organizations other than educational and state and local governments (see 42.~~705~~505-5).

(b) Procedures.

(1) Contractor proposal. In accordance with the Allowable Cost and Payment clause at 52.216-7, the contractor ~~is required to~~must submit an adequate final indirect cost rate proposal to the cognizant contracting officer (or cognizant Federal agency official) and to the cognizant auditor.

(i) The required content of the proposal and supporting data will vary depending on such factors as business type, size, and accounting system capabilities. The contractor, contracting officer, and auditor must work together to make the proposal, audit, and negotiation process as efficient as possible.

(ii) Each contractor ~~is required to~~must submit the final indirect cost rate proposal within the six-month period following the expiration of each of its fiscal years. The contracting officer may grant, in writing, reasonable extensions, for exceptional circumstances only, when requested in writing by the contractor.

(iii) Upon receipt of the proposal—

(A) The cognizant auditor will review the adequacy of the contractor's proposal for audit in support of negotiating final indirect cost rates and ~~will provide~~ a written description of any inadequacies to the contractor and contracting officer.

(B) If the auditor and contractor are unable to resolve the proposal's inadequacies identified by the auditor, the auditor will elevate the issue to the contracting office to resolve the inadequacies.

(iv) The proposal must be supported with adequate supporting data, ~~some of which~~. Additional supporting data may be required ~~subsequent to~~after finding that the proposal is adequate ~~for audit~~ in support of negotiating final indirect cost rates ~~(e.g., during the course of the performance of the advisory audit)~~. See the clause at 52.216-7(d)(2) for the description of an adequate final indirect cost rate proposal and supporting data.

(2) Audit. Once a proposal has been determined to be adequate for audit in support of negotiating final indirect cost rates, the auditor will audit the proposal and prepare an advisory audit report to the contracting officer (or cognizant Federal agency official), including a listing of any relevant advance agreements or restrictive terms of specific contracts.

(3) Negotiation team. The contracting officer (or cognizant Federal agency official) ~~shall~~ headheads the Government negotiating team, ~~which~~. The team develops a negotiation position. The team includes:

(i) The cognizant auditor;

(ii) ~~and~~ Technical or functional personnel as required;

(iii) Contracting offices ~~having~~with significant dollar interest ~~shall~~must be invited to participate in the negotiation and in the preliminary discussion of critical issues. ~~Individuals or offices~~;

(iv) Parties that have provided a significant input to the Government position should be invited to attend.

(4) Negotiation position. The ~~Government negotiating~~ team ~~shall develop~~develops a negotiation position. Pursuant to 10 U.S.C. 3745 and 41 U.S.C.4305, the contracting officer ~~shall~~will -

(i) Not resolve any questioned costs until obtaining-

(A) Adequate documentation on the costs; and

(B) The contract auditor's opinion on the allowability of the costs.

(ii) Whenever possible, invite the contract auditor to serve as an advisor at any negotiation or meeting with the contractor on the determination of the contractor's final indirect cost rates.

(5) The cognizant contracting officer ~~shall~~must-

(i) Conduct negotiations;

(ii) Prepare a written indirect cost rate agreement conforming to the requirements of the contracts;

(iii) Prepare, sign, and place in the contractor general file ~~(see 4.801(e)(3))~~ a negotiation memorandum covering-

(A) The disposition of significant matters in the advisory audit report;

(B) Reconciliation of all costs questioned, with identification of items and amounts allowed or disallowed in the final settlement as well as the disposition of period costing or allocability issues;

(C) Reasons why any recommendations of the auditor or other Government advisors were not followed; and

(D) Identification of certified cost or pricing data submitted during the negotiations and relied upon in reaching a settlement; and

(iv) The contracting officer must promptly distribute executed copies of the indirect cost rate agreement to the contractor and to each affected contracting agency and include copies of the agreement in the contract file. The contracting officer must include a copy of the negotiation memorandum described in 42.501(b)(5)(iii) in the contract file and furnish, as appropriate, to the affected contracting offices and Government auditor.

(v) Notify the contractor of the individual costs which were considered unallowable and the respective amounts of the disallowance.

~~(iv) Distribute resulting documents in accordance with 42.706.~~

~~(v) Notify the contractor of the individual costs which were considered unallowable and the respective amounts of the disallowance.~~

42.705505-2 Auditor determination procedure.

(a) Applicability and responsibility.

(1) The cognizant Government auditor ~~shall~~must establish final indirect cost rates for business units not covered in 42.705505-1(a).

(2) ~~In addition,~~ Auditor determination may also be used for business units that are covered in 42.705505-1(a) when the contracting officer (or cognizant Federal agency official) and auditor agree that the indirect costs can be settled with little difficulty and any of the following circumstances apply:

(i) The business unit ~~has~~ primarily has fixed-price contracts, with only minor involvement in cost-reimbursement contracts.

(ii) The administrative cost of contracting officer determination would exceed the expected benefits.

(iii) The business unit does not have a history of disputes and there are few cost problems.

(iv) The contracting officer (or cognizant Federal agency official) and auditor agree that special circumstances require auditor determination.

(b) Procedures.

(1) The contractor ~~shall~~must submit to the cognizant contracting officer (or cognizant Federal agency official) and auditor a final indirect cost rate proposal in accordance with 42.705505-1(b)(1).

(2) Once a proposal has been determined to be adequate for audit in support of negotiating final indirect cost rates, the auditor ~~shall~~will-

(i) Audit the proposal and prepare an advisory audit report, including a listing of any relevant advance agreements or restrictive terms of specific contracts. Copies of the audit report must be furnished to the affected contracting offices;

(ii) Seek agreement on indirect costs with the contractor;

(iii) Prepare an indirect cost rate agreement conforming to the requirements of the contracts. The agreement ~~shall~~must be signed by the contractor and the auditor. A copy of the agreement must be distributed to the contractor and to each affected contracting agency;

(iv) If agreement with the contractor is not reached, forward the audit report to the contracting officer (or cognizant Federal agency official) identified in the Directory of Contract Administration Services Components (see 42.203), who will then resolve the disagreement; and

(v) ~~Distribute resulting~~Promptly distribute resultant documents ~~in accordance with~~.

42.706.

~~42.705~~505-3 Educational institutions.

(a) General.

(1) Postdetermined final indirect cost rates ~~shall~~must be used ~~in the settlement of~~to settle indirect costs for all cost-reimbursement contracts with educational institutions, unless predetermined final indirect cost rates are authorized and used (see paragraph (b) of this subsection).

(2) The OMB Uniform Guidance at 2 CFR part 200, appendix III assigns each educational institution (defined as an institution of higher education in the OMB Uniform Guidance at 2 CFR part 200, subpart A, and 20 U.S.C. 1001) to a single Government agency for the negotiation of indirect cost rates ~~and provides that those rates shall be accepted by;~~ all Federal agencies. accept those rates. Cognizant Government agencies and educational institutions are listed in the ~~Directory of Federal Contract Audit Offices~~CASD (see 42.~~103~~202).

(3) The cognizant agency for indirect costs ~~shall establish the~~establishes billing rates and final indirect cost rates at the educational ~~institution (defined as an institution of higher education in 2 CFR 200, subpart A, and 20 U.S.C. 1001) consistent with the requirements of this subpart, subpart 31.3, and the OMB Uniform Guidance at 2 CFR part 200, subpart E and appendix III. The agency shall follow~~institutions, using the procedures ~~outlined in~~at 42.~~705~~505-1 (b).

(4) If the cognizant agency is unable to reach agreement with an institution, the ~~appeals system of the cognizant agency shall be followed for resolution of the dispute~~will resolve disputes in accordance with agency procedures and the OMB Uniform Guidance.

(b) Predetermined final indirect cost rates.

(1) ~~Under~~Agencies may use predetermined rates for cost-reimbursement research and development contracts with universities, colleges, or other educational institutions (~~41 U.S.C.~~

~~4708), payment for reimbursable indirect costs may be made on the basis of predetermined final indirect cost rates. The cognizant agency is not required to establish predetermined rates, but if they are established, their use must be extended~~41 U.S.C. 4708). If established, they extend to all the institution's Government contracts.

(2) In deciding whether the use of predetermined rates ~~would be~~are appropriate ~~for the educational institution concerned, the agency should~~, consider ~~both~~ the stability of ~~the institution's~~ indirect costs and bases over a period of years and ~~any~~ anticipated changes ~~in the amount of the direct and indirect costs~~.

(3) Unless ~~their use is~~ approved at a level in the cognizant agency ~~(see paragraph (a)(2) of this subsection)~~ higher than the contracting officer, do not use predetermined rates ~~shall not be used~~ when-

(i) There has been no recent audit of the indirect costs;

(ii) There have been frequent or wide fluctuations in the indirect cost rates and the bases over a period of years; or

(iii) The estimated reimbursable costs for any individual contract are expected to exceed \$1 million annually.

(4) ~~(i) If~~ no predetermined rates ~~are to be used and no rates have been previously established~~exist for the institution's current fiscal year, ~~the agency shall obtain from -~~

(i) The institution must provide the agency a proposal for predetermined rates.

(ii) If the proposal is found to be generally acceptable, the agency ~~shall~~must negotiate the predetermined rates with the institution. The rates should be based on an audit of the institution's costs for the year immediately preceding ~~the year in which~~that the rates are being negotiated. If this is not possible, ~~an~~or, if not available, earlier ~~audit~~audits, if determined appropriate by the cognizant agency may be used, but appropriate steps should be taken to identify and evaluate significant variations in costs incurred or in bases used that may have a bearing on the reasonableness of the proposed rates. However, in the case of smaller contracts (i.e., contracts that do not exceed the simplified acquisition threshold), an audit made at an earlier date is acceptable if-

(A) There have been no significant changes in the contractor's organization; and

(B) It is reasonably apparent that another audit would have little effect on the rates finally agreed upon and the potential for overpayment of indirect cost is relatively insignificant.

(5) If predetermined rates are used-

(i) The contracting officer ~~shall~~must include the negotiated rates and bases in the contract Schedule; and

(ii) See [part 16.307\(g\)](#), which prescribes the clause at 52.216-15, Predetermined Indirect Cost Rates.

(6) Predetermined indirect cost rates ~~shall be~~ [are](#) applicable for a period of not more than ~~four years~~ [four years](#). The agency ~~shall~~ [must](#) obtain ~~the contractor's proposal for new predetermined rates~~ [rate proposals](#) sufficiently in advance so that the new rates, based on current data, may be promptly negotiated near the beginning of the ~~new~~ [next](#) fiscal year or other period agreed to by the parties (see paragraphs (b) and (d) of the clause at 52.216-15, Predetermined Indirect Cost Rates).

(7) ~~Contracting officers shall~~ Use billing rates ~~established by the agency to reimburse the contractor for work performed during a period~~ [periods](#) not covered by predetermined rates.

(8) The OMB Uniform Guidance at 2 CFR part 200, subpart E and appendix III, provides additional guidance on how long predetermined rates may be used.

42.~~705~~ [505](#)-4 State and local governments.

The OMB Uniform Guidance at 2 CFR part 200, subpart E and appendix V, concerning cost principles for state and local governments (see ~~subpart part~~ [31.6](#)) establishes the ~~cognizant agency concept and the~~ procedures for determining ~~at the~~ [the](#) cognizant agency for ~~approving~~ State and local government indirect costs associated with federally-funded programs and activities. ~~The indirect cost rates negotiated and~~ [Rates](#) approved by the cognizant agency for indirect costs ~~will~~ [must](#) be used by all Federal agencies that also award contracts to these same State and local governments.

42.~~705~~ [505](#)-5 Nonprofit organizations other than educational [institutions](#) and state and local governments.

~~(See The OMB Uniform Guidance at 2 CFR part 200, subpart E and appendix IV; but see appendix VIII V, establishes the procedures for nonprofit organizations exempt from subpart E.)~~

~~42.706 Distribution of documents:~~

~~(a) The contracting officer or auditor shall promptly distribute executed copies of~~ [determining](#) the indirect cost rate agreement to the contractor and to each affected contracting [cognizant](#) agency and shall provide copies of the agreement for the contract files, in accordance [State and local government indirect costs associated](#) with ~~the guidance for contract modifications in subpart 4.2, Contract Distribution.~~

~~(b) Copies of the negotiation memorandum prepared under contracting officer determination or audit report prepared under auditor determination shall~~ [federally-funded programs and activities. Rates approved by the cognizant agency must](#) be ~~furnished, as appropriate, to the contracting offices and Government audit offices~~ [used by all Federal agencies.](#)

42.~~707~~ [506](#) Cost-sharing rates and limitations on indirect cost rates.

~~(a)~~ [\(a\) Rate ceilings in cost sharing.](#) Cost-sharing arrangements, when authorized, may call for the contractor to participate in the costs of the contract by accepting indirect cost rates lower than the

anticipated actual rates. In such cases, a negotiated indirect cost rate ceiling may be incorporated into the contract for prospective application. ~~For cost sharing under research and development contracts, see 35.003(b).~~

(b) ~~(1)~~ Other rate ceilings. Other situations may ~~make it prudent to provide a warrant the use of~~ final indirect cost rate ~~ceiling in a contract. Examples of ceilings,~~ such ~~circumstances are~~ as when the ~~proposed~~ contractor-

~~(i)~~

~~(1)~~ Is a new or recently reorganized company, ~~and there is~~ with no ~~past or recent record of~~ ~~incurred~~ indirect ~~costs~~ cost history;

~~(ii)~~ Has ~~a recent record of a~~ rapidly increasing indirect cost ~~rate~~ rates due to ~~a declining volume~~ ~~of sales without a commensurate decline in indirect expenses; or~~

~~(iii)~~ Seeks ~~to enhance its a~~ competitive ~~position in a particular circumstance~~ advantage by basing its proposal on ~~indirect cost rates lower than those that may reasonably be expected to occur during contract performance, thereby causing a cost overrun.~~

~~(2)~~ ~~In such cases, an equitable ceiling covering the final~~ unrealistically low indirect cost rates ~~may be negotiated and specified in the contract,~~ likely to result in a cost overrun.

(c) When ceiling provisions are utilized, the contract ~~shall~~ must also provide that-

(1) The Government ~~will~~ is not ~~be~~ obligated to pay any additional amount should the final ~~indirect cost~~ rates exceed the negotiated ceiling rates, and

~~(2)~~ ~~In the event the~~ If final ~~indirect cost~~ rates are less than the ~~negotiated~~ ceiling rates, the ~~negotiated~~ rates will be reduced to conform with the lower rates.

42.708 ~~507~~ Quick-closeout procedure.

(a) The contracting officer responsible for contract closeout ~~shall~~ may negotiate the settlement of direct and indirect costs for a specific contract, task order, or delivery order prior to ~~be closed, in advance of~~ the determination of final ~~direct costs and~~ indirect cost rates, as set forth ~~in~~

42.705 ~~505~~, if-

(1) The contract, task order, or delivery order is physically complete;

(2) The amount of unsettled direct costs and indirect costs to be allocated to the contract, task order, or delivery order is relatively insignificant. Cost amounts will be considered relatively insignificant when the (total unsettled direct costs and indirect costs to be allocated to any one contract, task order, or delivery order does not exceed the lesser of- \$1,000,000 or 10 percent of the total contract amount).

~~(i)~~ \$1,000,000; or

~~(ii)~~ 10 percent of the total contract, task order, or delivery order amount;

(3) The contracting officer performs a risk assessment and determines ~~that the use of the~~ quick-closeout ~~procedure is~~ procedures are appropriate. The risk assessment ~~shall~~ must include-

- (i) Consideration of the contractor's accounting, estimating, and purchasing systems;
 - (ii) Other concerns of the cognizant contract auditors; and
 - (iii) Any other pertinent information, such as, documented history of Federal Government approved indirect cost rate agreements, changes to contractor's rate structure, volatility of rate fluctuations during affected periods, mergers or acquisitions, special contract provisions limiting contractor's recovery of otherwise allowable indirect costs under cost reimbursement or time-and-materials contracts; and
- (4) Agreement can be reached on a reasonable estimate of allocable dollars.

(b) ~~Determinations~~ A determination of final indirect costs under the quick-closeout procedure provided for by the Allowable Cost and Payment clause at 52.216-7 ~~shall be~~ is final for the contract it covers and no adjustment ~~shall~~ will be made to other contracts for over- or under-recoveries of costs allocated or allocable to the contract covered by the agreement.

(c) Indirect cost rates used in the quick closeout of a contract ~~shall~~ will not be considered a binding precedent when establishing the final indirect cost rates for other contracts.

42.~~709~~ 508 Penalties for Unallowable Costs.

42.~~709~~ 508-1 Scope.

(a) This section implements 10 U.S.C. 3743 and 41 U.S.C. 4303. It covers the assessment of penalties against contractors which include unallowable indirect costs in-

- (1) Final indirect cost rate proposals; or
 - (2) The final statement of costs incurred or estimated to be incurred under a fixed-price incentive contract.
- (b) This section applies to all contracts in excess of \$1 million, except fixed-price contracts without cost incentives or any firm-fixed-price contracts for the purchase of commercial products or commercial services.

42.~~709~~ 508-2 General.

(a) The following penalties apply to contracts covered by this section:

- (1) If the indirect cost is expressly unallowable under a cost principle in the FAR, or an executive agency supplement to the FAR, that defines the allowability of specific selected costs, the penalty is equal to-

(i) The amount of the disallowed costs allocated to contracts that are subject to this section for which an indirect cost proposal has been submitted; plus

(ii) Interest on the paid portion, if any, of the disallowance.

(2) If the indirect cost was determined to be unallowable for that contractor before proposal submission, the penalty is two times the amount in paragraph (a)(1)(i) of this section.

(b) These penalties are in addition to other administrative, civil, and criminal penalties provided by law.

(c) ~~It is not necessary for~~ Penalties may be assessed even if the unallowable costs ~~to have been~~ were not paid to the contractor ~~in order to assess a penalty~~.

42.~~709~~508-3 Responsibilities.

(a) The cognizant contracting officer is responsible for—

~~(1) determining whether the penalties in 42.~~709~~508-2(a) should be assessed;~~

~~(2) Determining whether~~ and determining if such penalties should be waived pursuant to 42.~~709~~508-6; ~~and.~~

~~(3) Referring the matter to the appropriate criminal investigative organization for review and for appropriate coordination of remedies, if there is evidence that the contractor knowingly submitted unallowable costs.~~

(b) The contract auditor, ~~in the review~~ is responsible for reviews and/or ~~the determination~~ making determinations of final indirect cost proposals for contracts subject to this section, ~~is responsible for—~~

~~(1) Recommending to the contracting officer which~~ identifying costs that may be ~~unallowable and~~ subject to ~~the penalties in 42.709-2(a);~~

~~(2) penalty, and~~ providing rationale and supporting documentation for any ~~recommendation;~~ and recommendations

~~(3) Referring the matter~~ (c) Both contracting officers and contract auditors have a duty to refer matters to the appropriate criminal investigative organization for review and ~~for appropriate~~ coordination of remedies; if there is evidence that the contractor knowingly submitted unallowable costs.

42.~~709~~508-4 Assessing the penalty.

Unless a waiver is granted pursuant to 42.~~709~~508-6, the cognizant contracting officer ~~shall~~ must-

(a) Assess the penalty in 42.709508-2(a)(1), when the submitted cost is expressly unallowable under a cost principle in the FAR or an executive agency supplement that defines the allowability of specific selected costs; or

(b) Assess the penalty in 42.709508-2(a)(2), when the submitted cost was determined to be unallowable for that contractor prior to submission of the proposal. Prior determinations of unallowability may be evidenced by-

(1) A DCAA ~~Form~~ Form 1, Notice of Contract Costs Suspended and/or Disapproved (see 48 CFR 242.705-2), or any similar notice which the contractor elected not to appeal and was not withdrawn by the cognizant Government agency;

(2) A contracting officer final decision which was not appealed;

(3) A prior executive agency Board of Contract Appeals or court decision involving the contractor, which upheld the cost disallowance; or

(4) A determination or agreement of unallowability under part 31.201-6.

(c) The contracting officer must issue a final decision (see part 33.211) which includes a demand for payment ~~of~~ any penalty assessed under paragraph (a) or (b) of this section. The letter ~~shall~~ must state that the determination is a final decision under the Disputes clause of the contract. ~~(Demanding~~ The demand for payment of the penalty is separate from ~~demanding a demand for~~ repayment of any paid portion of the disallowed cost~~).~~

42.709508-5 Computing Interest.

For 42.709508-2(a)(1)(ii), compute interest on any paid portion of the disallowed cost as follows:

(a) Consider the overpayment to have occurred, and interest to have begun accumulating, from the midpoint of the contractor's fiscal year. Use an alternate equitable method if the cost was not paid evenly over the fiscal year.

(b) Use the interest rate specified by the Secretary of the Treasury pursuant to ~~Pub.L. 92-41 (85 Stat. 97);~~ U.S.C. 7109.

(c) Compute interest from the date of overpayment to the date of the demand letter for payment of the penalty.

(d) Determine the paid portion of the disallowed costs in consultation with the contract auditor.

42.709508-6 Waiver of the penalty.

The cognizant contracting officer ~~shall~~ must waive the penalties at 42.709508-2(a) when—

(a) The contractor withdraws the proposal before ~~the Government formally initiates an~~ formal audit ~~of the proposal and initiation (written notice to~~ the contractor ~~submits a revised proposal~~

~~(an audit will be deemed to be formally initiated when the Government provides the contractor with written notice, or holds an entrance conference~~ with the contractor is held, indicating that audit work on a specific final indirect cost proposal has begun~~); and submits a revised proposal as required by 41 U.S.C. 4303(c) and 10 U.S.C. 3743(c).~~;

(b) The ~~amount of the~~ unallowable costs ~~under the proposal which are~~ subject to the penalty is ~~\$10,000 or less (i.e., if the amount of expressly or previously determined unallowable costs which would be allocated to the contracts specified in 42.709-1(b) is~~ are \$10,000 or less~~); or~~;

(c) The contractor demonstrates, to the cognizant contracting officer's satisfaction, that-

(1) It has established policies and personnel training and an internal control and review system that provide assurance that unallowable costs subject to penalties are precluded from being included in the contractor's final indirect cost rate proposals ~~(e.g., the types of controls required for satisfactory participation in the Department of Defense sponsored self governance programs, specific accounting controls over indirect costs, compliance tests which demonstrate that the controls are effective, and Government audits which have not disclosed recurring instances of expressly unallowable costs); and~~;

(2) The unallowable costs subject to the penalty were inadvertently ~~incorporated~~ included into the proposal; ~~i.e., their inclusion resulted from an unintentional error, notwithstanding the exercise of~~ despite due care.

42.~~709~~508-7 Contract clause.

Use the clause at 52.242-3, Penalties for Unallowable Costs, in all solicitations and contracts over \$1 million except fixed-price contracts without cost incentives or any firm-fixed-price contract for the purchase of commercial products or commercial services. Generally, covered contracts are those which contain one of the clauses at 52.216-7, 52.216-16, or 52.216-17, or a similar clause from an executive agency's supplement to the FAR.

Subpart 42.~~86~~ - Disallowance of Costs

42.~~800~~600 Scope of subpart.

This subpart prescribes policies and procedures for-

(a) Issuing notices of intent to disallow costs; and

(b) Disallowing costs already incurred during the course of performance.

42.~~801~~601 Notice of intent to disallow costs.

~~(a) At any time during the performance of a contract of a type referred to in 42.802(a)~~ Contracting officers must make reasonable efforts to proactively address potentially unallowable costs with contractors. If unable to settle the matter through discussion, the cognizant contracting officer responsible for administering the contract may issue the contractor a written notice of intent to disallow specified costs incurred or planned for incurrence. ~~However, before issuing the notice, the contracting officer responsible for administering the contract shall make every~~

~~reasonable effort to reach a satisfactory settlement through discussions with the contractor.~~
during the performance of the following contract types:

(1) Cost-reimbursement contracts.

(2) Cost-reimbursement portions of fixed-price contracts.

(3) Letter contracts that provides for reimbursement of costs.

(4) Time-and-material and labor-hour contracts.

(5) Fixed-price incentive contracts.

(b) A notice of intent to disallow such costs usually results from monitoring contractor costs. The purpose of the notice is to notify the contractor as early as practicable during contract performance that the cost is considered unallowable under the contract terms and to provide for timely resolution of any resulting disagreement. In ~~the event~~case of disagreement, the contractor may submit to the contracting officer a written response. Any such response ~~shall~~must be answered by withdrawal of the notice or by making a written decision within 60 days.

(c) As a minimum, the notice ~~shall~~must-

(1) Refer to the contract's Notice of Intent to Disallow Costs clause;

(2) State the contractor's name and list the numbers of the affected contracts;

(3) Describe the costs to be disallowed, including estimated dollar value by item and applicable time periods, and state the reasons for the intended disallowance;

(4) Describe the potential impact on billing rates and forward pricing rate agreements;

(5) State the notice's effective date and the date by which written response must be received;

(6) List the recipients of copies of the notice; and

(7) Request the contractor to acknowledge receipt of the notice.

(d) The contracting officer issuing the notice ~~shall~~must furnish copies to all contracting officers cognizant of any segment of the contractor's organization.

(e) If the notice involves elements of indirect cost, it ~~shall~~must not be issued without coordination with the contracting officer or auditor having authority for final indirect cost settlement (see 42.~~705~~505).

(f) In the event the contractor submits a response that disagrees with the notice (see paragraph (b) of this section), the contracting officer who issued the notice ~~shall~~must either withdraw the notice

or issue the written decision, except when elements of indirect cost are involved, in which case the contracting officer responsible under 42.705505 for determining final indirect cost rates ~~shall~~must issue the decision.

42.802602 Contract clause.

The contracting officer ~~shall~~must insert the clause at 52.242-1, Notice of Intent to Disallow Costs, in solicitations and contracts when a cost-reimbursement contract, a fixed-price incentive contract, or a contract providing for price redetermination is contemplated.

42.803603 Disallowing costs after incurrence.

~~Cost-reimbursement contracts, the cost-reimbursement portion of fixed-price contracts, letter contracts that provide for reimbursement of costs, and time-and-material and labor-hour contracts provide for disallowing costs during the course of performance after the costs have been incurred. The following procedures shall apply:~~

The contracting officer must apply the following procedures when disallowing costs which the contractor has already incurred:

(a) Contracting officer receipt of vouchers. ~~When~~ Contracting officers should follow agency procedures when they receive vouchers directly from the contractor ~~and, with or without auditor assistance, approve or disapprove them, the process shall be conducted in accordance with the normal procedures of the individual agency.~~

(b) Auditor receipt of vouchers.

(1) When authorized by agency regulations, the contract auditor may ~~be authorized to~~ —

(i) Receive reimbursement vouchers directly from contractors,

(ii) Approve acceptable vouchers for payment ~~those vouchers found acceptable~~, and

(iii) Suspend payment of questionable costs.

(2) The auditor ~~shall~~must forward approved vouchers for payment to the cognizant contracting, finance, or disbursing officer, as appropriate under the agency's procedures.

~~(2)~~

(3) If ~~the examination of~~ a voucher raises ~~a question regarding the allowability of a cost under the contract terms~~questions, the auditor, ~~after informal discussion as appropriate~~, may ~~, where authorized by agency regulations,~~ issue a notice of contract costs suspended and ~~/or disapproved simultaneously~~ to the contractor and the disbursing officer, ~~with~~. A copy must be provided to the cognizant contracting officer, ~~for~~. This action after informal discussion and when authorized by agency regulations, permits deduction from current payments ~~with respect to~~for costs claimed but not considered reimbursable.

(34) If the contractor disagrees with the deduction from current payments, ~~the contractor~~they may-

- (i) Submit a written request to the cognizant contracting officer to consider whether the unreimbursed costs should be paid and ~~to discuss the findings with the contractor~~;
- (ii) File a claim under the Disputes clause, which the cognizant contracting officer will process in accordance with agency procedures; or
- (iii) Do both ~~of the~~ options listed above.

Subpart 42.~~9-7~~ – Bankruptcy

42.700 Scope of subpart.

~~42.900 Scope of subpart.~~

This subpart prescribes policies and procedures regarding for actions to be taken when a contractor enters into proceedings relating to bankruptcy. ~~It establishes a requirement for the contractor~~ It requires contractors to notify the contracting officer upon filing a petition for bankruptcy. ~~It further and~~ establishes minimum requirements for agencies to follow in the event of a contractor bankruptcy.

~~42.901~~ 701 General.

The contract administration office ~~shall~~ must take prompt action to determine the potential impact of a contractor bankruptcy ~~on the Government in order~~ to protect the interests of the Government.

~~42.902~~ 702 Procedures.

(a) When notified of bankruptcy proceedings, agencies ~~shall, as~~ must, at a minimum-

- (1) Furnish the notice of bankruptcy to legal counsel and other appropriate agency offices (e.g., contracting, financial, property) and affected buying activities;
- (2) Determine the amount of the Government's potential claim against the contractor (in assessing this impact, identify and review any contracts that have not been closed out, including those physically completed or terminated);
- (3) Take actions necessary to protect the Government's financial interests and safeguard Government property; and
- (4) Furnish pertinent contract information to the legal counsel representing the Government.

(b) The contracting officer ~~shall~~ will consult with legal counsel, whenever possible, prior to taking any action regarding the contractor's bankruptcy proceedings.

~~42.903~~ 703 Solicitation provision and contract clause.

The contracting officer ~~shall~~ must insert the clause at 52.242-13, Bankruptcy, in all solicitations and contracts exceeding the simplified acquisition threshold.

Subpart 42.~~10~~ – ~~[Reserved]~~

~~Subpart 42.11~~ 8 - Production Surveillance and Reporting

~~42.1101 General.~~

42.801 General.

Production surveillance is a ~~function of~~ contract administration function used to determine contractor progress and to identify any factors that may delay performance. Production surveillance involves Government review and analysis of-

- (a) Contractor performance plans, schedules, controls, and industrial processes; and
- (b) The contractor's actual performance under them.

~~42.1102~~802 Applicability.

This subpart applies to all contracts ~~for supplies or services~~ other than construction contracts, and Federal Supply Schedule contracts. ~~See part 37, especially subpart 37.6, regarding surveillance of contracts for services.~~

~~42.1103 Policy.~~

~~The contractor is responsible for timely contract performance. The Government will maintain surveillance of contractor performance as necessary to protect its interests. When the contracting office retains a contract for administration, the contracting officer administering the contract shall determine the extent of surveillance.~~

~~42.1104~~803 Surveillance requirements.

(a) The contract administration office determines the extent of production surveillance on the basis of-

(1) The criticality (degree of importance to the Government) assigned by the contracting officer (see 42.~~1105~~804) to the supplies or services; and

(2) Consideration of the following factors:

- (i) Contract requirements for reporting production progress and performance.
- (ii) The contract performance schedule.
- (iii) The contractor's production plan.
- (iv) The contractor's history of contract performance.
- (v) The contractor's experience with the contract supplies or services.
- (vi) The contractor's financial capability.
- (vii) Any supplementary written instructions from the contracting office.

(b) Contracts at or below the simplified acquisition threshold should not normally require production surveillance.

(c) In planning and conducting surveillance, contract administration offices ~~shall~~must make maximum use of any reliable contractor production control or data management systems.

(d) In performing surveillance, contract administration office personnel ~~shall~~must avoid any action that may-

(1) Be inconsistent with any contract requirement; or

(2) Result in claims of waivers, of changes, or of other contract modifications.

42.~~1105~~804 Assignment of criticality designator.

Contracting officers ~~shall~~must assign a criticality designator to each contract in the space for designating the contract administration office in the contract, as follows:

**Criticality
Designator**

Criterion

- | | |
|----------|---|
| A | Critical contracts, including DX-rated contracts (see subpart 11.6), contracts citing the authority in 6.302-2 (unusual and compelling urgency), and contracts for major systems. |
| B | Contracts (other than those designated "A") for items needed to maintain a Government or contractor production or repair line, to preclude out-of-stock conditions or to meet user needs for nonstock items. |
| C | All contracts other than those designated "A" or "B." |

42.~~1106~~ Reporting requirements.

~~(a) When information on contract performance status is needed, contracting officers may require contractors to submit production progress reports (see 42.1107(a)). Reporting requirements shall be limited to that information essential to Government needs and shall take maximum advantage of data output generated by contractor management systems.~~

~~(b) Contract administration offices shall review and verify the accuracy of contractor reports and advise the contracting officer of any required action. The accuracy of contractor prepared reports shall be verified either by a program of continuous surveillance of the contractor's report-preparation system or by individual review of each report.~~

~~(c) The contract administration office may at any time initiate a report to advise the contracting officer (and the inventory manager, if one is designated in the contract) of any potential or actual delay in performance. This advice shall-~~

~~(1) Be in writing;~~

~~(2) Be provided in sufficient time for the contracting officer to take necessary action; and~~

~~(3) Provide a definite recommendation, if action is appropriate.~~

~~42.1107~~805 Contract clause.

~~(a) The contracting officer shall~~(a) Insert the clause at 52.242-2, Production Progress Reports, in solicitations and contracts when production progress reporting is required; unless a construction contract, or a Federal Supply Schedule contract is contemplated.

(b) When the clause at 52.242-2 is used, ~~the contracting officer shall~~ specify appropriate reporting instructions in the Schedule ~~(see 42.1106(a)).~~

Subpart 42.129 - Novation and Change-of-Name Agreements

42.1200900 Scope of subpart.

This subpart prescribes policies and procedures for-

(a) Recognition of a successor in interest to Government contracts when contractor assets are transferred;

(b) Recognition of a change in a contractor's name; and

(c) Execution of novation agreements and change-of-name agreements by the responsible contracting officer.

~~42.1201 [Reserved]~~

42.1202901 Responsibility for executing agreements.

The contracting officer responsible for processing and executing novation and change-of-name agreements ~~shall~~will be determined as follows:

(a) If any of the affected contracts held by the transferor have been assigned to an administrative contracting officer (ACO) (see ~~part 2.1~~ and 42.202 of this part), the responsible contracting officer ~~shall~~will be-

(1) ~~This~~The assigned ACO; or

(2) The ACO responsible for the corporate office, if affected contracts are in more than one plant or division of the transferor.

(b) If none of the affected contracts held by the transferor have been assigned to an ACO, the contracting officer responsible for the largest unsettled (unbilled plus billed but unpaid) dollar balance of contracts ~~shall~~will be the responsible contracting officer.

(c) If several transferors are involved, the responsible contracting officer ~~shall be~~is-

(1) The ACO administering the largest unsettled dollar balance; or

(2) The contracting officer ~~(or ACO)~~ designated by the agency having the largest unsettled dollar balance, if none of the affected contracts have been assigned to an ACO.

42.~~1203~~⁹⁰² Processing agreements.

(a) If a contractor wishes the Government to recognize a successor in interest to its contracts or a name change, the contractor must submit a written request to the responsible contracting officer (see 42.~~1202~~). ~~If the contractor received its contract under subpart 8.7 under 41 U.S.C. chapter 85, Committee for Purchase from People Who Are Blind or Severely Disabled, use the procedures at 8.716 instead.~~⁹⁰¹). If the contractor is an AbilityOne Nonprofit Agency, paragraphs (a) through (g) of this section do not apply. The Committee will provide a notice of change to the cognizant contracting officer for execution of an SF-30 in accordance with paragraph (h).

(b) The responsible contracting officer ~~shall~~will-

(1) Identify and request that the contractor submit ~~the~~ information necessary to evaluate the proposed agreement for recognizing a successor in interest or a name change. This information should include the items identified in 42.~~1204~~⁹⁰³(e) and (f) or 42.~~1205~~⁹⁰⁴(a), as applicable;

(2) Notify each contract administration office and contracting office affected by a proposed agreement for recognizing a successor in interest, and provide those offices with a list of all affected contracts; and

(3) Request submission of any comments or objections to the proposed transfer within 30 days after notification. Any submission should be accompanied by supporting documentation.

(c) Upon receipt of the necessary information, the responsible contracting officer ~~shall~~will determine whether ~~or not~~ it is in the Government's interest to recognize the proposed successor in interest on the basis of-

(1) The comments received from the affected contract administration offices and contracting offices;

(2) The proposed successor's responsibility under ~~subpart 9.1, Responsible Prospective Contractors~~^{part 9}; and

(3) Any factor relating to the proposed successor's performance of ~~contracts with the~~ Government contracts that the Government determines would impair the proposed successor's ability to perform the contract satisfactorily.

(d) The execution of a novation agreement does not preclude the use of any other method available to the contracting officer to resolve any other issues related to a transfer of contractor assets, including the treatment of costs.

(e) Any separate agreement between the transferor and transferee regarding the assumption of liabilities (e.g., long-term incentive compensation plans, cost accounting standards noncompliances, environmental cleanup costs, and final overhead costs) should be referenced specifically in the novation agreement.

(f) Before novation and change-of-name agreements are executed, the responsible contracting officer ~~shall~~must ensure that Government counsel has reviewed them for legal sufficiency.

(g) The responsible contracting officer ~~shall~~must-

(1) Forward a signed copy of the executed novation or change-of-name agreement to the transferor and to the transferee; and

(2) Retain a signed copy in the case file.

(h) Following distribution of the agreement, the responsible contracting officer ~~shall~~must-

(1) Prepare a Standard Form 30, Amendment of Solicitation/Modification of Contract, incorporating a summary of the agreement and attaching a complete list of contracts affected;

(2) Retain the original Standard Form 30 with the attached list in the case file;

(3) Send a signed copy of the Standard Form 30, with attached list to the transferor and to the transferee; and

(4) Send a copy of this Standard Form 30 with attached list to each contract administration office or contracting office involved, which ~~shall~~will be responsible for further appropriate distribution.

42.~~1204~~903 Applicability of novation agreements.

(a) 41 U.S.C.6305 prohibits transfer of Government contracts from the contractor to a third party. The Government may, when in its interest, recognize a third party as the successor in interest to a Government contract when the third party's interest in the contract arises out of the transfer of-

(1) All the contractor's assets; or

(2) The entire portion of the assets involved in performing the contract. (See [part 14.404-2\(i\)](#) for the effect of novation agreements after bid opening but before award.) Examples of such transactions include, but are not limited to-

(i) Sale of these assets with a provision for assuming liabilities;

(ii) Transfer of these assets incident to a merger or corporate consolidation; and

(iii) Incorporation of a proprietorship or partnership, or formation of a partnership.

(b) A novation agreement is unnecessary when there is a change in the ownership of a contractor as a result of a stock purchase, with no legal change in the contracting party, and when that contracting party remains in control of the assets and is the party performing the contract. However, whether there is a purchase of assets or a stock purchase, there may be issues related to the change in ownership that appropriately should be addressed in a formal agreement between the contractor and the Government (see 42.~~1203~~902(e)).

(c) When it is in the Government's interest not to concur in the transfer of a contract from one company to another company, the original contractor remains under contractual obligation to the Government, and the contract may be terminated for reasons of default, should the original contractor not perform.

(d) When considering whether to recognize a third party as a successor in interest to Government contracts, the responsible contracting officer ~~shall~~must identify and evaluate any significant organizational conflicts of interest in accordance with ~~subpart-part~~ 9.5. If the responsible contracting officer determines that a conflict of interest cannot be resolved, but ~~that it is in the best interest of the Government to approve~~approving the novation request is in the Government's interest, a waiver request ~~for a waiver~~ may be submitted in accordance with ~~the procedures at part~~ 9.503.

(e) When a contractor asks the Government to recognize a successor in interest, the contractor ~~shall~~must submit to the responsible contracting officer three signed copies of the proposed novation agreement and one copy each, as applicable, of the following:

(1) The document describing the proposed transaction, e.g., purchase~~/~~or sale agreement or memorandum of understanding.

(2) A list of all affected contracts between the transferor and the Government, as of the date of sale or transfer of assets, showing for each, as of that date, the-

(i) Contract number and type;

(ii) Name and address of the contracting office;

(iii) Total dollar value, as amended; and

(iv) Approximate remaining unpaid balance.

(3) Evidence of the transferee's capability to perform.

(4) Any other relevant information requested by the responsible contracting officer.

(f) Except as provided in paragraph (g) of this section, the contractor ~~shall~~must submit to the responsible contracting officer one copy of each of the following documents, as applicable, as the documents become available:

(1) An authenticated copy of the instrument effecting the transfer of assets~~;~~ (e.g., bill of sale, certificate of merger, contract, deed, agreement, or court decree.)

(2) A certified copy of each resolution of the corporate parties' boards of directors authorizing the transfer of assets.

(3) A certified copy of the minutes of each corporate party's stockholder meeting necessary to approve the transfer of assets.

(4) An authenticated copy of the transferee's certificate and articles of incorporation, if a corporation was formed for the purpose of receiving the assets involved in performing the Government contracts.

(5) The opinion of legal counsel for the transferor and transferee stating that the transfer was properly effected under applicable law and the effective date of transfer.

(6) Balance sheets of the transferor and transferee as of the dates immediately before and after the transfer of assets, audited by independent accountants.

(7) Evidence that any security clearance requirements have been met.

(8) The consent of sureties on all contracts listed under paragraph (e)(2) of this section if bonds are required, or a statement from the transferor that none are required.

(g) If the Government has acquired the documents during its participation in the pre-merger or pre-acquisition review process, or the Government's interests are adequately protected with an alternative formulation of the information, the responsible contracting officer may modify the list of documents to be submitted by the contractor.

(h) When recognizing a successor in interest to a Government contract is consistent with the Government's interest, the responsible contracting officer ~~shall~~must execute a novation agreement with the transferor and the transferee. It ~~shall~~must ordinarily provide in part that-

(1) The transferee assumes all the transferor's obligations under the contract;

(2) The transferor waives all rights under the contract against the Government;

(3) The transferor guarantees performance of the contract by the transferee (a satisfactory performance bond may be accepted instead of the guarantee); and

(4) Nothing in the agreement ~~shall~~will relieve the transferor or transferee from compliance with any Federal law.

(i) The responsible contracting officer ~~shall~~must use the following format for agreements when the transferor and transferee are corporations, and all the transferor's assets are transferred. This format may be adapted to fit specific cases and may be used as a guide in preparing similar agreements for other situations.

~~Novation Agreement~~

~~The ABC Corporation (Transferor), a corporation duly organized and existing under the laws of _____ [insert State] with its principal office in _____ [insert city]; the XYZ~~

Corporation (Transferee), [if appropriate add "formerly known as the EFG Corporation"] a corporation duly organized and existing under the laws of _____ [insert State] with its principal office in _____ [insert city]; and the United States of America (Government) enter into this Agreement as of _____ [insert the date transfer of assets became effective under applicable State law].

(a) THE PARTIES AGREE TO THE FOLLOWING FACTS:

(1) The Government, represented by various Contracting Officers of the _____ [insert name(s) of agency(ies)], has entered into certain contracts with the Transferor, namely: _____ [insert contract or purchase order identifications]; [or delete "namely" and insert "as shown in the attached list marked 'Exhibit A' and incorporated in this Agreement by reference."]. The term "the contracts," as used in this Agreement, means the above contracts and purchase orders and all other contracts and purchase orders, including all modifications, made between the Government and the Transferor before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the Government or the Transferor has any remaining rights, duties, or obligations under these contracts and purchase orders). Included in the term "the contracts" are also all modifications made under the terms and conditions of these contracts and purchase orders between the Government and the Transferee, on or after the effective date of this Agreement.

(2) As of _____, 20____, the Transferor has transferred to the Transferee all the assets of the Transferor by virtue of a _____ [insert term descriptive of the legal transaction involved] between the Transferor and the Transferee.

(3) The Transferee has acquired all the assets of the Transferor by virtue of the above transfer.

(4) The Transferee has assumed all obligations and liabilities of the Transferor under the contracts by virtue of the above transfer.

(5) The Transferee is in a position to fully perform all obligations that may exist under the contracts.

(6) It is consistent with the Government's interest to recognize the Transferee as the successor party to the contracts.

(7) Evidence of the above transfer has been filed with the Government. ~~[When a change of name is also involved; e.g., a prior or concurrent change of the Transferee's name, an appropriate statement shall be inserted (see example in paragraph(8) of this Agreement)].~~

(8) A certificate dated _____, 20____, signed by the Secretary of State of _____ [insert State], to the effect that the corporate name of EFG CORPORATION was changed to XYZ CORPORATION on _____, 20____, has been filed with the Government.

(b) IN CONSIDERATION OF THESE FACTS, THE PARTIES AGREE THAT BY THIS AGREEMENT—

(1) The Transferor confirms the transfer to the Transferee, and waives any claims and rights against the Government that it now has or may have in the future in connection with the contracts.

(2) The Transferee agrees to be bound by and to perform each contract in accordance with the conditions contained in the contracts. The Transferee also assumes all obligations and liabilities of, and all claims against, the Transferor under the contracts as if the Transferee were the original party to the contracts.

(3) The Transferee ratifies all previous actions taken by the Transferor with respect to the contracts, with the same force and effect as if the action had been taken by the Transferee.

(4) The Government recognizes the Transferee as the Transferor's successor in interest in and to the contracts. The Transferee by this Agreement becomes entitled to all rights, titles, and interests of the Transferor in and to the contracts as if the Transferee were the original party to the contracts. Following the effective date of this Agreement, the term "Contractor," as used in the contracts, shall refer to the Transferee.

(5) Except as expressly provided in this Agreement, nothing in it shall be construed as a waiver of any rights of the Government against the Transferor.

(6) All payments and reimbursements previously made by the Government to the Transferor, and all other previous actions taken by the Government under the contracts, shall be considered to have discharged those parts of the Government's obligations under the contracts. All payments and reimbursements made by the Government after the date of this Agreement in the name of or to the Transferor shall have the same force and effect as if made to the Transferee, and shall constitute a complete discharge of the Government's obligations under the contracts, to the extent of the amounts paid or reimbursed.

(7) 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.

(8) The Transferor guarantees payment of all liabilities and the performance of all obligations that the Transferee -

(i) assumes under this Agreement; or (ii) may undertake in the future should these contracts be modified under their terms and conditions. The Transferor waives notice of, and consents to, any such future modifications.

(9) The contracts shall remain in full force and effect, except as modified by this Agreement. Each party has executed this Agreement as of the day and year first above written.

NOVATION AGREEMENT

The ABC CORPORATION (Transferor), a corporation duly organized and existing under the laws of [insert State] with its principal office in [insert city]; the XYZ CORPORATION (Transferee), [if appropriate add "formerly known as the EFG Corporation"] a corporation duly organized and existing under the laws of [insert State] with its principal office in [insert city]; and the UNITED STATES OF AMERICA (Government) enter into this Agreement as of [insert the date transfer of assets became effective under applicable State law].

[When a change of name is also involved; e.g., a prior or concurrent change of the Transferee's name, an appropriate statement shall be inserted (see example in paragraph (8) below)].

UNITED STATES OF AMERICA,

By _____

Title _____

By

Title

ABC CORPORATION,

By _____

Title _____

By

Title

[CORPORATE SEAL]

XYZ CORPORATION,

By _____

Title _____

By

Title

[CORPORATE SEAL]

CERTIFICATE

I, _____, _____, certify that I am the Secretary of ABC CORPORATION; that _____, _____, who signed this Agreement for this corporation, was then _____ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers.

Witness my hand and the seal of this corporation this _____ day of _____ 20__.

By _____

[CORPORATE SEAL]

CERTIFICATE

_____, I, _____, certify that I am the Secretary of XYZ CORPORATION; that _____, who signed this Agreement for this corporation, was then _____ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers. ~~Witness my hand and the seal of this corporation this day of _____ 20__.~~

By _____

[CORPORATE SEAL]

CERTIFICATE

I, _____, certify that I am the Secretary of XYZ Corporation, that _____, who signed this Agreement for this corporation, was then _____ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers. Witness my hand and the seal of this corporation this day of _____ 20__.

By _____

Witness my hand and the seal of this corporation this _____ day of _____ 20__.

By _____

[CORPORATE SEAL]

42. ~~1205~~904 Agreement to recognize contractor's change of name.

(a) If only a change of the contractor's name is involved and the Government's and contractor's rights and obligations remain unaffected, the parties ~~shall~~must execute an agreement to reflect the name change. The contractor ~~shall~~must forward to the responsible contracting officer three signed copies of the Change-of-Name Agreement, and one copy each of the following:

(1) The document effecting the name change, authenticated by a proper official of the State having jurisdiction.

(2) The opinion of the contractor's legal counsel stating that the change of name was properly effected under applicable law and showing the effective date.

(3) A list of all affected contracts and purchase orders remaining unsettled between the contractor and the Government, showing for each the contract number and type, and name and address of the contracting office. The contracting officer may request the total dollar value as amended and the remaining unpaid balance for each contract.

(b) The following suggested format for an agreement may be adapted for specific cases:

Change-of-Name Agreement

The ABC CORPORATION (Contractor), a corporation duly organized and existing under the laws of _____ [insert State], and the UNITED STATES OF AMERICA (Government), enter into this Agreement as of _____ [insert date when the change of name became effective under applicable State law].

(a) THE PARTIES AGREE TO THE FOLLOWING FACTS:

(1) The Government, represented by various Contracting Officers of the _____ [insert name(s) of agency(ies)], has entered into certain contracts and purchase orders with the XYZ CORPORATION, namely: _____ [insert contract or purchase order identifications]; [or delete "namely" and insert "as shown in the attached list marked ~~"Exhibit A"~~"Exhibit A'" and incorporated in this Agreement by reference."]. The term ~~"the contracts,"~~ as used in this Agreement, means the above contracts and purchase orders and all other contracts and purchase orders, including all modifications, made by the Government and the Contractor before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the Government or the Contractor has any remaining rights, duties, or obligations under these contracts and purchase orders).

(2) The XYZ CORPORATION, by an amendment to its certificate of incorporation, dated _____, 20____, has changed its corporate name to ABC CORPORATION.

(3) This amendment accomplishes a change of corporate name only and all rights and obligations of the Government and of the Contractor under the contracts are unaffected by this change.

(4) Documentary evidence of this change of corporate name has been filed with the Government.

(b) IN CONSIDERATION OF THESE FACTS, THE PARTIES AGREE THAT____

(1) The contracts covered by this Agreement are amended by substituting the name "ABC CORPORATION" for the name "XYZ CORPORATION" wherever it appears in the contracts; and

(2) Each party has executed this Agreement as of the day and year first above written.

UNITED STATES OF AMERICA,

By _____

Title _____

By _____

Title _____

ABC CORPORATION,

By _____

Title _____

By _____

Title _____

[CORPORATE SEAL]

CERTIFICATE

I, _____, _____, certify that I am the Secretary of ABC CORPORATION; that _____, _____, who signed this Agreement for this corporation, was then _____ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers.

Witness my hand and the seal of this corporation this _____ day of _____ 20____.

By _____

By _____

[CORPORATE SEAL]

Subpart 42.1310 - Suspension of Work, Stop-Work Orders, and Government Delay of Work 42.13011001 General.

Situations may occur during contract performance that cause the Government to order a suspension of work, or a work stoppage. This subpart provides clauses to meet these situations

~~and a clause for settling contractor claims for unordered Government caused delays that are not otherwise covered in the contract~~ or result in a work stoppage.

42.~~1302~~1002 Suspension of work.

A suspension of work under a construction or architect-engineer contract may be ordered by the contracting officer for a reasonable period of time. If the suspension is unreasonable, the contractor may submit a written claim for increases in the cost of performance, excluding profit.

42.~~1303~~1003 Stop-work orders.

(a) Stop-work orders may be used, when appropriate, in any negotiated fixed-price or cost-reimbursement supply, research and development, or service contract if work stoppage may be required for reasons such as advancement in the state-of-the-art, production or engineering breakthroughs, or realignment of programs.

(b) Generally, a stop-work order will be issued only if it is advisable to suspend work pending a decision by the Government and a supplemental agreement providing for the suspension is not feasible. Issuance of a stop-work order ~~shall~~must be approved at a level higher than the contracting officer. Stop-work orders ~~shall~~will not be used in place of a termination notice after a decision to terminate has been made.

(c) Stop-work orders should include-

- (1) A description of the work to be suspended;
- (2) Instructions concerning the contractor's issuance of further orders for materials or services;
- (3) Guidance to the contractor on action to be taken on any subcontracts; and
- (4) Other suggestions to the contractor for minimizing costs.

(d) Promptly after issuing the stop-work order, the contracting officer should discuss the stop-work order with the contractor and modify the order, if necessary, in light of the discussion.

(e) As soon as feasible after a stop-work order is issued, but before its expiration, the contracting officer ~~shall~~must take appropriate action to-

- (1) Terminate the contract;
- (2) Cancel the stop-work order (any cancellation of a stop-work order ~~shall be~~is subject to the same approvals as were required for its issuance); or
- (3) Extend the period of the stop-work order if it is necessary and if the contractor agrees (any extension of the stop-work order ~~shall~~must be done by a supplemental agreement).

42.~~1304~~1004 Government delay of work.

(a) The clause at 52.242-17, Government Delay of Work, provides for the administrative settlement of contractor claims that arise from delays and interruptions in the contract work caused by the acts, or failures to act, of the contracting officer. This clause is not applicable if the contract otherwise specifically provides for an equitable adjustment because of the delay or interruption; e.g., when the Changes clause is applicable.

(b) The clause does not authorize the contracting officer to order a suspension, delay, or interruption of the contract work and it ~~shall~~must not be used as the basis or justification of such an order.

(c) If the contracting officer has notice of an unordered delay or interruption covered by the clause, the contracting officer ~~shall~~must act to end the delay or take other appropriate action as soon as practicable.

(d) The contracting officer ~~shall~~must retain in the file a record of all negotiations leading to any adjustment made under the clause, and related certified cost or pricing data, or data other than certified cost or pricing data.

42.~~1305~~1005 Contract clauses.

~~(a) The contracting officer shall~~(a) Insert the clause at 52.242-14, Suspension of Work, in solicitations and contracts when a fixed-price construction or architect-engineer contract is contemplated. Contracting officers may reduce the 90-day period in the clause, as appropriate.

(b)

(1) The contracting officer may, when contracting by negotiation, insert the clause at 52.242-15, Stop-Work Order, in solicitations and contracts for supplies, services, or research and development.

(2) If a cost-reimbursement contract is contemplated, ~~the contracting officer shall~~ use the clause with its ~~Alternate I~~Alternate I.

~~(c) The contracting officer shall~~(c) Insert the clause at 52.242-17, Government Delay of Work, in solicitations and contracts when a fixed-price contract is contemplated for supplies other than commercial or modified-commercial products. The clause use is optional when a fixed-price contract is contemplated for services, or for supplies that are commercial or modified-commercial products.

Subpart 42.~~14~~—~~[Reserved]~~

~~Subpart 42.15~~11 - Contractor Performance Information

42.~~1500~~1100 Scope of subpart.

This subpart provides policies and establishes responsibilities for recording and maintaining contractor performance information. ~~This subpart does not apply to procedures used by agencies in determining fees under award or incentive fee contracts. See subpart 16.4. However, the fee amount paid to contractors should be reflective of the contractor's performance and the past performance evaluation should closely parallel and be consistent with the fee determinations.~~

42.1101 General.

~~42.1501 General.~~

(a) Past performance information (including the ratings and supporting narratives) is relevant information, for future ~~source selection~~ purposes, regarding a contractor's actions under previously awarded contracts or orders. It includes, for example, the contractor's record of-

- (1) Conforming to requirements and to standards of good workmanship;
- (2) Forecasting and controlling costs;
- (3) Adherence to schedules, including the administrative aspects of performance;
- (4) Reasonable and cooperative behavior and commitment to customer satisfaction;
- (5) Complying with the requirements of the small business subcontracting plan (see [part 19.705-7\(b\)\),](#) including:
 - (i) Favorable consideration of a mentor with an SBA-approved mentor-protégé agreement (see 13 CFR 125.9) that subcontracts to its protégé, and
 - (ii) That protégé is a covered territory business or that protégé's principal office is located in the Commonwealth of Puerto Rico (see 15 U.S.C. ~~657f(a)~~[632\(ff\)](#));
- (6) Reporting into databases (see ~~subpart~~[part 4.14](#), and reporting requirements in the solicitation provisions and clauses referenced in [part 9.104-7](#));
- (7) Integrity and business ethics; [\(see part 9\)](#); and
- (8) Business-like concern for the interest of the customer.

(b) Agencies ~~shall~~[must](#) monitor their compliance with the past performance evaluation requirements (see ~~42.1502~~[1102](#)) and use the Contractor Performance Assessment Reporting System (CPARS) metric tools to measure the quality and timely reporting of past performance information. CPARS is the official source for past performance information.

~~42.1502~~[1102](#) Policy.

(a) General. Past performance evaluations ~~shall~~[must](#) be prepared at least annually and at the time the work under a contract or order is completed. [Interim evaluations are permissible.](#)

[\(1\)](#) Past performance evaluations are required for contracts and orders as specified in paragraphs (b) through (f) of this section, including contracts and orders performed outside the United States. ~~These~~

[\(2\)](#) [Past performance](#) evaluations are ~~generally~~[completed](#) for the entity, division, or unit that performed the contract or order.

(3) Agencies must enter past performance information ~~shall be entered~~ into CPARS, the Governmentwide evaluation reporting tool for all past performance reports on contracts and orders. Instructions for submitting evaluations into CPARS are available at <http://www.cpars.gov/>.

(b) Contracts.

(1) Except as provided in paragraphs (e), (f), and (h) of this section, agencies ~~shall~~must prepare evaluations of contractor performance for each contract ~~(as defined in FAR part 2)~~and order that exceeds the simplified acquisition threshold and for each order that exceeds the simplified acquisition threshold.

(2) Agencies ~~are required to~~must prepare an evaluation if a modification to the contract causes the dollar amount to exceed the simplified acquisition threshold.

(c) Orders under multiple-agency contracts.

(1) Agencies ~~shall~~must prepare an evaluation of contractor performance for each order that exceeds the simplified acquisition threshold that ~~is~~ placed under a Federal Supply Schedule contract or placed under a task-order contract, or a delivery-order contract awarded by another agency (i.e., Governmentwide acquisition contract or multi-agency contract).

(2)(i) Agencies placing orders under their own multiple-agency contract ~~shall also~~must prepare evaluations for their own orders. This evaluation ~~shall~~must not consider the requirements under paragraph (g) of this section.

(ii) Agencies ~~are required to~~must prepare an evaluation if a modification to ~~the~~an order causes the ~~dollar amount~~value to exceed the simplified acquisition threshold.

(d) Orders under single-agency contracts. For single-agency task-order and delivery-order contracts, the contracting officer may require performance evaluations for each order in excess of the simplified acquisition threshold when such evaluations would produce more ~~useful~~meaningful past performance information for source selection officials than that contained in the overall contract evaluation (e.g., when the scope of the basic contract is very broad and the nature of individual orders could be significantly different). This evaluation ~~need~~does not have to consider the requirements under paragraph (g) of this section unless the contracting officer deems it appropriate.

(e) Construction contracts. Agencies must prepare past performance evaluations ~~shall be prepared~~ for each construction contract of \$900,000 or more, and for each construction contract terminated for default regardless of contract value. Past performance evaluations may also be prepared for construction contracts below \$900,000.

(f) Architect-engineer services contracts. Past performance evaluations ~~shall~~must be prepared for each architect-engineer services contract of \$45,000 or more, and for each architect-engineer

services contract that is terminated for default regardless of contract value. Past performance evaluations may also be prepared for architect-engineer services contracts below \$45,000.

(g) Content. Past performance evaluations ~~shall~~must include an assessment of the contractor's—

(1) Performance against, and efforts to achieve, the goals identified in the small business subcontracting plan when the contract includes the clause at 52.219-9, Small Business Subcontracting Plan; and

(2) Reduced or untimely payments (as defined in part 19.701), made to small business subcontractors, determined by the contracting officer to be unjustified. The contracting officer ~~shall~~must—

(i) Consider and evaluate a contractor's written explanation for a reduced or an untimely payment when determining whether the reduced or untimely payment is justified; and

(ii) Determine that a history of unjustified reduced or untimely payments has occurred when the contractor has reported three or more occasions of unjustified reduced or untimely payments under a single contract within a 12-month period (see 42.1503(h)(1)(vi) and the evaluation ratings in Table 42-2). The following payment or nonpayment situations are not considered to be unjustified:

(A) There is a contract dispute on performance.

(B) A partial payment is made for amounts not in dispute.

(C) A payment is reduced due to past overpayments.

(D) There is an administrative mistake.

(E) Late performance by the subcontractor leads to later payment by the prime contractor.

(h) Agencies ~~shall not evaluate performance for contracts awarded under subpart 8.7.~~

~~(i) Agencies shall~~must promptly report other contractor information in accordance with 42.~~1503(h)~~1103(g).

~~42.1503~~1103 Procedures.

~~(a) (Note 1: Plus or minus signs may be used to indicate an improving (+) or worsening (-) trend insufficient to change the evaluation status.~~

Note 2: N/A (not applicable) should be used if the ratings are not going to be applied to a particular area for evaluation.

NOTE 1: Plus or minus signs may be used to indicate an improving (+) or worsening (-) trend insufficient to change evaluation status.

NOTE 2: Zero percent is not a goal unless the contracting officer determined when negotiating the subcontracting plan that no subcontracting opportunities exist in a particular socio-economic category. In such cases, the contractor will be considered to have met the goal for any socio-economic category where the goal negotiated in the plan was zero.

(a)(1) Agencies ~~shall~~must assign responsibility and management accountability for the completeness of past performance submissions. Agency procedures for the past performance evaluation system ~~shall~~must—

(i) Generally, provide for input to the evaluations from the technical office, contracting office, program management office, and, where appropriate, quality assurance and end users of the product or service;

(ii) Identify and assign past performance evaluation roles and responsibilities to those individuals responsible for preparing and reviewing interim evaluations, if prepared, and final evaluations (e.g., contracting officers, contracting officer representatives, project managers, and program managers). Those individuals identified may obtain information for the evaluation of performance from the program office, administrative contracting office, audit office, end users of the product or service, and any other technical or business advisor, as appropriate; and

(iii) Address management controls and appropriate management reviews of past performance evaluations, to include accountability for documenting past performance on CPARS.

~~(2) If agency procedures do not specify the individuals responsible for past performance evaluation duties, the contracting officer is responsible for this function.~~

~~(3) Interim evaluations may be prepared as required, in accordance with agency procedures.~~

~~(b)-(1)(i)~~ The evaluation ~~should~~must include a clear, non-technical description of the principal purpose of the contract or order.

(ii) The evaluation ~~should~~must reflect how the contractor performed.

(iii) The evaluation ~~should~~must include clear relevant information that accurately depicts the contractor's performance; and be based on objective facts supported by program and contract or order performance data. ~~The evaluations should be tailored~~

(iv) Tailor each evaluation to the contract type, size, content, and complexity of the contractual requirements.

(2) Evaluation factors for each assessment ~~shall~~must include, at a minimum, the following:

(i) Technical (quality of product or service);

(ii) Cost control (not applicable for firm-fixed-price or fixed-price with economic price adjustment arrangements);

(iii) Schedule/timeliness;

(iv) Management or business relations;

(v) Small business subcontracting, including reduced or untimely payments to small business subcontractors when [part 19.702\(a\)](#) requires a subcontracting plan (as applicable, see Table 42-2); and

(vi) Other (as applicable) (e.g., trafficking violations, tax delinquency, failure to report in accordance with contract terms and conditions, defective cost or pricing data, terminations, suspension and debarments, and failure to comply with limitations on subcontracting).

(3) Evaluation factors may include subfactors.

(4) Each factor and subfactor used ~~shall~~must be evaluated and a supporting narrative provided. Each evaluation factor, as listed in [this](#) paragraph (~~((b)(2) of this section, shall)~~), must be rated in accordance with a five-scale rating system (i.e., exceptional, very good, satisfactory, marginal, and unsatisfactory). The ratings and narratives must reflect the definitions in the tables ~~Table 42-1 or Table 42-2~~ of this section.

~~(c)(1)~~ When the contract provides for incentive fees, the incentive-fee contract performance evaluation ~~shall~~must be entered into CPARS.

(2) When the contract provides for award fee, the award fee-contract performance adjectival rating as described in [part 16.401\(e\)\(3\)](#) ~~shall~~ must be entered into CPARS.

~~(d)(1)~~ Agency evaluations of contractor performance, including both negative and positive evaluations, prepared under this subpart ~~shall~~must be provided to the contractor as soon as practicable after completion of the evaluation. The contractor will receive a CPARS-system generated notification when an evaluation is ready for comment.

(2) Contractors ~~shall~~must be afforded up to 14 calendar days from the date of notification of availability of the past performance evaluation to submit comments, rebutting statements, or additional information.

(3) While the evaluation is an agency decision, agencies must provide for review at a level above the contracting officer in the event of disagreements between the parties.

(4) Evaluations of contractor performance developed on contracts awarded prior to April 1, 2026 should be marked "Source Selection Information."

~~(5) Agencies shall provide for review at a level above the contracting officer to consider disagreements between the parties regarding the evaluation. The ultimate conclusion on the~~

~~performance evaluation is a decision of the contracting agency. Copies of the evaluation, contractor response, and review comments, if any, shall be retained as part of the evaluation. These evaluations may be used to support future award decisions, and should therefore be marked "Source Selection Information". Evaluation of Federal Prison Industries (FPI) performance may be used to support a waiver request (see 8.604) when FPI is a mandatory source in accordance with subpart 8.6. The completed evaluation shall not be released to other than Government personnel and the contractor whose performance is being evaluated during the period the information may be used to provide source selection information. Disclosure of such information could cause harm both to the commercial interest of the Government and to the competitive position of the contractor being evaluated as well as impede the efficiency of Government operations. Evaluations used in determining award or incentive fee payments may also be used to satisfy the requirements of this subpart. A copy of the annual or final past performance evaluation shall be provided to the contractor as soon as it is finalized.~~

~~(e) Agencies shall require frequent evaluation (e.g., monthly, quarterly) of agency compliance with the reporting requirements in 42.1502, so agencies can readily identify delinquent past performance reports and monitor their reports for quality control.~~

~~(f)(6) Agencies must provide a copy of the annual or final past performance evaluation to the contractor as soon as it is finalized.~~

(e)(1) Agencies ~~shall~~must prepare and submit all past performance evaluations electronically in CPARS at <https://www.cpars.gov>.

~~(2) .These evaluations~~The agency must make the past performance evaluation, including any contractor response, including any contractor-submitted information (with indication whether agency review is pending), ~~become~~available forto source selection officials ~~not later than in the CPARS system within~~ 14 days after the ~~date on which the contractor is notified~~notification of the evaluation's availability for comment.

~~(3) Contractors must be given 14 calendar days from notification to submit comments, rebutting statements, or additional information.~~

(4) The Government ~~shall~~must update CPARS with any contractor comments provided ~~after 14 days,~~within the 14-day timeframe given to contractors in this paragraph (e), as well as any subsequent agency review of comments received.

(5) Past performance evaluations for classified contracts and special access programs ~~shall~~must not be reported in CPARS; but will be reported as stated in this subpart and in accordance with agency procedures.

(6) Agencies ~~shall~~must ensure that appropriate management and technical controls are in place to ensure that only authorized personnel have access to the data and the information safeguarded in accordance with ~~42.1503(d),~~paragraph (d) of this section.

(~~g~~f) Agencies ~~shall~~must use the past performance information in CPARS- that is within ~~three~~3 years (~~six~~6 years for construction and architect-engineer contracts) of the completion of performance of the evaluated contract or order, and information contained in ~~the Federal Awardee Performance and Integrity Information System (FAPIIS); responsibility/qualification reports in the System Award Management (SAM), at SAM.gov~~, e.g., terminations for default or cause.

~~(h) Other contractor performance information.~~

~~(1) Agencies shall~~(g)(1) Agencies use integrity records to support responsibility determinations, as addressed in part 9. Agencies must ensure information is accurately reported in the FAPIIS module of CPARS within 3 calendar days after a contracting officer-—

(i) Issues a final determination that a contractor has submitted defective cost or pricing data;

(ii) Makes a subsequent change to the final determination concerning defective cost or pricing data pursuant to part 15.407-1(d);

(iii) Issues a final termination for cause or default notice;

(iv) Makes a subsequent withdrawal or a conversion of a termination for default to a termination for convenience;

(v) Receives a final determination after an administrative proceeding, in accordance with part 22.1704(d)(1); that substantiates an allegation of a violation of the trafficking in persons prohibitions in part 22.1703(a) and 52.222-50(b); or

(vi) Determines that a contractor has a history of three or more unjustified reduced or untimely payments to small business subcontractors under a single contract within a 12-month period (see ~~42.1502~~1102(g)(2)).

(2) The information ~~to be~~ posted in accordance with this paragraph (~~h~~g) is information relating to contractor performance; but does not constitute a "past performance review,"", which would be exempted from public availability in accordance with section 3010 of the Supplemental Appropriations Act, 2010 (Pub. L. 111-212). Therefore, all such information posted in FAPIIS will be publicly available, unless covered by a disclosure exemption under the Freedom of Information Act (see ~~9.105-2(b)(2); part 9).~~

(3) Agencies ~~shall~~must establish CPARS focal points who will register users to report data into the FAPIIS module of CPARS (available at <https://www.cpars.gov/>~~).~~.

(4) ~~With regard to~~The contracting officer must follow the procedures in part 9 when handling information that may be covered by a disclosure exemption under the Freedom of Information Act,~~the contracting officer shall follow the procedures at 9.105-2(b)(2)(iv);~~.

Rating	Definition	Note
(a) Exceptional	Performance meets contractual requirements and exceeds many to the Government's benefit. The contractual performance of the element or sub-element being evaluated was accomplished with few minor problems for which corrective actions taken by the contractor were highly effective.	To justify an Exceptional rating, identify multiple significant events and state how they were of benefit to the Government. A singular benefit, however, could be of such magnitude that it alone constitutes an Exceptional rating. Also, there should have been NO significant weaknesses identified.
(b) Very Good	Performance meets contractual requirements and exceeds some to the Government's benefit. The contractual performance of the element or sub-element being evaluated was accomplished with some minor problems for which corrective actions taken by the contractor were effective.	To justify a Very Good rating, identify a significant event and state how it was a benefit to the Government. There should have been no significant weaknesses identified.
(c) Satisfactory	Performance meets contractual requirements. The contractual performance of the element or sub-element contains some minor problems for which corrective actions taken by the contractor appear or were satisfactory.	To justify a Satisfactory rating, there should have been only minor problems, or major problems the contractor recovered from without impact to the contract/order. There should have been NO significant weaknesses identified. A fundamental principle of assigning ratings is that contractors will not be evaluated with a rating lower than Satisfactory solely for not performing beyond the requirements of the contract/order.
(d) Marginal	Performance does not meet some contractual requirements. The contractual performance of the element or sub-element being evaluated reflects a serious problem for which the contractor has not yet identified corrective actions. The contractor's proposed actions appear only	To justify Marginal performance, identify a significant event in each category that the contractor had trouble overcoming and state how it impacted the Government. A Marginal rating should be supported by

marginally effective or were not fully implemented.

referencing the management tool that notified the contractor of the contractual deficiency (e.g., management, quality, safety, or environmental deficiency report or letter).

(e) Unsatisfactory

Performance does not meet most contractual requirements and recovery is not likely in a timely manner. The contractual performance of the element or sub-element contains a serious problem(s) for which the contractor's corrective actions appear or were ineffective

To justify an Unsatisfactory rating, identify multiple significant events in each category that the contractor had trouble overcoming and state how it impacted the Government. A singular problem, however, could be of such serious magnitude that it alone constitutes an unsatisfactory rating. An Unsatisfactory rating should be supported by referencing the management tools used to notify the contractor of the contractual deficiencies (e.g., management, quality, safety, or environmental deficiency reports, or letters).

NOTE 1: Plus or minus signs may be used to indicate an improving (+) or worsening (-) trend insufficient to change the evaluation status.

Note 2: N/A (not applicable) should be used if the ratings are not going to be applied to a particular area for evaluation.

Table 42-2 Evaluation Rating Definitions [For the small business subcontracting evaluation factor, when 52.219-9 is used]

Rating	Definition	Note
(a) Exceptional	Exceeded all statutory goals or goals as negotiated. Had exceptional success with initiatives to assist, promote, and utilize small business (SB), small disadvantaged business (SDB), women-owned small business (WOSB), HUBZone small business, veteran-owned small business (VOSB) and service disabled veteran	To justify an Exceptional rating, identify multiple significant events and state how they were a benefit to small business utilization. A singular benefit, however, could be of such magnitude that it

	owned small business (SDVOSB). Complied with FAR 52.219-8, Utilization of Small Business Concerns. Exceeded any other small business participation requirements incorporated in the contract/order, including the use of small businesses in mission critical aspects of the program. Went above and beyond the required elements of the subcontracting plan and other small business requirements of the contract/order. Completed and submitted Individual Subcontract Reports and/or Summary Subcontract Reports in an accurate and timely manner. Did not have a history of three or more unjustified reduced or untimely payments to small business subcontractors within a 12-month period.	constitutes an Exceptional rating. Small businesses should be given meaningful and innovative work directly related to the contract, and opportunities should not be limited to indirect work such as cleaning offices, supplies, landscaping, etc. Also, there should have been no significant weaknesses identified.
(b) Very Good	Met all of the statutory goals or goals as negotiated. Had significant success with initiatives to assist, promote and utilize SB, SDB, WOSB, HUBZone, VOSB, and SDVOSB. Complied with FAR 52.219-8, Utilization of Small Business Concerns. Met or exceeded any other small business participation requirements incorporated in the contract/order, including the use of small businesses in mission critical aspects of the program. Endeavored to go above and beyond the required elements of the subcontracting plan. Completed and submitted Individual Subcontract Reports and/or Summary Subcontract Reports in an accurate and timely manner. Did not have a history of three or more unjustified reduced or untimely payments to small business subcontractors within a 12-month period.	To justify a Very Good rating, identify a significant event and state how it was a benefit to small business utilization. Small businesses should be given meaningful and innovative opportunities to participate as subcontractors for work directly related to the contract, and opportunities should not be limited to indirect work such as cleaning offices, supplies, landscaping, etc. There should be no significant weaknesses identified.
(c) Satisfactory	Demonstrated a good faith effort to meet all of the negotiated subcontracting goals in the various socio-economic categories for the current period. Complied with FAR 52.219-8, Utilization of Small Business Concerns. Met any other small business participation requirements included in the contract/order. Fulfilled the requirements of the subcontracting plan included in the contract/order. Completed and submitted	To justify a Satisfactory rating, there should have been only minor problems, or major problems the contractor has addressed or taken corrective action. There should have been no significant weaknesses identified. A fundamental principle of assigning

(d) Marginal

Individual Subcontract Reports and/or Summary Subcontract Reports in an accurate and timely manner. Did not have a history of three or more unjustified reduced or untimely payments to small business subcontractors within a 12-month period. Deficient in meeting key subcontracting plan elements. Deficient in complying with FAR 52.219-8, Utilization of Small Business Concerns, and any other small business participation requirements in the contract/order. Did not submit Individual Subcontract Reports and/or Summary Subcontract Reports in an accurate or timely manner. Failed to satisfy one or more requirements of a corrective action plan currently in place; however, does show an interest in bringing performance to a satisfactory level and has demonstrated a commitment to apply the necessary resources to do so. Required a corrective action plan. Did not have a history of three or more unjustified reduced or untimely payments to small business subcontractors within a 12-month period.

(e) Unsatisfactory

Noncompliant with FAR 52.219-8 and 52.219-9, and any other small business participation requirements in the contract/order. Did not submit Individual Subcontract Reports and/or Summary Subcontract Reports in an accurate or timely manner. Showed little interest in bringing performance to a satisfactory level or is generally uncooperative. Required a corrective action plan. Had a history of three or more unjustified reduced or untimely payments to small business subcontractors within a 12-month period.

ratings is that contractors will not be assessed a rating lower than Satisfactory solely for not performing beyond the requirements of the contract/order. To justify a Marginal rating, identify a significant event that the contractor had trouble overcoming and how it impacted small business utilization. A Marginal rating should be supported by referencing the actions taken by the Government that notified the contractor of the contractual deficiency.

To justify an Unsatisfactory rating, identify multiple significant events that the contractor had trouble overcoming and state how it impacted small business utilization. A singular problem, however, could be of such serious magnitude that it alone constitutes an Unsatisfactory rating. An Unsatisfactory rating should be supported by referencing the actions taken by the Government to notify the contractor of the deficiencies. When an Unsatisfactory rating is justified, the contracting officer must consider whether the contractor

~~made a good faith effort to
comply with the
requirements of the
subcontracting plan
required by FAR 52.219-9
and follow the procedures
outlined in 52.219-16;
Liquidated Damages-
Subcontracting Plan.~~

~~NOTE 1: Plus or minus signs may be used to indicate an improving (+) or worsening (-) trend
insufficient to change evaluation status.~~

~~NOTE 2: Generally, zero percent is not a goal unless the contracting officer determined when
negotiating the subcontracting plan that no subcontracting opportunities exist in a particular
socio-economic category. In such cases, the contractor shall be considered to have met the goal
for any socio-economic category where the goal negotiated in the plan was zero.~~

~~42.1504~~42.1104 Contract clause.

Insert the clause at 52.242-5, Payments to Small Business Subcontractors, in all solicitations and contracts containing the clause at 52.219-9, Small Business Subcontracting Plan.

Subpart 42.~~1612~~12 - Small Business Contract Administration

42.~~1601~~1201 General.

The contracting officer ~~shall~~must make every reasonable effort to respond in writing within 30 days to any written request to the contracting officer from a small business concern ~~with respect to~~regarding a contract administration matter. In the event the contracting officer cannot respond to the request within the 30-day period, the contracting officer ~~shall~~must, within the period, ~~transmit~~communicate to the contractor a written notification of the specific date the contracting officer expects to respond. This provision ~~shall~~does not apply to a request for a contracting officer decision under 41 U.S.C. chapter 71, Contract Disputes.

Subpart 42.~~1713~~13 - Forward Pricing Rate Agreements

42.~~1701~~1301 Procedures.

(a) ~~Negotiation of forward pricing rate agreements (FPRA's) may be requested by The contracting officer or the contractor or initiated by the,~~ administrative contracting officer (ACO). ~~In determining), or the contractor may initiate a request for a forward pricing rate agreement (FPRA). Normally, FPRAs are negotiated only with contractors having a significant volume of Government contract proposals. The cognizant Federal agency should determine whether or not to establish such an agreement, the ACO should consider an FPRA by considering whether the benefits to be derived from the agreement are commensurate with the effort of establishing and monitoring it. Normally, FPRA's should be negotiated only with contractors having a significant volume of Government contract proposals. The cognizant contract administration agency shall determine whether an FPRA will be established.~~

(b) The ACO ~~shall~~must obtain the contractor's forward pricing rate proposal and require that it include cost or pricing data that are accurate, complete, and current as of the date of submission ~~(, but must not require a certification (see part 15.407-3(e))).~~. The ACO ~~shall~~must invite the cognizant contract auditor and contracting offices having a significant interest to participate in developing a Government objective and in the negotiations. Upon completing negotiations, the ACO ~~shall~~must prepare a price negotiation memorandum (PNM) (see part 15.406-3) and forward copies of the PNM and FPRA to the cognizant auditor and to all contracting offices that are known to be affected by the FPRA.

(c) The FPRA ~~shall~~must provide specific terms and conditions covering expiration, application, and data requirements for systematic monitoring to ensure the validity of the rates. The agreement ~~shall~~must provide for cancellation at the ~~option~~choice of either party and ~~shall~~must require the contractor to submit to the ACO and to the cognizant contract auditor any significant change in cost or pricing data used to support the FPRA.

(d) When an FPRA is invalid, the contractor should submit and negotiate a new proposal to reflect the changed conditions. If an FPRA has not been established or has been invalidated, the ACO will issue a forward pricing rate recommendation (FPRR) to buying activities with documentation to assist negotiators. In the absence of an FPRA or FPRR, the ACO ~~shall include~~must provide support to the contracting officer for rates utilized.

(e) The ACO may negotiate continuous updates to the FPRA. The FPRA will provide specific terms and conditions covering notification, application, and data requirements for systematic monitoring to ensure the validity of the rates.