

Federal Acquisition Regulation

42.705-3

42.705-2 Auditor determination procedure.

(a) *Applicability and responsibility.* (1) The cognizant Government auditor shall establish final indirect cost rates for business units not covered in 42.705-1(a).

(2) In addition, auditor determination may be used for business units that are covered in 42.705-1(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 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 submit to the cognizant contracting officer (or cognizant Federal agency official) and auditor a final indirect cost rate proposal in accordance with 42.705-1(b)(1).

(2) Upon receipt of a proposal, the auditor shall—

(i) Audit the proposal and seek agreement on indirect costs with the contractor;

(ii) Prepare an indirect cost rate agreement conforming to the requirements of the contracts. The agreement shall be signed by the contractor and the auditor;

(iii) 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

(iv) Distribute resulting documents in accordance with 42.706.

[48 FR 42370, Sept. 19, 1983, as amended at 59 FR 67052, Dec. 28, 1994; 62 FR 51258, Sept. 30, 1997; 63 FR 9065, Feb. 23, 1998]

42.705-3 Educational institutions.

(a) *General.* (1) Postdetermined final indirect cost rates shall be used in the settlement of indirect costs for all cost-reimbursement contracts with educational institutions, unless predetermined final indirect cost rates are authorized and used (see paragraph (b) below).

(2) OMB Circular No. A-21, Cost Principles for Educational Institutions, assigns each educational institution to a single Government agency for the negotiation of indirect cost rates and provides that those rates shall be accepted by all Federal agencies. Cognizant Government agencies and educational institutions are listed in the Directory of Federal Contract Audit Offices (see 42.103).

(3) The cognizant agency shall establish the billing rates and final indirect cost rates at the educational institution, consistent with the requirements of this subpart, subpart 31.3, and the OMB Circular. The agency shall follow the procedures outlined in 42.705-1(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.

(b) *Predetermined final indirect cost rates.* (1) Under cost-reimbursement research and development contracts with universities, colleges, or other educational institutions (41 U.S.C. 254a), 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 to all the institution's Government contracts.

(2) In deciding whether the use of predetermined rates would be 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 agency (see subparagraph (a)(2) above) higher than the contracting officer, predetermined rates shall not be used when—