

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) 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. Cognizant Government agencies and educational institutions are listed in the Directory of Federal Contract Audit Offices (see [42.103](#)).

(3) The cognizant agency for indirect costs shall establish the 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 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. 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 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 paragraph (a)(2) of this subsection) higher than the contracting officer, 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 predetermined rates are to be used and no rates have been previously established for the institution's current fiscal year, the agency shall obtain from the institution a proposal for predetermined rates.

(ii) If the proposal is found to be generally acceptable, the agency shall 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 the rates are being negotiated. If this is not possible, an earlier audit 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 include the negotiated rates and bases in the contract Schedule; and

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

(6) Predetermined indirect cost rates shall be applicable for a period of not more than four years. The agency shall obtain the contractor's proposal for new predetermined rates sufficiently in advance so that the new rates, based on current data, may be promptly negotiated near the beginning of the new 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 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.

Parent topic: [42.705 Final indirect cost rates](#).