

# PART 742—CONTRACT ADMINISTRATION

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR, 1979 Comp., p. 435.

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

## **Subpart 742.7—Indirect Cost Rates**

### **742.770 Negotiated indirect cost rate agreement.**

Link to an amendment published at 89 FR 4206, Jan. 23, 2024.

Except for educational institutions having a cognizant agency (as defined in OMB Circular A-88, 44 FR 70094, 12/5/79) other than USAID, USAID may establish negotiated overhead rates in a Negotiated Indirect Cost Rate Agreement, executed by both parties. The Negotiated Indirect Cost Rate Agreement is automatically incorporated in each contract between the parties and shall specify: (a) The final rate(s), (b) the base(s) to which the rate(s) apply, (c) the period(s) for which the rate(s) apply, (d) the items treated as direct costs, and (e) the contract(s) to which the rate(s) apply. The Negotiated Indirect Cost Rate Agreement shall not change any monetary ceiling, obligation, or specific cost allowance or disallowance provided for in each contract between the parties.

# **Subpart 742.11—Production, Surveillance, and Reporting**

Source: 72 FR 53163, Sept. 18, 2007, unless otherwise noted.

## **742.1170 Performance monitoring and progress reporting.**

### **742.1170-1 General.**

Performance monitoring is a function of contract administration used to determine contractor progress towards achieving the goals and objectives of the contract and to identify any factors that may delay or prevent the accomplishment of those goals and objectives. Performance monitoring requires USAID personnel, particularly the contracting officer's representative, to maintain adequate knowledge of the contractor's activities and progress in order to ensure that USAID's objectives, as stated in the contract's Statement of Work, will be achieved.

### **742.1170-2 Applicability.**

(a) This section applies to USAID non-personal, professional/technical services contracts exceeding the simplified acquisition threshold, but may be applied to other USAID contracts, if the contracting officer and requiring office determine that doing so is in the best interests of the Agency. The contracting officer must ensure that this determination is documented in the contract file. This section does not apply to personal services contracts.

(b) The underlying principles of (48 CFR) FAR subpart 42.11 apply to USAID contracts and are inherent to this section. However, not all of the specific requirements and terminology in (48 CFR) FAR subpart 42.11 are compatible with the types of technical assistance contracts usually awarded by USAID. Therefore, this section 742.1170 applies when the requirements of (48 CFR) FAR subpart 42.11 do not meet USAID requirements or are otherwise not appropriate.

(c) The progress reports discussed in this section are separate from the performance evaluation reports prepared in accordance with (48 CFR) FAR subpart 42.15 and internal Agency procedures, although they may be used by USAID personnel or their authorized representatives when evaluating the contractor's performance. Furthermore, the policies, procedures, and limitations of this section do not apply to technical reports, studies, papers, etc., the acquisition of which may be part of or even the sole purpose of the contract.

### **742.1170-3 Policy.**

Link to an amendment published at 89 FR 37961, May 6, 2024.

(a) The contractor is responsible for timely contract performance. Performance monitoring by USAID does not obviate this responsibility.

(b) The requiring office, particularly the contracting officer's representative and the contracting officer, will determine how to monitor the contractor's performance to protect the Government's interests, by considering:

- (1) The contract requirements for reporting progress;
  - (2) The contract performance schedule;
  - (3) The contractor's implementation plan or workplan;
  - (4) The contractor's history of contract performance;
  - (5) The contractor's experience with the services or supplies being provided under the contract;
  - (6) The contractor's financial capability;
  - (7) Any other factors the requiring office, particularly the contracting officer's representative and the contracting officer, considers appropriate and necessary to adequately monitor contractor performance (for example, the day-to-day working proximity of the contracting officer's representative or contracting officer to the contractor's place of performance).
- (c) In monitoring contractor performance, the requiring office (particularly the contracting officer's representative and contracting officer) must utilize any of the contractor's existing systems or processes for monitoring progress, provided that doing so is not contrary to the terms of the contract. The requiring officer or contracting officer's representative must not require anything from the contractor that is outside the scope or terms of the contract or may result in claims of waivers, of changes, or of other contract modifications. Further, progress reports shall not require information already available from other sources.

#### **742.1170-4 Progress reporting requirements and contract clause.**

- (a) When the requiring office needs information on contract performance status on a regular basis, the contracting officer may require the contractor to submit periodic progress reports, tailored to address specific contract requirements but limited to only that information essential to USAID's needs in monitoring the contractor's progress.
- (b) Because the contracting officer's representative is the individual most familiar with the contractor's performance, the contractor must submit the progress reports directly to the cognizant technical officer. The contracting officer's representative must review the reports and advise the contracting officer, in writing, of any recommended action, including any action needed to address potential or actual delays in performance. The contracting officer's representative must so advise the contracting officer in sufficient time, typically thirty days, for him or her to take any action that the contracting officer determines is appropriate. The requirements of this paragraph do not relieve the contractor of notification requirements identified elsewhere in the contract.
- (c) The contracting officer must insert the clause at 752.242-70, Periodic Progress Reports, in solicitations and contracts that require progress reporting, as specified in this section. The contracting officer must include specific reporting instructions in the Schedule.

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Link to an amendment published at 89 FR 37961, May 6, 2024.

## **Subpart 742.15—Contractor Performance Information**

Source: 65 FR 36642, June 9, 2000, unless otherwise noted.

### **742.1501 [Reserved]**

### **742.1502 Policy.**

(a) [Reserved]

(b) Performance for personal services contracts awarded under (48 CFR) AIDAR appendices D and J shall not be evaluated under the contractor performance reporting procedures prescribed in (48 CFR) FAR subpart 42.15.

### **742.1503 Procedures.**

(a) [Reserved]

(b) Personal services contractors shall be recognized as Government personnel for the purposes of the restriction on access to contractor performance information in (48 CFR) FAR 42.1503.