Subpart 242.70 - CONTRACTOR BUSINESS SYSTEMS

Parent topic: Part 242 - CONTRACT ADMINISTRATION

242.7000 Contractor business system deficiencies.

(a) *Definitions*. As used in this subpart——

“Acceptable contractor business systems” means contractor business systems that comply with the terms and conditions of the applicable business system clauses listed in the definition of “contractor business systems” in this section.

*Contractor business systems*means—

(i) Accounting system, if the contract includes the clause at 252.242-7006, Accounting System Administration;

(ii) Earned value management system, if the contract includes the clause at 252.234-7002, Earned Value Management System;

(iii) Estimating system, if the contract includes the clause at 252.215-7002, Cost Estimating System Requirements;

(iv) Material management and accounting system, if the contract includes the clause at 252.242-7004, Material Management and Accounting System;

(v) Property management system, if the contract includes the clause at 252.245-7003, Contractor Property Management System Administration; and

(vi) Purchasing system, if the contract includes the clause at 252.244-7001, Contractor Purchasing System Administration.

“Covered contract” means a contract that is subject to the Cost Accounting Standards under 41 U.S.C. chapter 15, as implemented in regulations found at48 CFR 9903.201-1 (10 U.S.C. 3841note prec., as amended by section 816 ofPub. L. 112-81).

(b) *Determination to withhold payments*. If the contracting officer makes a final determination to disapprove a contractor’s business system in accordance with the clause at 252.242-7005 , Contractor Business Systems, the contracting officer shall—

(1) In accordance with agency procedures, identify one or more covered contracts containing the clause at 252.242-7005 from which payments will be withheld. When identifying the covered contracts from which to withhold payments, the contracting officer shall ensure that the total amount of payment withholding under 252.242-7005 does not exceed 10 percent of progress payments, performance-based payments, and interim payments under cost-reimbursement, labor-hour, and time-and-materials contracts billed under each of the identified covered contracts. Similarly, the contracting officer shall ensure that the total amount of payment withholding under the clause at 252.242-7005 for each business system does not exceed 5 percent of progress payments, performance-based payments, and interim payments under cost-reimbursement, labor-

hour, and time-and-materials contracts billed under each of the identified covered contracts. The contracting officer has the sole discretion to identify the covered contracts from which to withhold payments.

(2) Promptly notify the contractor, in writing, of the contracting officer's determination to implement payment withholding in accordance with the clause at 252.242-7005. The notice of payment withholding shall be included in the contracting officer's written final determination for the contractor business system and shall inform the contractor that—

(i) Payments shall be withheld from the contract or contracts identified in the written determination in accordance with the clause at 252.242-7005, until the contracting officer determines that there are no remaining material weaknesses; and

(ii) The contracting officer reserves the right to take other actions within the terms and conditions of the contract.

(3) Provide a copy of the determination to all contracting officers administering the selected contracts from which payments will be withheld. The contracting officer shall also provide a copy of the determination to the auditor; payment office; affected contracting officers at the buying activities; and cognizant contracting officers in contract administration activities.

(c) *Monitoring contractor's corrective action.* The contracting officer, in consultation with the auditor or functional specialist, shall monitor the contractor's progress in correcting the weaknesses. The contracting officer shall notify the contractor of any decision to decrease or increase the amount of payment withholding in accordance with the clause at 252.242-7005.

(d) *Correction of significant deficiencies*.

(1) If the contractor notifies the contracting officer that the contractor has corrected the material weaknesses, the contracting officer shall request the auditor or functional specialist to review the correction to verify that the weaknesses have been corrected. If, after receipt of verification, the contracting officer determines that the contractor has corrected all material weaknesses as directed by the contracting officer's final determination, the contracting officer shall discontinue the withholding of payments, release any payments previously withheld, and approve the system, unless other material weaknesses remain.

(2) Prior to the receipt of verification, the contracting officer may discontinue withholding payments pending receipt of verification, and release any payments previously withheld, if the contractor submits evidence that the material weaknesses have been corrected, and the contracting officer, in consultation with the auditor or functional specialist, determines that there is a reasonable expectation that the corrective actions have been implemented and are expected to correct the material weaknesses.

(3) Within 90 days of receipt of the contractor notification that the contractor has corrected the material weaknesses, the contracting officer shall—

(i) Make a determination that—

(A) The contractor has corrected all material weaknesses as directed by the contracting officer's final determination in accordance with paragraph (d)(1) of this section;

(B) There is a reasonable expectation that the corrective actions have been implemented in accordance with paragraph (d)(2) of this section; or

(C) The contractor has not corrected all material weaknesses as directed by the contracting officer's final determination in accordance with paragraph (d)(1) of this section, or there is not a reasonable expectation that the corrective actions have been implemented in accordance with paragraph (d)(2) of this section; or

(ii)Reduce withholding directly related to the material weaknesses covered under the corrective action plan by at least 50 percent of the amount being withheld from progress payments and performance-based payments, and direct the contractor, in writing, to reduce the percentage withheld on interim cost vouchers by at least 50 percent, until the contracting officer makes a determination in accordance with paragraph (d)(3)(i) of this section.

(4) If, at any time, the contracting officer determines that the contractor has failed to correct the material weaknesses identified in the contractor's notification, the contracting officer will continue, reinstate, or increase withholding from progress payments and performance-based payments, and direct the contractor, in writing, to continue, reinstate, or increase the percentage withheld on interim cost vouchers to the percentage initially withheld, until the contracting officer determines that the contractor has corrected all material weaknesses as directed by the contracting officer's final determination.

(e) Sample formats. For sample formats for written notifications of contracting officer determinations to initiate payment withholding, reduce payment withholding, and discontinue payment withholding in accordance with the clause at 252.242-7005, see PGI 242.7000.

242.7001 Contract clause.

Use the clause at 252.242-7005, Contractor Business Systems, in solicitations and contracts (other than in contracts with educational institutions, Federally Funded Research and Development Centers (FFRDCs), or University Affiliated Research Centers (UARCs) operated by educational institutions) when—

(a) The resulting contract will be a covered contract as defined in 242.7000 (a); and

(b) The solicitation or contract includes any of the following clauses:

(1) 252.215-7002 , Cost Estimating System Requirements.

(2) 252.234-7002 , Earned Value Management System.

(3) 252.242-7004 , Material Management and Accounting System.

(4) 252.242-7006 , Accounting System Administration.

(5) 252.244-7001 , Contractor Purchasing System Administration.

(6) 252.245-7003 , Contractor Property Management System Administration.