42.705-1 Contracting officer determination procedure.

(a) *Applicability and responsibility. Contracting officer* determination *shall* 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* (see subpart 42.6), 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*, but having a resident administrative *contracting officer* (see 42.602), with that officer responsible for the determination. For this purpose, a nonresident administrative *contracting officer* is considered as resident if at least 75 percent of the administrative *contracting officer*'s 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 42.705-3).

(5) State and local governments (see 42.705-4).

(6) Nonprofit organizations other than educational and state and local governments (see 42.705-5).

(b) Procedures.

(1) In accordance with the Allowable Cost and Payment clause at 52.216-7, the contractor is required to submit an adequate *final indirect cost rate* proposal to the *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 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 *may* be required subsequent to 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) 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) The *contracting officer* (or *cognizant Federal agency* official) *shall* head the Government negotiating team, which includes the cognizant auditor and technical or functional personnel as required. *Contracting offices* having significant dollar interest *shall* be invited to participate in the negotiation and in the preliminary discussion of critical issues. Individuals or offices that have provided a significant input to the Government position *should* be invited to attend.

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

(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*-

(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(c)(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) 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.

Parent topic: 42.705 Final indirect cost rates.