PART 742—CONTRACT ADMINISTRATION AND AUDIT SERVICES

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.

When USAID is the cognizant Federal agency pursuant to FAR 42.003, USAID may enter into a Negotiated Indirect Cost Rate Agreement with the contractor to establish billing rates and final indirect cost rates in accordance with FAR 42.703. The Negotiated Indirect Cost Rate Agreement is incorporated into the contract pursuant to FAR 42.703-1(b). Application of the Negotiated Indirect Cost Rate Agreement, including any adjustments thereto, will be subject to any monetary or indirect rate ceiling, obligation, limitation of cost provision, and 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.

(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 requirements for an activity monitoring, evaluation, and learning plan, as applicable;

(3) The contract performance schedule;

(4) The contractor's implementation plan or workplan;

(5) The contractor's history of contract performance;

(6) The contractor's experience with the services or supplies being provided under the contract;

(7) The contractor's financial capability;

(8) 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.

742.1170-5 Activity Monitoring, Evaluation, and Learning Plan requirement and contract clause.

(a) When the requiring office needs information on how the contractor expects to monitor

implementation performance and context, conduct or collaborate on an evaluation, and generate evidence to inform learning and adaptive management, the contracting officer may require the contractor to submit an Activity Monitoring, Evaluation, and Learning Plan (AMELP) tailored to specific contract requirements. For more information on monitoring, evaluation, and learning during the design and implementation of activities, see ADS Chapter 201 at *https://www.usaid.gov/about-us/agency-policy/series-200/201*.

(b) Unless instructed otherwise in writing by the requiring office, the contracting officer must insert the clause at 752.242-71 in section F of solicitations and contracts exceeding the simplified acquisition threshold, except as specified in paragraph (c) of this section. The contracting officer may insert this clause in other USAID contracts if the contracting officer, in consultation with the requiring office, determines that an Activity Monitoring, Evaluation, and Learning Plan is necessary, as provided in paragraph (a) of this section.

(c) The clause is not required to be included in contracts for:

(1) Supplies and services that USAID acquires for its own direct use or benefit;

(2) Emergency food assistance under the Food for Peace Act or section 491 of the Foreign Assistance Act of 1961, including for the procurement, transportation, storage, handling and/or distribution of such assistance;

(3) International disaster assistance under section 491 of the Foreign Assistance Act of 1961 or other authorities administered by the Bureau for Humanitarian Assistance; or

(4) Activities managed by the Bureau for Conflict Prevention and Stabilization's Office of Transition Initiatives, or fully or partially funded with the Complex Crises Fund.

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.