

Department of Defense

242.7200

Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts).

[61 FR 18688, Apr. 29, 1996]

Subpart 242.70 [Reserved]

Subpart 242.71—Voluntary Refunds

242.7100 General.

(a) A voluntary refund is a payment or credit (adjustment under one or more contracts or subcontracts) to the Government from a contractor or subcontractor which is not required by any contractual or other legal obligation.

(b) A voluntary refund may be solicited (requested by the Government) or unsolicited.

(1) Generally, request voluntary refunds only after determining that no contractual remedy is readily available to recover the amount sought.

(2) Acceptance of unsolicited refunds does not prejudice remedies otherwise available to the Government.

(c) Before soliciting a voluntary refund or accepting an unsolicited one, the contracting officer should have legal counsel review the contract and related data to—

(1) Confirm that there are no readily available contractual remedies; and

(2) Advise whether the proposed action would jeopardize or impair the Government's rights.

242.7101 Solicited refunds.

(a) Request voluntary refunds only when—

(1) The contracting officer concludes that the contractor overcharged under a contract, or inadequately compensated the Government for the use of Government-owned property, or inadequately compensated the Government in the disposition of contractor inventory; and

(2) Retention of the amount in question by the contractor or subcontractor would be contrary to good conscience and equity.

(b) Do not solicit voluntary refunds without approval of the head of the contracting activity, or as provided in department/agency regulations.

(c) Voluntary refunds may be requested during or after contract performance.

242.7102 Disposition of voluntary refunds.

A contract modification, rather than a check, is the preferred means of effecting a solicited or unsolicited refund transacted before final payment.

(a) For modifications, adjust the price for the refund and credit the refund to the applicable appropriation cited in the contract.

(b) For checks—

(1) Advise the contractor to—

(i) Make the check payable to the agency which awarded the contract;

(ii) Forward the check to the contracting officer or when the contract is assigned to another office for administration, to that office; and

(iii) Include a letter with the check—

(A) Identifying it as a voluntary refund;

(B) Giving the contract number involved; and

(C) Where possible, giving the appropriation and account number to be credited.

(2) Forward the check to the office responsible for control of funds.

Subpart 242.72—Contractor Material Management and Accounting System

SOURCE: 65 FR 77833, Dec. 13, 2000, unless otherwise noted.

242.7200 Scope of subpart.

(a) This subpart provides policies, procedures, and standards for use in the evaluation of a contractor's material management and accounting system (MMAS).

(b) The policies, procedures, and standards in this subpart—

(1) Apply only when the contractor has contracts exceeding the simplified acquisition threshold that are not for the acquisition of commercial items and are either—

(i) Cost-reimbursement contracts; or

(ii) Fixed-price contracts with progress payments made on the basis of costs incurred by the contractor as work progresses under the contract; and

242.7201

(2) Do not apply to small businesses, educational institutions, or nonprofit organizations.

242.7201 Definitions.

Material management and accounting system and *valid time-phased requirements* are defined in the clause at 252.242-7004, Material Management and Accounting System.

242.7202 Policy.

DoD policy is for its contractors to have an MMAS that conforms to the standards in paragraph (e) of the clause at 252.242-7004, so that the system—

- (a) Reasonably forecasts material requirements;
- (b) Ensures the costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements; and
- (c) Maintains a consistent, equitable, and unbiased logic for costing of material transactions.

242.7203 Review procedures.

(a) *Criteria for conducting reviews.* Conduct an MMAS review when—

(1) A contractor has \$40 million of qualifying sales to the Government during the contractor's preceding fiscal year; and

(2) The administrative contracting officer (ACO), with advice from the auditor, determines an MMAS review is needed based on a risk assessment of the contractor's past experience and current vulnerability.

(b) *Qualifying sales.* Qualifying sales are sales for which cost or pricing data were required under 10 U.S.C. 2306a, as implemented in FAR 15.403, or that are contracts priced on other than a firm-fixed-price or fixed-price with economic price adjustment basis. Sales include prime contracts, subcontracts, and modifications to such contracts and subcontracts.

(c) *System evaluation.* Cognizant contract administration and audit activities must jointly establish and manage programs for evaluating the MMAS systems of contractors and must annually establish a schedule of contractors to be reviewed. In addition, they must—

- (1) Conduct reviews as a team effort.
 - (i) the ACO—

48 CFR Ch. 2 (10-1-02 Edition)

(A) Appoints a team leader; and

(B) Ensures that the team includes appropriate functional specialists (*e.g.*, industrial specialist, engineer, property administrator, auditor).

(ii) The team leader—

(A) Advises the ACO and the contractor of findings during the review and at the exit conference; and

(B) Makes every effort to resolve differences regarding questions of fact during the review.

(iii) The contract auditor—

(A) Participates as a member of the MMAS team or serves as the team leader (see paragraph (c)(1)(i) of this section); and

(B) Issues an audit report for incorporation into the MMAS report based on an analysis of the contractor's books, accounting records, and other related data.

(2) Tailor reviews to take full advantage of the day-to-day work done by both organizations.

(3) Prepare the MMAS report.

(d) *Disposition of evaluation team findings.* The team leader must document the evaluation team findings and recommendations in the MMAS report to the ACO. If there are any significant MMAS deficiencies, the report must provide an estimate of the adverse impact on the Government resulting from those deficiencies.

(1) *Initial notification to the contractor.* The ACO must provide a copy of the report to the contractor immediately upon receipt from the team leader.

(i) The ACO must notify the contractor in a timely manner if there are no deficiencies.

(ii) If there are any deficiencies, the ACO must request the contractor to provide a written response within 30 days (or such other date as may be mutually agreed to by the ACO and the contractor) from the date of initial notification.

(iii) If the contractor agrees with the report, the contractor has 60 days (or such other date as may be mutually agreed to by the ACO and the contractor) to correct any identified deficiencies or submit a corrective action plan showing milestones and actions to eliminate the deficiencies.