

42.802

(2) State the contractor's name and list the numbers of the affected contracts;

(3) Describe the costs to be disallowed, including estimated dollar value by item and applicable time periods, and state the reasons for the intended disallowance;

(4) Describe the potential impact on billing rates and forward pricing rate agreements;

(5) State the notice's effective date and the date by which written response must be received;

(6) List the recipients of copies of the notice; and

(7) Request the contractor to acknowledge receipt of the notice.

(d) The contracting officer issuing the notice shall furnish copies to all contracting officers cognizant of any segment of the contractor's organization.

(e) If the notice involves elements of indirect cost, it shall not be issued without coordination with the contracting officer or auditor having authority for final indirect cost settlement (see 42.705).

(f) In the event the contractor submits a response that disagrees with the notice (see paragraph (b) above), the contracting officer who issued the notice shall either withdraw the notice or issue the written decision, except when elements of indirect cost are involved, in which case the contracting officer responsible under 42.705 for determining final indirect cost rates shall issue the decision.

42.802 Contract clause.

The contracting officer shall insert the clause at 52.242-1, Notice of Intent to Disallow Costs, in solicitations and contracts when a cost-reimbursement contract, a fixed-price incentive contract, or a contract providing for price redetermination is contemplated.

42.803 Disallowing costs after incurrence.

Cost-reimbursement contracts, the cost-reimbursement portion of fixed-price contracts, letter contracts that provide for reimbursement of costs, and time-and-material and labor-hour contracts provide for disallowing costs during the course of performance after

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the costs have been incurred. The following procedures shall apply:

(a) *Contracting officer receipt of vouchers.* When contracting officers receive vouchers directly from the contractor and, with or without auditor assistance, approve or disapprove them, the process shall be conducted in accordance with the normal procedures of the individual agency.

(b) *Auditor receipt of vouchers.* (1) When authorized by agency regulations, the contract auditor may be authorized to (i) receive reimbursement vouchers directly from contractors, (ii) approve for payment those vouchers found acceptable, and (iii) suspend payment of questionable costs. The auditor shall forward approved vouchers for payment to the cognizant contracting, finance, or disbursing officer, as appropriate under the agency's procedures.

(2) If the examination of a voucher raises a question regarding the allowability of a cost under the contract terms, the auditor, after informal discussion as appropriate, may, where authorized by agency regulations, issue a notice of contract costs suspended and/or disapproved simultaneously to the contractor and the disbursing officer, with a copy to the cognizant contracting officer, for deduction from current payments with respect to costs claimed but not considered reimbursable.

(3) If the contractor disagrees with the deduction from current payments, the contractor may—

(i) Submit a written request to the cognizant contracting officer to consider whether the unreimbursed costs should be paid and to discuss the findings with the contractor;

(ii) File a claim under the Disputes clause, which the cognizant contracting officer will process in accordance with agency procedures; or

(iii) Do both of the above.

Subpart 42.9—Bankruptcy

SOURCE: 56 FR 15154, Apr. 15, 1991, unless otherwise noted.

42.900 Scope of subpart.

This subpart prescribes policies and procedures regarding actions to be taken when a contractor enters into

proceedings relating to bankruptcy. It establishes a requirement for the contractor to notify the contracting officer upon filing a petition for bankruptcy. It further establishes minimum requirements for agencies to follow in the event of a contractor bankruptcy.

42.901 General.

The contract administration office shall take prompt action to determine the potential impact of a contractor bankruptcy on the Government in order to protect the interests of the Government.

42.902 Procedures.

(a) When notified of bankruptcy proceedings, agencies shall, as a minimum—

(1) Furnish the notice of bankruptcy to legal counsel and other appropriate agency offices (e.g., contracting, financial, property) and affected buying activities;

(2) Determine the amount of the Government's potential claim against the contractor (in assessing this impact, identify and review any contracts that have not been closed out, including those physically completed or terminated);

(3) Take actions necessary to protect the Government's financial interests and safeguard Government property; and

(4) Furnish pertinent contract information to the legal counsel representing the Government.

(b) The contracting officer shall consult the legal counsel, whenever possible, prior to taking any action regarding the contractor's bankruptcy proceedings.

42.903 Solicitation provision and contract clause.

The contracting officer shall insert the clause at 52.242-13, Bankruptcy, in all solicitations and contracts exceeding the simplified acquisition threshold.

[56 FR 15154, Apr. 15, 1991, as amended at 60 FR 34759, July 3, 1995; 61 FR 39190, July 26, 1996]

Subpart 42.10 [Reserved]

Subpart 42.11—Production Surveillance and Reporting

42.1101 General.

Production surveillance is a function of contract administration used to determine contractor progress and to identify any factors that may delay performance. Production surveillance involves Government review and analysis of (a) contractor performance plans, schedules, controls, and industrial processes and (b) the contractor's actual performance under them.

42.1102 Applicability.

This subpart applies to all contracts for supplies or services other than facilities, construction contracts, and Federal Supply Schedule contracts. See part 37, especially subpart 37.6, regarding surveillance of contracts for services.

[48 FR 42370, Sept. 19, 1983, as amended at 62 FR 44816, Aug. 22, 1997]

42.1103 Policy.

The contractor is responsible for timely contract performance. The Government will maintain surveillance of contractor performance as necessary to protect its interests. When the contracting office retains a contract for administration, the contracting officer administering the contract shall determine the extent of surveillance.

42.1104 Surveillance requirements.

(a) The contract administration office determines the extent of production surveillance on the basis of (1) the criticality (degree of importance to the Government) assigned by the contracting officer (see 42.1105) to the supplies or services and (2) consideration of the following factors:

(i) Contract requirements for reporting production progress and performance.

(ii) The contract performance schedule.

(iii) The contractor's production plan.

(iv) The contractor's history of contract performance.

(v) The contractor's experience with the contract supplies or services.