

42.705-4

(i) There has been no recent audit of the indirect costs;

(ii) There have been frequent or wide fluctuations in the indirect cost rates and the bases over a period of years; or

(iii) The estimated reimbursable costs for any individual contract are expected to exceed \$1 million annually.

(4)(i) If predetermined rates are to be used and no rates have been previously established for the institution's current fiscal year, the agency shall obtain from the institution a proposal for predetermined rates.

(ii) If the proposal is found to be generally acceptable, the agency shall negotiate the predetermined rates with the institution. The rates should be based on an audit of the institution's costs for the year immediately preceding the year in which the rates are being negotiated. If this is not possible, an earlier audit may be used, but appropriate steps should be taken to identify and evaluate significant variations in costs incurred or in bases used that may have a bearing on the reasonableness of the proposed rates. However, in the case of smaller contracts (e.g., \$100,000 or less), an audit made at an earlier date is acceptable if (A) there have been no significant changes in the contractor's organization and (B) it is reasonably apparent that another audit would have little effect on the rates finally agreed upon and the potential for overpayment of indirect cost is relatively insignificant.

(5) If predetermined rates are used—

(i) The contracting officer shall include the negotiated rates and bases in the contract Schedule; and

(ii) See 16.307(i), which prescribes the clause at 52.216-15, Predetermined Indirect Cost Rates.

(6) Predetermined indirect cost rates shall be applicable for a period of not more than four years. The agency shall obtain the contractor's proposal for new predetermined rates sufficiently in advance so that the new rates, based on current data, may be promptly negotiated near the beginning of the new fiscal year or other period agreed to by the parties (see paragraphs (b) and (d) of the clause at 52.216-15, Predetermined Indirect Cost Rates).

(7) Contracting officers shall use billing rates established by the agency to

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reimburse the contractor for work performed during a period not covered by predetermined rates.

[48 FR 42370, Sept. 19, 1983, as amended at 61 FR 31622, June 20, 1996; 63 FR 9065, Feb. 23, 1998]

42.705-4 State and local governments.

OMB Circular No. A-87 concerning cost principles for state and local governments (see subpart 31.6) establishes the cognizant agency concept and procedures for determining a cognizant agency for approving state and local government indirect costs associated with federally-funded programs and activities. The indirect cost rates negotiated by the cognizant agency will be used by all Federal agencies that also award contracts to these same state and local governments.

42.705-5 Nonprofit organizations other than educational and state and local governments.

See OMB Circular No. A-122.

42.706 Distribution of documents.

(a) The contracting officer or auditor shall promptly distribute executed copies of the indirect cost rate agreement to the contractor and to each affected contracting agency and shall provide copies of the agreement for the contract files, in accordance with the guidance for contract modifications in subpart 4.2, Contract Distribution.

(b) Copies of the negotiation memorandum prepared under contracting officer determination or audit report prepared under auditor determination shall be furnished, as appropriate, to the contracting offices and Government audit offices.

42.707 Cost-sharing rates and limitations on indirect cost rates.

(a) Cost-sharing arrangements, when authorized, may call for the contractor to participate in the costs of the contract by accepting indirect cost rates lower than the anticipated actual rates. In such cases, a negotiated indirect cost rate ceiling may be incorporated into the contract for prospective application. For cost sharing under research and development contracts, see 35.003(b).