

Department of Justice

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(b) The burden of proof shall be upon the carrier to justify that such cost is an allocable cost under this part.

(c) An allocable cost shall not be assigned to the CALEA compliance effort if other costs incurred for the same purpose in like circumstances have been included as a direct cost of that, or any other, cost objective.

(d) The accumulation of allocable costs shall be as follows:

(1) Allocable costs shall be accumulated by logical cost groupings with due consideration of the reasons for incurring such costs.

(i) Each grouping should be determined so as to permit distribution of the grouping on the basis of the benefits accruing to the multiple cost objectives.

(ii) Similarly, the particular case may require subdivision of these groupings (e.g., building occupancy costs might be separable from those of personnel administration within the engineering group).

(2) Such allocation necessitates selecting a distribution base common to all cost objectives to which the grouping is to be allocated. The base should be selected so as to permit allocation of the grouping on the basis of the benefits accruing to the multiple cost objectives.

(3) When substantially the same results can be achieved through less precise methods, the number and composition of cost groupings should be governed by practical considerations and should not unduly complicate the allocation.

(4) Once a methodology for determining an appropriate base for distributing allocable costs has been agreed to, it shall not be modified without written approval of the FBI, if that modification affects the level of reimbursement from the government. All items properly includable in an allocable cost base should bear a pro rata share of allocable costs irrespective of their acceptance as reimbursable under this part.

(5) The carrier's method of allocating allocable costs shall be in accordance with the accounting principles used by the carrier in the preparation of their externally audited financial statements and consistently applied, to the

extent that the expenses are allowable under these regulations. The method may require further examination when:

(i) Substantial differences occur between the cost patterns of work under CALEA compliance effort and the carrier's other work;

(ii) Significant changes occur in the nature of the business, the extent of subcontracting, fixed-asset improvement programs, inventories, the volume of sales and production, manufacturing processes, the carrier's products, or other relevant circumstances; or

(iii) Allocable cost groupings developed for a carrier's primary location are applied to off-site locations. Separate cost groupings for costs allocable to off-site locations may be necessary to permit equitable distribution of costs on the basis of the benefits accruing to the multiple cost objectives.

(6) The base period for allocating allocable costs is the cost accounting period during which such costs are incurred and accumulated for distribution to work performed in that period. The base period for allocating allocable costs will normally be the carrier's fiscal year. A shorter period may be appropriate when performance involves only a minor portion of the fiscal year, or when it is general practice to use a shorter period. When the compliance effort is performed over an extended period, as many base periods shall be used as are required to accurately represent the period of performance.

§ 100.15 Disallowed costs.

(a) General and Administrative (G&A) costs are disallowed. G&A costs include, but are not limited to, any management, financial, and other expenditures which are incurred by or allocated to a business unit as a whole. These include, but are not limited to:

(1) Accounting and Finance, External Relations, Human Resources, Information Management, Legal, Procurement; and

(2) Other general administrative activities such as library services, food services, archives, and general security investigation services.

(b) Customer Service costs are disallowed. These costs include, but are not limited to, any Marketing, Sales,

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Product Management, and Advertising expenses.

(c) Plant costs that are not directly associated with the modifications identified in §100.11 are disallowed. These include, but are not limited to, repairing materials for reuse, performing routine work to prevent trouble; expenses related to property held for future telecommunications use; provisioning costs; network operations costs; and depreciation and amortization expenses.

(d) Costs that have already been recovered from any governmental or non-governmental entity are disallowed.

(e) Costs that cannot be either directly assigned or directly allocated are disallowed.

(f) Additional costs that are incurred due to the carrier's failure to complete the CALEA compliance effort in the time frame agreed to by the government and the carrier are disallowed.

(g) Costs associated with modifications of any equipment, facility or service installed or deployed after January 1, 1995 which are deemed reasonably achievable by the Federal Communications Commission under section 109(b) of CALEA are disallowed.

(h) To ensure that the Government does not reimburse carriers for disallowed costs, the following provisions are included:

(1) Costs that are expressly disallowed or mutually agreed to be disallowed, including mutually agreed to be disallowed directly associated costs, shall be excluded from any billing, claim, or proposal applicable to reimbursement under CALEA. When a disallowed cost is incurred, its directly associated costs are also disallowed.

(2) Disallowed costs involved in determining rates used for standard costs, or for allocable cost proposals or billing, need be identified only at the time rates are proposed, established, revised, or adjusted. These requirements may be satisfied by any form of cost identification which is adequate for purposes of cost determination and verification.

§ 100.16 Cost estimate submission.

(a) The carrier shall provide sufficient cost data at the time of proposal submission to allow adequate analysis

and evaluation of the estimated costs. The FBI reserves the right to request additional cost data from carriers in order to ensure compliance with this part.

(b) The requirement for submission of cost data is met if, as determined by the FBI, all cost data reasonably available to the carrier are either submitted or identified in writing by the date of agreement on the costs.

(c) If cost data and information to explain the estimating process are required by the FBI and the carrier refuses to provide necessary data, or the FBI determines that the data provided are so deficient as to preclude adequate analysis and evaluation, the FBI will attempt to obtain the data and/or elicit corrective action.

(d) Instructions for submission of the cost data for the estimate are as follows:

(1) The carrier shall submit to the FBI estimated costs by line item with supporting information.

(2) A cost element breakdown as described in §100.16(h) shall be attached for each proposed line item.

(3) Supporting breakdowns shall be furnished for each cost element, consistent with the carrier's cost accounting system.

(4) When more than one line item is proposed, summary total amounts covering all line items shall be furnished for each cost element.

(5) Depending on the carrier's accounting system, the carrier shall provide breakdowns for the following categories of cost elements, as applicable:

(i) *Materials*. Provide a consolidated cost summary of individual material quantities included in the various tasks, orders, or agreement line items being proposed and the basis upon which they were developed (vendor quotes, invoice prices, etc.). Include raw materials, parts, software, components, and assemblies. For all items proposed, identify the item, source, quantity, and cost.

(ii) *Direct labor*. Provide a time-phased (e.g., monthly, quarterly) breakdown of labor hours, rates, and costs by appropriate category, and furnish the methodologies used in developing estimates.