

Health and Human Services

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and similar rates for use in contracts awarded to commercial organizations.

Subpart 342.70—Contract Monitoring

342.7000 Purpose.

Contract monitoring is an essential element of contract administration that the Contracting Officer and the COTR perform jointly. This subpart describes HHS' operating concepts.

342.7001 Contract monitoring responsibilities.

(a) The contract establishes the obligations of both the Government and the contractor. The Contracting Officer is the only person authorized to modify the contract and shall confirm all modifications in writing.

(b) The Contracting Officer shall ensure the contractor's compliance with all the terms and conditions of the contract. The Contracting Officer shall inform the contractor by letter (if not already stipulated in the contract) of the authorities and responsibilities of the Government personnel involved with the contract.

(c) The Contracting Officer shall use program, technical, and other personnel for assistance and advice in monitoring the contractor's performance and in other areas of post-award administration. The Contracting Officer shall ensure that these individuals understand and carry out their assigned responsibilities. The individual roles and corresponding responsibilities typically involve, but are not limited to, the following:

(1) The role of program and technical personnel in monitoring the contract is to assist and advise the Contracting Officer, and act as the COTR when so designated by the Contracting Officer. COTR activities include—

(i) Providing technical monitoring during contract performance and advising the Contracting Officer relating to delivery, acceptance, or rejection of deliverables in accordance with the terms of the contract;

(ii) Assessing contractor performance;

(iii) Recommending necessary changes to the schedule of work and period of performance to accomplish

the objectives of the contract (The COTR shall provide the Contracting Officer a written request along with an appropriate justification and a funding document, if additional funds are needed.);

(iv) Reviewing invoices/vouchers and recommending approval/disapproval by the Contracting Officer, including providing comments regarding anything unusual discovered in the review (*Note:* If a contract contains the Salary Rate Limitation clause specified in 352.231-70, the Contracting Officer, in conjunction with the COTR, shall monitor the contractor's invoices to ensure that the contractor is billing salaries, including those of subcontractors, at rates no higher than the Federal Executive Schedule salary rate limitation in effect on the date(s) the expense(s) was/were incurred.);

(v) Reviewing and recommending approval or disapproval of subcontractors, overtime, travel, and key personnel changes; and

(vi) Participating, as necessary, in various phases of the contract closeout process.

(2) The roles of the contract administrator, auditor, cost analyst, and property administrator are to assist or advise the Contracting Officer in post-award administration. Such activities include—

(i) Evaluating contractor systems and procedures, including accounting policies and procedures, purchasing policies and practices, property accounting and control, wage and salary plans and rate structures, personnel policies and practices, *etc.*;

(ii) Processing disputes under the Disputes clause and any resultant appeals;

(iii) Modifying or terminating the contract; and

(iv) Determining the allowability of: costs charged in incentive or cost-reimbursement type contracts, and progress payments under fixed-price contracts. This is important for awards to new organizations or those with financial weaknesses.

(d) The Contracting Officer shall ensure that contractor performance and contract monitoring conform with contract terms and conditions. If performance is not satisfactory or if problems

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are anticipated, the Contracting Officer shall take immediate action to protect the Government's rights under the contract. The Contracting Officer shall notify appropriate officials of problems that cannot be resolved within contract limitations and whenever the contractor is not meeting contract or program objectives. The notification shall include a statement of corrective actions that the Contracting Officer is taking.

342.7002 Procedures to be followed when a contractor fails to perform.

(a) The Contracting Officer shall initiate immediate action to protect the Government's rights whenever the contractor fails to comply with either the delivery or reporting terms of the contract. Compliance with the reporting terms includes those reports the contractor is required to submit directly to the payment office. The payment office shall notify the Contracting Officer promptly when the contractor does not submit such a report on time.

(b) When the contract contains a termination for default clause, the contractor's failure to submit any report, perform services, or deliver work when required by the contract is considered a default in performance. The Contracting Officer shall immediately issue a formal 10-day cure notice pursuant to *FAR 49.607*. The notice shall include a statement to the effect that payments will be withheld if the default is not cured within the time period specified in the notice or if the default is not determined to be excusable.

(1) If the default is cured or is determined to be excusable, the Contracting Officer shall not initiate the withholding action.

(2) If the default is not determined to be excusable or a response is not received within the allotted time, the Contracting Officer shall initiate withholding action on all contract payments and shall determine whether termination for default or other action would be in the best interest of the Government.

(c) When the contract does not contain a termination for default clause, the Contracting Officer shall consider a contractor's failure to submit any required report, perform services, or de-

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liver work when required by the contract a failure to perform. The Contracting Officer shall immediately issue a written notice to the contractor that: specifies the failure, and provides a 10-day period (or longer period if the Contracting Officer deems it necessary) within which the contractor shall either cure the failure or provide reasons for an excusable delay. The notice shall include a statement to the effect that payments will be withheld, if the default is not cured within the time period specified in the notice or if the default is not determined to be excusable.

(1) If the contractor cures the failure or the Contracting Officer determines it to be excusable, the Contracting Officer shall not initiate the withholding action.

(2) If the Contracting Officer does not determine the failure excusable or the contractor does not provide a response within the allotted time, the Contracting Officer shall initiate withholding action on all contract payments and shall determine whether termination for convenience or other action would be in the best interest of the Government.

(d) The Contracting Officer shall consult *FAR subpart 49.4* for further guidance before taking any of the actions described in this section.

342.7003 Withholding of contract payments.

342.7003-1 Solicitation provisions and contract clauses.

(a) The Contracting Officer shall insert the clause in *352.242-73*, Withholding of Contract Payments, and the clause in *FAR 52.249-14*, Excusable Delays, in solicitations and contracts when a cost-reimbursement, time-and-materials, or labor-hour contract is contemplated.

(b) The Contracting Officer shall insert the clause in *352.242-74*, Final Decisions on Audit Findings, in solicitations and contracts when a cost-reimbursement contract is contemplated, except for those contracts with:

(1) A foreign government or agency of that government; or

(2) An international organization or a subsidiary body of that organization that the HCA determines would not be appropriate.