Health and Human Services
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 responsi-
sibilities.
(a) The contract establishes the obli-
gations 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 en-
sure the contractor’s compliance with
all the terms and conditions of the con-
tract. The Contracting Officer shall in-
form the contractor by letter (if not al-
ready 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 per-
sonnel for assistance and advice in
monitoring the contractor’s perform-
ance and in other areas of post-award
administration. The Contracting Offi-
cer shall ensure that these individuals
understand and carry out their as-
signed responsibilities. The individual
roles and corresponding responsibil-
ities typically involve, but are not lim-
ited to, the following:

(i) The role of program and technical
personnel in monitoring the contract is
to assist and advise the Contracting Of-
cifer, and act as the COTR when so des-
ignated by the Contracting Officer.

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

(iii) Assessing contractor perform-
ance;

(iv) 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 Of-
oficer a written request along with an
appropriate justification and a funding
document, if additional funds are need-
ed.);

(v) Reviewing invoices/vouchers and
recommending approval/disapproval by
the Contracting Officer, including pro-
viding 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 conjunc-
tion with the COTR, shall monitor the
contractor’s invoices to ensure that
the contractor is billing salaries, in-
cluding those of subcontractors, at
rates no higher than the Federal Exec-
utive Schedule salary rate limitation
in effect on the date(s) the expense(s)
was/were incurred.);

(vi) Reviewing and recommending ap-
proval or disapproval of subcontrac-
tors, overtime, travel, and key per-
sonnel changes; and

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

(2) The roles of the contract adminis-
trator, auditor, cost analyst, and prop-
erty administrator are to assist or ad-
vice 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 ac-
counting and control, wage and salary
plans and rate structures, personnel
policies and practices, etc.;

(ii) Processing disputes under the
Disputes clause and any resultant ap-
peals;

(iii) Modifying or terminating the
contract; and

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

(d) The Contracting Officer shall en-
sure that contractor performance and
contract monitoring conform with con-
tact terms and conditions. If perform-
ance is not satisfactory or if problems
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 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.