

Subchapter 3042.7 Indirect Cost Rates

3042.703 General.

3042.703-1 Policy.

For forward pricing and billing rates, contracting officers shall utilize the rates in the Forward Pricing Rate Agreement, if one exists. If one does not exist, but there is a Forward Pricing Rate Recommendation, contracting officers should normally use that recommendation as the basis for negotiating the indirect rates. If the contracting officer negotiates rates that differ from those in the Forward Pricing Rate Recommendation, the contract file must include the rationale for negotiating different rates. If there is no Forward Pricing Rate Agreement or Forward Pricing Rate Recommendation, the contracting officer should normally obtain information from DCAA to assist the contracting officer in negotiating the indirect rates. If the contracting officer negotiates rates that differ significantly from the rate information provided by DCAA, the contracting officer must document the rationale for the differences in the contract file. Where DCAA has an audit presence, DHS will use DCAA unless DCAA agrees otherwise.

3042.703-2 Certificate of indirect costs.

(b) Waiver of certification.

(1) This authority is delegated to one level above the contracting officer. In no case shall the authority be delegated below one level above the contracting officer. A copy of the approved waiver shall be submitted to OCPO within five days of approval.

3042.705 Final indirect cost rates.

3042.705-1 Contracting officer determination procedure.

(a) Applicability and responsibility. The contracting officer is responsible for ensuring that the direct and indirect costs paid under cost reimbursement and T&M contracts are allowable.

(b) DHS Procedures. For final indirect rates, DHS relies on the rates established by the cognizant federal agency, if such rates exist. If the rates are audit determined, DHS relies on the indirect cost rates established by DCAA, unless the DHS and DCAA mutually agree that another agency will be the cognizant audit agency.

(1) Pursuant to the Memorandum of Understanding (MOU) between DHS and DCAA at Appendix U, DCAA audits are based on its policy for sampling low-risk incurred cost proposals (also see DHS FAR Class Deviation Number 16-04 entitled “Defense Contract Audit Agency Policy and Procedure For Sampling Low-Risk Incurred Cost Proposals.”) An audit will not be performed if the incurred cost proposal is classified as low risk and not selected for audit in the sampling process. If an audit was not performed because the incurred cost proposal was classified as low risk and not sampled, DCAA will provide the customer a memorandum stating that the submission was not selected for an audit.

This memorandum will include the Certificate of Final Indirect Costs, signed rate agreement, schedule of direct and indirect costs proposed during the fiscal year (Schedule H), and cumulative allowable cost worksheet, if this can be readily prepared. If an audit is performed, DCAA will provide the customer with an incurred cost audit report at the conclusion of the audit. A copy of the annual audit reports or low risk memoranda provided by DCAA shall be maintained in the contract file.

(2) DCAA performs contract audits on an annual basis (not on a contract by contract basis). Thus, DCAA notifies contracting officers when an annual audit of a contractor's incurred costs is going to be performed that includes their DHS contract. This notification will request DHS acknowledgement that the DHS contract should be included in the annual audit, and a request for reimbursement to DCAA for the DHS applicable share of the audit cost. Unless there are exceptional circumstances, DHS contracting officers shall obtain these annual incurred cost audits. If the contracting officer decides not to obtain the annual audit of the direct or indirect costs, the contracting officer shall document in the contract file as to why the audit was not obtained. In addition, the contracting officer shall notify OCPO, Executive Director, Acquisition Policy and Oversight via PROCUREMENTSUPPORT@HQ.DHS.GOV of their decision to not obtain the audit. The contract file documentation shall include, as a minimum, a discussion of the reason the audit was not obtained (e.g., small dollar amounts remaining unaudited or unsettled; low dollar value of the contracts; the necessary audit will not be performed for many years and there is an urgency to close the contract).

(3) Annual audit reports or low risk memoranda shall be used to establish the allowable direct and indirect costs under cost reimbursement and T&M contracts, unless there are final rates negotiated by the cognizant federal agency that differ from those shown in the DCAA report or low risk memoranda. In such cases, the allowable direct and indirect costs shall be determined based on the rates negotiated by the cognizant federal agency.

(4) To mitigate possible overpayments, the contracting officer shall periodically compare the amounts billed under the contract with the allowable costs shown on the summary sheet. If the amounts billed significantly exceed the allowable costs, the contracting officer shall notify the contractor and request a credit adjustment. If the adjustment is not provided promptly, the contracting officer shall issue a demand for payment to recover the overpayments.

3042.705-3 Educational institutions.

(b) If DHS is the Cognizant Federal Agency for an educational institution for the purpose of negotiating indirect cost rates, the use of predetermined final indirect cost rates must be approved by the COCO. In no case shall the authority be delegated below the COCO.

3042-708 Quick-closeout procedures.

3042.708-70 DHS quick-closeout procedures.

The contracting officer may:

- (a) Require the contractor to submit the following: (1) the contractor's final indirect cost rate proposal reflecting actual cost experience during the covered period(s), together with supporting cost or pricing data, for each of its fiscal years for which quick-closeout is involved, and (2) a final voucher and a summary of all costs by cost element and for each of its fiscal years for the contract(s) in question.
- (b) Notify the cognizant audit activity, either verbally or in writing, identify the contract(s), and request:
 - (1) the contractor's indirect cost history covering a sufficient number of fiscal years to see the trend of claimed, audit questioned, and disallowed costs; and
 - (2) any other information that could impact the decision to use quick-closeout procedures. Indirect cost histories should be requested from the contractor only when the cognizant audit activity is unable to provide the information.
- (c) Review the contract(s) for indirect cost rate ceilings and any other contract limitations, as well as the rate history information.
- (d) If quick-closeout procedures are appropriate based upon the information obtained pursuant to paragraphs (a), (b), and (c), the contracting file shall be documented with the findings and rationale.
- (e) Final indirect cost rates should be established using one of the following:
 - (1) Contractor's claimed actual rates adjusted to reflect an appropriate percentage of unallowable costs in prior year claims; or
 - (2) Recommended actual rates from the cognizant audit agency, the local pricing office, another installation pricing office, or other recognized knowledgeable source.
- (f) If an agreement is reached with the contractor, obtain a release of all claims and other applicable closing documents (see HSAR 3004.804-570).

Subchapter 3042.8 Disallowance of Costs

3042.803 Disallowing costs after incurrence.

(b) *Auditor receipt of vouchers.*

(3)(ii) When the contractor files a claim for unreimbursed costs under the Disputes clause of the contract, contracting officers shall process the claim in accordance with Component procedures.