

## 42.705-3 Educational institutions.

### (a) General.

(1) Postdetermined *final indirect cost rates* shall be used in the settlement of *indirect costs* for all cost-reimbursement contracts with educational institutions, unless predetermined *final indirect cost rates* are authorized and used (see paragraph (b) of this subsection).

(2) The OMB Uniform Guidance at 2 CFR part 200, appendix III assigns each educational institution (defined as an institution of higher education in the OMB Uniform Guidance at 2 CFR part 200, subpart A, and 20 U.S.C. 1001) to a single Government agency for the negotiation of *indirect cost rates* and provides that those rates shall be accepted by all *Federal agencies*. Cognizant Government agencies and educational institutions are listed in the Directory of Federal Contract Audit Offices (see 42.103).

(3) The cognizant agency for *indirect costs* shall establish the *billing rates* and *final indirect cost rates* at the educational institution (defined as an institution of higher education in 2 CFR 200, subpart A, and 20 U.S.C. 1001) consistent with the requirements of this subpart, subpart 31.3, and the OMB Uniform Guidance at 2 CFR part 200, subpart E and appendix III. The agency shall follow the procedures outlined in 42.705-1(b).

(4) If the cognizant agency is unable to reach agreement with an institution, the appeals system of the cognizant agency shall be followed for resolution of the dispute.

### (b) Predetermined *final indirect cost rates*.

(1) Under cost-reimbursement research and development contracts with universities, colleges, or other educational institutions (41 U.S.C.4708), payment for reimbursable *indirect costs* may be made on the basis of predetermined *final indirect cost rates*. The cognizant agency is not required to establish predetermined rates, but if they are established, their use *must* be extended to all the institution's Government contracts.

(2) In deciding whether the use of predetermined rates would be appropriate for the educational institution concerned, the agency *should* consider both the stability of the institution's *indirect costs* and bases over a period of years and any anticipated changes in the amount of the direct and *indirect costs*.

(3) Unless their use is approved at a level in the agency (see paragraph (a)(2) of this subsection) higher than the *contracting officer*, predetermined rates shall not be used when-

(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 (*i.e.*, contracts that do not exceed the *simplified acquisition threshold*), 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\(g\)](#), 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 reimburse the contractor for work performed during a period not covered by predetermined rates.

(8) The OMB Uniform Guidance at 2 CFR part 200, subpart E and appendix III, provides additional guidance on how long predetermined rates *may* be used.

**Parent topic:** [42.705](#) *Final indirect cost rates*.