

CHANGE REQUEST COVER SHEET

Change Request Number: 12-68

Date Received: 6/4/2012

Title: Final Indirect Cost Rates

Name: Eugene Scott

Phone: 202-493-4639

Policy OR Guidance: Guidance

Section/Text Location Affected: T3.10.1.12 Final Indirect Cost Rates

Summary of Change: The changes clarify in Procurement Guidance that the contractor's final indirect rate proposal must be certified.

Reason for Change: To clarify certain time periods specified in contract clause 3.2.4-5.

Development, Review, and/or Concurrence: Acquisition Policy AAP-100, AGC, Aeronautical Center, AAQ-1.

Target Audience: Contracting Officers and Contract Specialists.

Potential Links within FAST for the Change: None

Briefing Planned: No

ASAG Responsibilities: Approve

Potential Links within FAST for the Change: None

Links for New/Modified Forms (or) Documents (LINK 1) [null](#)

Links for New/Modified Forms (or) Documents (LINK 2) [null](#)

Links for New/Modified Forms (or) Documents (LINK 3) [null](#)

SECTIONS EDITED:

Procurement Guidance:

T3.10.1 Contract Administration

Contract Administration

Section 12 : Final Indirect Cost Rates [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

SECTIONS EDITED:

Section 12 : Final Indirect Cost Rates

Old Content: Procurement Guidance:

T3.10.1 Contract Administration

Contract Administration

Section 12 : Final Indirect Cost Rates

a. *Cognizant Federal Agency.* A contractor (or its operating divisions) may do business with more than one Federal agency. To avoid inconsistent or duplicated activities, one agency is designated as the cognizant agency for settling the final indirect cost rates with the contractor. The cognizant agency, which could be FAA, is normally the one with the largest dollar amount of negotiated contracts, including options. Once an agency assumes cognizance, it should remain so for at least five years to ensure continuity and ease of administration. If at the end of the five-year period another agency has the largest dollar amount of negotiated contracts, including options, then the two agencies should coordinate and determine which will assume cognizance. However, cognizance may transfer before the five-year period expires if circumstances warrant it and the affected agencies agree.

b. *Billing Rates.*

(1) A billing rate is an indirect cost rate established temporarily for interim reimbursement of incurred indirect costs, and is adjusted as necessary pending establishment of final indirect cost rates.

(2) The cognizant Contracting Officer (CO) (or cognizant Federal agency official) or auditor responsible for establishing the final indirect cost rates is also responsible for determining the billing rates.

(3) The cognizant CO (or cognizant Federal agency official) or auditor establishes billing rates based on information from recent review, previous rate audits or experience, or similar reliable data or experience of other contracting activities. In establishing billing rates, the cognizant CO (or cognizant Federal agency official) or auditor should ensure billing rates are as close as possible to the final indirect cost rates anticipated for the contractor's fiscal period, as adjusted for any unallowable costs. When the cognizant CO (or cognizant Federal agency official) or auditor determines the dollar value of contracts requiring use of billing rates does not warrant submission of a detailed billing rate proposal, the billing rates may be established by making appropriate adjustments from the prior year's indirect cost experience to eliminate unallowable and nonrecurring costs and to reflect new or changed conditions.

(4) Once established, billing rates may be prospectively or retroactively revised by mutual agreement of the cognizant CO (or cognizant Federal agency official) or auditor and the contractor at either party's request, to prevent substantial overpayment or underpayment. When the parties cannot agree, the cognizant CO (or cognizant Federal agency official) may unilaterally determine billing rates.

(5) The elements of indirect cost and the base or bases used in computing billing rates must not be interpreted as determinative of the indirect costs to be distributed or of the bases of distribution to be used in the final settlement.

(6) When the contractor provides the certified final indirect cost rate proposal to the cognizant CO, the contractor and the Government may mutually agree to revise billing rates to reflect the proposed indirect cost rates, as approved by the Government to reflect historically disallowed amounts from prior years' audits, until the proposal has been audited and settled. The historical decrement will be determined by either the cognizant CO/agency official or the auditor.

c. Reimbursing Indirect Costs. Billing rates and final indirect cost rates must be used in reimbursing indirect costs under cost-reimbursement contracts and in determining progress payments under fixed-price contracts.

d. Final Indirect Cost Rates.

(1) Final indirect cost rates must be established on the basis of CO determination procedure or auditor determination procedure. The establishment of a business unit's final indirect cost rates provides uniformity of approach with a contractor when more than one contract or agency is involved; economy of administration; and timely settlement under cost-reimbursement contracts.

(2) These rates are binding for all cost-reimbursement contracts for all agencies and their contracting offices, unless otherwise specifically prohibited by statute. An agency must not perform an audit of indirect cost rates when the CO determines that the objectives of the audit can reasonably be met by accepting the results of an audit that was conducted by any other department or agency of the Federal Government.

(3) Billing rates and final indirect cost rates must be used in reimbursing indirect costs under cost-reimbursement contracts and in determining progress payments under fixed-price contracts.

(4) Final indirect cost rates must be used for contract closeout for a business unit, unless the quick-closeout procedure in AMS Procurement Guidance T3.10.1.A.11.F is used.

(5) Within 120 days (or longer period, if approved in writing by the CO) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the contractor must submit a completion invoice or voucher reflecting the settled amounts

and rates. To determine whether a period longer than 120 days is appropriate, the CO should consider whether there are extenuating circumstances, such as:

- (a) Pending closeout of subcontracts awaiting Government audit.

- (b) Pending contractor, subcontractor, or Government claims.

- (c) Delays in the disposition of Government property.

- (d) Delays in contract reconciliation.

- (e) Any other pertinent factors.

(6) If the contractor fails to submit a completion invoice or voucher within the time specified in subparagraph c.(2) of this section, the cognizant CO may determine the amounts due to the contractor under the contract, and document it in a unilateral modification to the contract.

(7) The CO must coordinate a possible unilateral decision on final indirect rates and resolution efforts with Headquarters Procurement Legal Division, or Region or Center Assistant Chief Counsel's office, as applicable.

e. CO Determination Procedure.

(1) The cognizant CO (or cognizant Federal agency official) is responsible for establishing the final indirect cost rates for:

- (a) Business units of a multidivisional corporation under the cognizance of a corporate administrative contracting officer (ACO) with that officer responsible for the determination, assisted as required by the ACO, assigned to the individual business units. Negotiations may be conducted on a coordinated or centralized basis, depending upon the degree of centralization within the contractor's organization.

- (b) Business units not under the cognizance of a corporate ACO, but having a resident ACO, with that officer responsible for the determination. For this purpose, a nonresident ACO is considered as resident if at least 75 percent of the time is devoted to a single contractor.

- (c) Educational institutions

- (d) State and local governments

- (e) Nonprofit organizations other than educational and state and local governments

(2) According to AMS clause 3.2.4-5 "Allowable Cost and Payment," the contractor must submit a final indirect cost rate proposal to the CO (or cognizant Federal agency official) and to the cognizant auditor. The required content of the proposal and supporting data will vary depending on such factors as business type, size, and accounting system capabilities. The contractor, CO, and auditor must work together to make the proposal, audit, and negotiation process as efficient as possible. Each contractor must submit an adequate proposal to the CO (or cognizant Federal agency official) and auditor within the six-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the contractor and granted in writing by the CO. A contractor must support its proposal with adequate supporting data. For guidance on what generally constitutes an adequate final indirect cost rate proposal and supporting data, contractors should refer to the Model Incurred Cost Proposal in Chapter 6 of the Defense Contract Audit Agency Pamphlet No. 7641.90, Information for Contractors, available on their website.

(3) The auditor must submit to the cognizant CO (or cognizant Federal agency official) an advisory audit report identifying any relevant advance agreements or restrictive terms of specific contracts.

(4) The cognizant CO (or cognizant Federal agency official) heads the Government negotiating team, which includes the cognizant auditor and technical or functional personnel as required. Contracting offices having significant dollar interest must be invited to participate in the negotiation and in the preliminary discussion of critical issues. Individuals or offices that have provided a significant input to the Government position should be invited to attend.

(5) The Government negotiating team must develop a negotiation position. The cognizant CO must:

- (a) Not resolve any questioned costs until obtaining adequate documentation on the costs and the contract auditor's opinion on the allowability of the costs; and

- (b) Whenever possible, invite the contract auditor to serve as an advisor at any negotiation or meeting with the contractor on the determination of the contractor's final indirect cost rates.

(6) The cognizant CO:

- (a) Conducts negotiations;

- (b) Prepares a written indirect cost rate agreement conforming to the requirements of the contracts; and

- (c) Prepares, signs, and places in the contractor general file:

- (i) The disposition of significant matters in the advisory audit report;

- (ii) Reconciliation of all costs questioned, with identification of items and amounts allowed or disallowed in the final settlement as well as the disposition of period costing or allocability issues;
- (iii) Reasons why any recommendations of the auditor or other Government advisors were not followed; and
- (iv) Identification of cost or pricing data submitted during the negotiations and relied upon in reaching a settlement; and
- (v) Promptly distribute resulting documents to include executed copies of the indirect cost rate agreement to the contractor and to each affected contracting agency and provide copies of the agreement for the contract files, in accordance with the guidance for contract modifications, T3.10.1.
- (vi) Notify the contractor of the individual costs which were considered unallowable and the respective amounts of the disallowance.

f. Auditor Determination Procedure.

(1) The cognizant Government auditor establishes final indirect cost rates for:

- (a) Business units of a multidivisional corporation under the cognizance of a corporate ACO, with that officer responsible for the determination, assisted as required by the ACO, assigned to the individual business units. Negotiations may be conducted on a coordinated or centralized basis, depending upon the degree of centralization within the contractor's organization.
- (b) Business units not under the cognizance of a corporate ACO, but having a resident ACO, with that officer responsible for the determination. For this purpose, a nonresident ACO is considered as resident if at least 75 percent of the time is devoted to a single contractor.
- (c) For business units not included, the CO (or cognizant Federal agency official) will determine whether the rates will be CO or auditor determined.
- (d) Educational institutions.
- (e) State and local governments.
- (f) Nonprofit organizations other than educational and state and local governments

(2) The auditor determination may be used for business units that are covered when the CO (or cognizant Federal agency official) and auditor agree that the indirect costs can be settled with little difficulty and any of the following circumstances apply:

- (a) The business unit has primarily fixed-price contracts, with only minor involvement in cost-reimbursement contracts.
- (b) The administrative cost of CO determination would exceed the expected benefits.
- (c) The business unit does not have a history of disputes and there are few cost problems.
- (d) The CO (or cognizant Federal agency official) and auditor agree that special circumstances require auditor determination.

(3) Procedures.

- (a) The contractor must submit to the cognizant CO (or cognizant Federal agency official) and auditor a final indirect cost rate proposal.
- (b) Upon receipt of a proposal, the auditor:
 - (i) Audits the proposal and seeks agreement on indirect costs with the contractor;
 - (ii) Prepares an indirect cost rate agreement conforming to the requirements of the contracts. The agreement must be signed by the contractor and the auditor;
 - (iii) If agreement with the contractor is not reached, forwards the audit report to the CO (or cognizant Federal agency official) identified in the Federal Directory of Contract Administration Services Components, available on their website, who will then resolve the disagreement; and
 - (iv) Distributes Resulting Documents. Copies of the documented audit report prepared under auditor determination or audit report prepared under auditor determination must be furnished, as appropriate, to the contracting offices and Government audit offices.

g. Certification.

- (1) Certificate of Indirect Costs. A proposal must not be accepted and no agreement be made to establish final indirect cost rates unless the contractor certifies the costs.
 - (a) Waiver of Certification. The agency head, or designee, may waive the certification requirement when determined to be in the interest of the United States. The reasons for the determination documented in writing and made available to the public. A waiver may be appropriate for a contract with:

- (1) A foreign government or international organization, such as a subsidiary body of the North Atlantic Treaty Organization;
- (2) A state or local government subject to OMB Circular A-87;
- (3) An educational institution subject to OMB Circular A-21; and
- (4) A nonprofit organization subject to OMB Circular A-122.

(b) Failure to certify.

(1) If the contractor has not certified its proposal for final indirect cost rates and a waiver is not appropriate, the CO may unilaterally establish the rates.

(2) Rates established unilaterally are based on audited historical data or other available data as long as unallowable costs are excluded; and set low enough to ensure that unallowable costs will not be reimbursed.

(c) False Certification. The CO should consult with legal counsel to determine appropriate action when a contractor's certificate of final indirect costs is thought to be false.

(d) Penalties for Unallowable Costs. Penalties for submission of unallowable costs in final indirect cost rate proposals are outlined in AMS clause 3.10.1-3.

New Content: Procurement Guidance:

T3.10.1 Contract Administration

Contract Administration

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b. *Billing Rates.*

- (1) A billing rate is an indirect cost rate established temporarily for interim reimbursement of incurred indirect costs, and is adjusted as necessary pending establishment of final indirect cost rates.
- (2) The cognizant Contracting Officer (CO) (or cognizant Federal agency official) or auditor responsible for establishing the final indirect cost rates is also responsible for determining the billing rates.
- (3) The cognizant CO (or cognizant Federal agency official) or auditor establishes billing rates based on information from recent review, previous rate audits or experience, or similar reliable data or experience of other contracting activities. In establishing billing rates, the cognizant CO (or cognizant Federal agency official) or auditor should ensure billing rates are as close as possible to the final indirect cost rates anticipated for the contractor's fiscal period, as adjusted for any unallowable costs. When the cognizant CO (or cognizant Federal agency official) or auditor determines the dollar value of contracts requiring use of billing rates does not warrant submission of a detailed billing rate proposal, the billing rates may be established by making appropriate adjustments from the prior year's indirect cost experience to eliminate unallowable and nonrecurring costs and to reflect new or changed conditions.
- (4) Once established, billing rates may be prospectively or retroactively revised by mutual agreement of the cognizant CO (or cognizant Federal agency official) or auditor and the contractor at either party's request, to prevent substantial overpayment or underpayment. When the parties cannot agree, the cognizant CO (or cognizant Federal agency official) may unilaterally determine billing rates.
- (5) The elements of indirect cost and the base or bases used in computing billing rates must not be interpreted as determinative of the indirect costs to be distributed or of the bases of distribution to be used in the final settlement.
- (6) When the contractor provides the certified final indirect cost rate proposal to the cognizant CO, the contractor and the Government may mutually agree to revise billing rates to reflect the proposed indirect cost rates, as approved by the Government to reflect historically disallowed amounts from prior years' audits, until the proposal has been audited and settled. The historical decrement will be determined by either the cognizant CO/agency official or the auditor.

c. *Reimbursing Indirect Costs.* Billing rates and final indirect cost rates must be used in reimbursing indirect costs under cost-reimbursement contracts and in determining progress payments under fixed-price contracts.

d. *Final Indirect Cost Rates.*

- (1) Final indirect cost rates must be established on the basis of CO determination procedure or auditor determination procedure. The establishment of a business unit's final indirect cost rates provides uniformity of approach with a contractor when more

than one contract or agency is involved; economy of administration; and timely settlement under cost-reimbursement contracts.

(2) These rates are binding for all cost-reimbursement contracts for all agencies and their contracting offices, unless otherwise specifically prohibited by statute. An agency must not perform an audit of indirect cost rates when the CO determines that the objectives of the audit can reasonably be met by accepting the results of an audit that was conducted by any other department or agency of the Federal Government.

(3) Billing rates and final indirect cost rates must be used in reimbursing indirect costs under cost-reimbursement contracts and in determining progress payments under fixed-price contracts.

(4) Final indirect cost rates must be used for contract closeout for a business unit, unless the quick-closeout procedure in AMS Procurement Guidance T3.10.1.A.11.F is used.

(5) Within 120 days (or longer period, if approved in writing by the CO) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the contractor must submit a completion invoice or voucher reflecting the settled amounts and rates. To determine whether a period longer than 120 days is appropriate, the CO should consider whether there are extenuating circumstances, such as:

(a) Pending closeout of subcontracts awaiting Government audit.

(b) Pending contractor, subcontractor, or Government claims.

(c) Delays in the disposition of Government property.

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(6) If the contractor fails to submit a completion invoice or voucher within the time specified in subparagraph c.(2) of this section, the cognizant CO may determine the amounts due to the contractor under the contract, and document it in a unilateral modification to the contract.

(7) The CO must coordinate a possible unilateral decision on final indirect rates and resolution efforts with Headquarters Procurement Legal Division, or Region or Center Assistant Chief Counsel's office, as applicable.

e. CO Determination Procedure.

(1) The cognizant CO (or cognizant Federal agency official) is responsible for establishing the final indirect cost rates for:

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(b) Business units not under the cognizance of a corporate ACO, but having a resident ACO, with that officer responsible for the determination. For this purpose, a nonresident ACO is considered as resident if at least 75 percent of the time is devoted to a single contractor.

(c) Educational institutions

(d) State and local governments

(e) Nonprofit organizations other than educational and state and local governments

(2) According to AMS clause 3.2.4-5 "Allowable Cost and Payment," the contractor must submit a certified final indirect cost rate proposal to the CO (or cognizant Federal agency official) and to the cognizant auditor. The required content of the proposal and supporting data will vary depending on such factors as business type, size, and accounting system capabilities. The contractor, CO, and auditor must work together to make the proposal, audit, and negotiation process as efficient as possible. Each contractor must submit an adequate proposal to the CO (or cognizant Federal agency official) and auditor within the 180 day period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the contractor and granted in writing by the CO. A contractor must support its proposal with adequate supporting data. For guidance on what generally constitutes an adequate final indirect cost rate proposal and supporting data, contractors should refer to the Model Incurred Cost Proposal in Chapter 6 of the Defense Contract Audit Agency Pamphlet No. 7641.90, Information for Contractors, available on their website.

(3) The auditor must submit to the cognizant CO (or cognizant Federal agency official) an advisory audit report identifying any relevant advance agreements or restrictive terms of specific contracts.

(4) The cognizant CO (or cognizant Federal agency official) heads the Government negotiating team, which includes the cognizant auditor and technical or functional personnel as required. Contracting offices having significant dollar interest must be invited to participate in the negotiation and in the preliminary discussion of critical issues. Individuals or offices that have provided a significant input to the Government position should be invited to attend.

(5) The Government negotiating team must develop a negotiation position. The cognizant CO must:

- (a) Not resolve any questioned costs until obtaining adequate documentation on the costs and the contract auditor's opinion on the allowability of the costs; and
- (b) Whenever possible, invite the contract auditor to serve as an advisor at any negotiation or meeting with the contractor on the determination of the contractor's final indirect cost rates.

(6) The cognizant CO:

- (a) Conducts negotiations;
- (b) Prepares a written indirect cost rate agreement conforming to the requirements of the contracts; and
- (c) Prepares, signs, and places in the contractor general file:
 - (i) The disposition of significant matters in the advisory audit report;
 - (ii) Reconciliation of all costs questioned, with identification of items and amounts allowed or disallowed in the final settlement as well as the disposition of period costing or allocability issues;
 - (iii) Reasons why any recommendations of the auditor or other Government advisors were not followed; and
 - (iv) Identification of cost or pricing data submitted during the negotiations and relied upon in reaching a settlement; and
 - (v) Promptly distribute resulting documents to include executed copies of the indirect cost rate agreement to the contractor and to each affected contracting agency and provide copies of the agreement for the contract files, in accordance with the guidance for contract modifications, T3.10.1.
 - (vi) Notify the contractor of the individual costs which were considered unallowable and the respective amounts of the disallowance.

f. Auditor Determination Procedure.

(1) The cognizant Government auditor establishes final indirect cost rates for:

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be conducted on a coordinated or centralized basis, depending upon the degree of centralization within the contractor's organization.

(b) Business units not under the cognizance of a corporate ACO, but having a resident ACO, with that officer responsible for the determination. For this purpose, a nonresident ACO is considered as resident if at least 75 percent of the time is devoted to a single contractor.

(c) For business units not included, the CO (or cognizant Federal agency official) will determine whether the rates will be CO or auditor determined.

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(2) The auditor determination may be used for business units that are covered when the CO (or cognizant Federal agency official) and auditor agree that the indirect costs can be settled with little difficulty and any of the following circumstances apply:

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(c) The business unit does not have a history of disputes and there are few cost problems.

(d) The CO (or cognizant Federal agency official) and auditor agree that special circumstances require auditor determination.

(3) Procedures.

(a) The contractor must submit to the cognizant CO (or cognizant Federal agency official) and auditor a final indirect cost rate proposal.

(b) Upon receipt of a proposal, the auditor:

(i) Audits the proposal and seeks agreement on indirect costs with the contractor;

(ii) Prepares an indirect cost rate agreement conforming to the requirements of the contracts. The agreement must be signed by the contractor and the auditor;

(iii) If agreement with the contractor is not reached, forwards the audit report to the CO (or cognizant Federal agency official) identified in the Federal Directory of Contract Administration Services Components, available on their website, who will then resolve the disagreement; and

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g. Certification.

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(b) Failure to certify.

(1) If the contractor has not certified its proposal for final indirect cost rates and a waiver is not appropriate, the CO may unilaterally establish the rates.

(2) Rates established unilaterally are based on audited historical data or other available data as long as unallowable costs are excluded; and set low enough to ensure that unallowable costs will not be reimbursed.

(c) False Certification. The CO should consult with legal counsel to determine appropriate action when a contractor's certificate of final indirect costs is thought to be false.

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(d) State and local governments

(e) Nonprofit organizations other than educational and state and local governments

(2) According to AMS clause 3.2.4-5 "Allowable Cost and Payment," the contractor must submit a ***certified*** final indirect cost rate proposal to the CO (or cognizant Federal agency official) and to the cognizant auditor. The required content of the proposal and supporting data will vary depending on such factors as business type, size, and accounting system capabilities. The contractor, CO, and auditor must work together to make the proposal,

audit, and negotiation process as efficient as possible. Each contractor must submit an adequate proposal to the CO (or cognizant Federal agency official) and auditor within the ~~six-month~~ 180 day period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the contractor and granted in writing by the CO. A contractor must support its proposal with adequate supporting data. For guidance on what generally constitutes an adequate final indirect cost rate proposal and supporting data, contractors should refer to the Model Incurred Cost Proposal in Chapter 6 of the Defense Contract Audit Agency Pamphlet No. 7641.90, Information for Contractors, available on their website.

(3) The auditor must submit to the cognizant CO (or cognizant Federal agency official) an advisory audit report identifying any relevant advance agreements or restrictive terms of specific contracts.

(4) The cognizant CO (or cognizant Federal agency official) heads the Government negotiating team, which includes the cognizant auditor and technical or functional personnel as required. Contracting offices having significant dollar interest must be invited to participate in the negotiation and in the preliminary discussion of critical issues. Individuals or offices that have provided a significant input to the Government position should be invited to attend.

(5) The Government negotiating team must develop a negotiation position. The cognizant CO must:

- (a) Not resolve any questioned costs until obtaining adequate documentation on the costs and the contract auditor's opinion on the allowability of the costs; and
- (b) Whenever possible, invite the contract auditor to serve as an advisor at any negotiation or meeting with the contractor on the determination of the contractor's final indirect cost rates.

(6) The cognizant CO:

- (a) Conducts negotiations;
- (b) Prepares a written indirect cost rate agreement conforming to the requirements of the contracts; and
- (c) Prepares, signs, and places in the contractor general file:
 - (i) The disposition of significant matters in the advisory audit report;
 - (ii) Reconciliation of all costs questioned, with identification of items and amounts allowed or disallowed in the final settlement as well as the disposition of period costing or allocability issues;

- (iii) Reasons why any recommendations of the auditor or other Government advisors were not followed; and
- (iv) Identification of cost or pricing data submitted during the negotiations and relied upon in reaching a settlement; and
- (v) Promptly distribute resulting documents to include executed copies of the indirect cost rate agreement to the contractor and to each affected contracting agency and provide copies of the agreement for the contract files, in accordance with the guidance for contract modifications, T3.10.1.
- (vi) Notify the contractor of the individual costs which were considered unallowable and the respective amounts of the disallowance.

f. Auditor Determination Procedure.

(1) The cognizant Government auditor establishes final indirect cost rates for:

- (a) Business units of a multidivisional corporation under the cognizance of a corporate ACO, with that officer responsible for the determination, assisted as required by the ACO, assigned to the individual business units. Negotiations may be conducted on a coordinated or centralized basis, depending upon the degree of centralization within the contractor's organization.
- (b) Business units not under the cognizance of a corporate ACO, but having a resident ACO, with that officer responsible for the determination. For this purpose, a nonresident ACO is considered as resident if at least 75 percent of the time is devoted to a single contractor.
- (c) For business units not included, the CO (or cognizant Federal agency official) will determine whether the rates will be CO or auditor determined.
- (d) Educational institutions.
- (e) State and local governments.
- (f) Nonprofit organizations other than educational and state and local governments

(2) The auditor determination may be used for business units that are covered when the CO (or cognizant Federal agency official) and auditor agree that the indirect costs can be settled with little difficulty and any of the following circumstances apply:

- (a) The business unit has primarily fixed-price contracts, with only minor involvement in cost-reimbursement contracts.

(b) The administrative cost of CO determination would exceed the expected benefits.

(c) The business unit does not have a history of disputes and there are few cost problems.

(d) The CO (or cognizant Federal agency official) and auditor agree that special circumstances require auditor determination.

(3) Procedures.

(a) The contractor must submit to the cognizant CO (or cognizant Federal agency official) and auditor a final indirect cost rate proposal.

(b) Upon receipt of a proposal, the auditor:

(i) Audits the proposal and seeks agreement on indirect costs with the contractor;

(ii) Prepares an indirect cost rate agreement conforming to the requirements of the contracts. The agreement must be signed by the contractor and the auditor;

(iii) If agreement with the contractor is not reached, forwards the audit report to the CO (or cognizant Federal agency official) identified in the Federal Directory of Contract Administration Services Components, available on their website, who will then resolve the disagreement; and

(iv) Distributes Resulting Documents. Copies of the documented audit report prepared under auditor determination or audit report prepared under auditor determination must be furnished, as appropriate, to the contracting offices and Government audit offices.

g. Certification.

(1) Certificate of Indirect Costs. A proposal must not be accepted and no agreement be made to establish final indirect cost rates unless the contractor certifies the costs.

(a) Waiver of Certification. The agency head, or designee, may waive the certification requirement when determined to be in the interest of the United States. The reasons for the determination documented in writing and made available to the public. A waiver may be appropriate for a contract with:

(1) A foreign government or international organization, such as a subsidiary body of the North Atlantic Treaty Organization;

- (2) A state or local government subject to OMB Circular A-87;
- (3) An educational institution subject to OMB Circular A-21; and
- (4) A nonprofit organization subject to OMB Circular A-122.

(b) Failure to certify.

(1) If the contractor has not certified its proposal for final indirect cost rates and a waiver is not appropriate, the CO may unilaterally establish the rates.

(2) Rates established unilaterally are based on audited historical data or other available data as long as unallowable costs are excluded; and set low enough to ensure that unallowable costs will not be reimbursed.

(c) False Certification. The CO should consult with legal counsel to determine appropriate action when a contractor's certificate of final indirect costs is thought to be false.

(d) Penalties for Unallowable Costs. Penalties for submission of unallowable costs in final indirect cost rate proposals are outlined in AMS clause 3.10.1-3.
