

NIH Policy Manual

7610 - Establishment of Overhead Rates for Use in the Award and Administration of Contracts and Grants with Commercial Organizations

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Approving Official(s): DDM

Release Date: 9/11/2006 ?

Transmittal Notice

1. Explanation of Material Transmitted:

This revision is issued to update the policies prescribing procedures for the negotiation of indirect cost rates with commercial organizations. The primary updates are as follows: (1) the title of the Manual Chapter has been changed from “Establishment of Overhead Rates...” to “Establishment of Indirect Cost Rates...” (2) the references to the “Financial Advisory Services Branch (FASB) have been changed to the “Division of Financial Advisory Services (DFAS),” (3) the lead time for requesting DFAS to negotiate rates with a prospective contractor/grantee has been changed from 45 days to 60 days and (4) a section has been added for contracts and grants officials to identify the cognizant office responsible for negotiating indirect cost rates.

2. Filing Instructions:

Remove: NIH Manual Chapter 7610 dated: 6/10/92.

Insert: NIH Manual Chapter 7610 dated: 9/11/06.

PLEASE NOTE: For information on:

- Content of this chapter, contact the issuing office listed above.
- On-line information, enter this URL: <http://oma.od.nih.gov/manualchapters/>
- To sign up for e-mail notification of future changes, please go to the [NIH Manual Chapters LISTSERV](#) Web page.

A. Purpose

To provide policies and assign responsibilities for (1) coordinating the establishment of indirect cost rates for NIH cost-type contracts and grants with commercial organizations, and (2) disseminating rate information.

B. References

1. Federal Acquisition Regulation Subpart 42.7 - Indirect Cost Rates
2. Federal Acquisition Regulation 31.103 - Contracts with Commercial Organizations and 31.203 - Indirect Costs
3. Federal Acquisition Regulation 15.404 - Proposal Analysis and 15.407-3 - Forward Pricing Rate Agreements
4. [NIH Manual Chapter 54301-201](#) – Facilities and Administrative Costs and Other Cost Policies

C. Policy

The Division of Financial Advisory Services (DFAS), Office of Acquisition Management and Policy (OAMP) will negotiate indirect cost rates with commercial organizations and will make such rate information available to contracts and grants officials. These negotiated rates will be used for funding and reimbursing costs on cost-reimbursement type awards and also may be used for the calculation of fixed price contract award amounts, as applicable.

D. Negotiation Agreement

Negotiation Agreement - This agreement is used when provisional and/or final rates have been negotiated with a commercial organization. Generally, the period covered by the agreement for provisional rates will be the commercial organization's fiscal year plus an additional six months to allow time for the submission of a proposal for final rates and new provisional rates based on actual costs for the completed fiscal year. The agreement is signed by an authorized representative of the commercial organization and by the Director, DFAS, OAMP, NIH. In the event that an agreement cannot be reached with a commercial organization, a unilateral decision will be made by DFAS based on available cost information.

E. Responsibilities and Procedures

1. Contracts and Grants Officials
 - a. When rates have not been negotiated with a prospective contractor/grantee, the contracts or grants official will request DFAS to negotiate provisional indirect cost rates. As much lead time as possible should be provided to DFAS, but at least 60 days should be allowed when making any such requests.

- b. The contracts or grants official will advise DFAS of any circumstances that might warrant establishment of special or off-site rates. The contracts or grants official will also obtain advice from DFAS concerning rates to be used when a contractor/grantee begins work on a new or significantly expanded contract/grant or one requiring the occupancy of space not previously used for NIH work.
- c. The contracts or grants official will direct all commercial organizations receiving cost-reimbursement type awards for the first time to contact the Chief, Indirect Cost Branch, DFAS and provide the information shown below. Upon receipt of the information, the Chief, Indirect Cost Branch will follow up with an email message to the commercial organization's representative with a detailed request for submission of an indirect cost proposal.

Name and Address of the commercial organization

Name, Title and email address of the commercial organization's representative

Contract/Grant Number

Name of the NIH Contract/Grant Official.

2. Contracts Officials

- a. Contracts officials shall incorporate in Section G of all cost-reimbursement type contracts the following language: *In accordance with Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) Clause 52.216-7 (d)(2), Allowable Cost and Payment incorporated by reference in this contract in Part II, Section I, the cognizant Contracting Officer representative responsible for negotiating provisional and/or final indirect cost rates is identified as follows:*

(NOTE: Substitute the Name & Address of the cognizant audit agency, below, if it is NOT DFAS.)

*Director, Division of Financial Advisory Services
Office of Acquisition Management and Policy
National Institutes of Health
6100 Building, Room 6B05
6100 Executive Blvd. MSC-7540
Bethesda, MD 20892-7540*

These rates are hereby incorporated without further action of the Contracting Officer.

- b. When a cost-reimbursement type contract awardee does not have negotiated indirect cost rates at the time of an award, it is recommended that contracts officials include an advance understanding clause in the contract containing language substantially similar to the following:

Indirect costs are funded at a rate of ____% of _____ costs; however, the contractor shall not bill or be reimbursed for indirect costs until such time as an indirect cost proposal has been submitted to the cognizant office responsible for negotiating the indirect cost rates unless a temporary billing rate(s) has been included in the contract. The indirect cost rate proposal should be submitted no later than three (3) months after the date of contract award.

Note: If the advance understanding includes temporary billing rates with applicable conditions or requirements [e.g., an indirect cost rate proposal must be submitted to the cognizant office responsible for negotiating the indirect cost rates within three (3) months of the award date], it is essential to include the effective dates for the billing rates and the ramifications, if any, (e.g., suspension of indirect costs) if the conditions or requirements are not met within the specified time frame.

3. Grants Officials

When a grant awardee does not have negotiated indirect cost rates at the time of an award, it is recommended that grants officials include a statement in the terms and conditions of the grant using language substantially similar to the following:

This award includes \$ _____ for Facilities and Administration (F&A) costs. Of this amount, \$ _____ [the amount in excess of the amount calculated at 10% of salaries and wages] is restricted pending the negotiation of an F&A rate(s). These restricted funds may not be used for any purpose without the prior approval of the grants management official. If the rate(s) negotiated is(are) lower than originally estimated/funded, this award amount may be revised downward.

The grantee should submit an F&A rate proposal to the DFAS Indirect Cost Branch [see the Indirect Cost Branch link at <http://oamp.od.nih.gov/dfas/rates.asp>] no later than three (3) months after the issue date of this grant award. If a proposal is not submitted within the three month time frame, the restricted funds will not be released for use in the current budget period.

4. Division of Financial Advisory Services, OAMP

- a. The DFAS will (1) determine provisional indirect cost rates that can be used for funding purposes for commercial organizations new to NIH which do not have rates negotiated with a federal agency, (2) negotiate provisional and final rates with commercial contractors and grantees which receive the preponderance of their federal awards from DHHS, and (3) issue a Negotiation Agreement and disseminate negotiated rate information to contracts and grants officials. The Negotiation Agreement will be signed by the Director, DFAS, and will be binding upon all contracts and grants officials. Since some commercial organizations distribute costs such as departmental burden, fringe benefits, and space charges through a general overhead rate and others by separately computed rates, DFAS will normally negotiate the computed rates and publish such information in a Negotiation Agreement.

- b. Indirect cost rate information will be electronically entered by DFAS into the Commercial Rate Agreement Distribution System (C-RADS), a secure, on-line system. The rate information can be obtained from C-RADS by HHS federal contracts and grants officials who have a bona fide need for the rate information and are properly registered for access to the system. C-RADS can be accessed at <https://c-rads.od.nih.gov/index.asp>.

F. Records Retention and Disposal

All records (e-mail and non-e-mail) pertaining to this chapter must be retained and disposed of under the authority of [NIH Manual Chapter 1743](#), "Keeping and Destroying Records, Appendix 1, "NIH Records Control Schedule," Item 2600-A-4, "Routine Procurement Files". Refer to the NIH Manual Chapter for specific disposition instructions.

NIH e-mail messages. NIH e-mail messages (messages, including attachments, that are created on NIH computer systems or transmitted over NIH networks) that are evidence of the activities of the agency or have informational value are considered Federal records. These records must be maintained in accordance with current NIH Records Management guidelines. Contact your IC Records Officer for additional information.

All e-mail messages are considered Government property, and, if requested for a legitimate Government purpose, must be provided to the requester. Employees' supervisors, NIH staff conducting official reviews or investigations, and the Office of Inspector General may request access to or copies of the e-mail messages. E-mail messages must also be provided to Congressional oversight committees if requested and are subject to Freedom of Information Act requests. Since most e-mail systems have back-up files that are retained for significant periods of time, e-mail messages and attachments are likely to be retrievable from a back-up file after they have been deleted from an individual's computer. The back-up files are subject to the same requests as the original messages.

G. Management Controls

1. **Office Responsible for Reviewing Management Controls Relative to this Chapter:** The Office of Acquisition Management and Policy.
2. **Frequency of Review:** This chapter will be reviewed annually and updated no less frequently than every five years.
3. **Method of Review:** The Office of Acquisition Management and Policy will evaluate users of the rates negotiated by the DFAS based on email messages, telephone calls, meetings and memoranda and make appropriate changes as needed.
4. **Review Reports:** Reports are sent to the Deputy Director for Management upon request.