

TITLE: CIB 92-17 Indirect Cost Rates

October 31, 1992

U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

MEMORANDUM FOR ALL CONTRACTING OFFICERS AND NEGOTIATORS

TO: Distribution List FAC

FROM: DAA/FA, John F. Owens, Procurement Executive

SUBJECT: Indirect Cost Rates

CONTRACT INFORMATION BULLETIN 92-17

This Contract Information Bulletin supersedes and cancels CIBs 90-21 and 84-11 as well as OPAM 84-3 which applied to the Office of Procurement, AID/W.

1. What Are Indirect Costs:

Indirect costs are costs which cannot be directly identified with a single contract or grant. The indirect costs are applied equitably across all of the business activities of the organization, according to the benefits each gains from them. Some examples of indirect costs are office space rental, utilities, and clerical and managerial staff salaries. To the extent that indirect costs are reasonable, allowable and allocable they are a legitimate cost of doing business payable under a U.S. Government contract.

2. How Indirect Cost Rates Are Established:

Responsibility for negotiating indirect cost rates with organizations doing business with the U.S. government is specifically assigned. Each organization negotiates its indirect cost rates with one government agency which has been assigned cognizance. Usually the cognizant government agency is that agency which has the largest dollar volume of contracts with the firm or organization. The resulting Negotiated Indirect Cost Rate Agreement (NICRA) is binding on the entire government. The NICRA contains both final rates for past periods and provisional, or billing rates, for current and future periods. A procurement office may not negotiate a different rate or base of application for an individual cost reimbursement contract or program. The provisional (billing) rate is established for use in reimbursing indirect costs under cost-reimbursement contracts and grants until a final rate can be established. The billing rate may be revised by the cognizant agency to prevent substantial overpayment or underpayment in the event of a significant change in the firm's business volume. A final indirect cost rate is established after the close of the contractor's fiscal year and once established is not subject to change.

Predetermined (final) indirect cost rates may be used in contracts and grants with educational institutions. See FAR subpart 42.7 and AIDAR 731.370 and 742.770.

3. Where To Get Indirect Cost Rates:

The Overhead and Special Costs and Contract Closeout Branch (OP/PS/OCC) of the Office of Procurement has or can obtain, information on indirect cost rates for all U.S. organizations. It is the only office in the Agency with the authority to establish indirect cost rates for the U.S. organizations for which A.I.D. has cognizance. OP/PS/OCC also maintains or can obtain information on indirect cost rates for U.S. firms and organizations that are under the cognizance of other federal agencies and acts as the A.I.D. clearing house for this information. Contracting Officers and negotiators are reminded that indirect cost rates are sensitive information and should be protected as such and not divulged to other organizations.

Potential contractors or grantees are required to submit rate proposals and related materials (including audit reports or cognizant agency rate agreements) with their financial proposals. Negotiators should forward copies of these documents to OP/PS/OCC and obtain their assistance in determining appropriate indirect cost rates, except where the organization has established a current rate agreement with A.I.D. or another federal agency.

OP/PS/OCC will obtain rates for organizations, which do not provide rate agreements with their proposals. If the organization has never done business with A.I.D. before, or if verification is required then at a minimum the following information must be provided to OCC with the request for assistance:

- (1) RFP No. or Contract and Modification No.
- (2) Type of Contract
- (3) Total Amount of Proposal
- (4) Period of Performance
- (5) Indirect Rates and Bases Being Proposed by the Contractor/Grantee
- (6) Address, Phone No. and Contact Person at the Contractor/Grantee Office
- (7) Cognizant Agency and Audit Office, if Known
- (8) Any Other Factors Deemed Significant by the Contract Specialist or Contracting Officer

Negotiation memoranda should include reference to assistance from OCC, including the date and name of the OCC staff member who was consulted.

4. Prior Approval Required:

Only in exceptional circumstances should a cost reimbursement type A.I.D. contract or grant contain an indirect cost rate which deviates from the government-wide NICRA rates for U.S. firm. Inclusion of such rates must have the prior approval of OP/PS/OCC.

5. Deviations From Negotiated Indirect Cost Rate Agreements (NICRA) - Establishing Indirect Cost Rate Ceilings:

a. Cost Sharing Arrangements:

A cost-sharing arrangement may call for the contractor/grantee to participate in the cost of the contract/grant by accepting indirect cost rates lower than the anticipated actual rates. If the objective in a particular program is to have the contractor/grantee organization share costs, such as might be the case with a PVO under a grant, the organization may agree to bill A.I.D. for only a portion of the total amount of overhead which would be allotted to the particular grant or cooperative agreement under its NICRA, with the agreement that the remaining overhead amount will be counted towards meeting the PVO's cost share requirements. Such an agreement must, however, be clearly spelled out in the agreement showing that the overhead rate itself is not changed from the NICRA (see Handbook 13, Paragraph 4J). In such a case, a negotiated final ceiling indirect cost rate should be included in the contract or grant using the clause specified in paragraph 6.

b. Other Reasons for Ceiling Rates:

FAR 42.707 (b) lists other situations, in addition to cost-sharing arrangements, when it would be prudent to establish a final indirect cost rate ceiling in a contract or grant.

Realistic and equitable provisional and ceiling indirect cost rates should be negotiated and established in the contract schedule for each of the contractor's accounting periods during the term of the contract. Provisional rates may be less than, equal to, or, in special circumstances, more than proposed by the contractor. Ceiling rates may equal or exceed the negotiated provisional rates. In the latter case, ceiling rates normally should not be established which exceed the provisional rates for the same period by more than ten percent (10%) of the provisional rate. The negotiated final ceiling indirect cost rate should be included in the contract or grant using the clause specified in paragraph.

6. Ceiling Indirect Cost Rates Clause:

Ceiling indirect cost rates are established in the contract or grant schedule by inclusion of a discrete clause substantially as follows:

"CLAUSE _____. Advance Understanding on Ceiling Indirect Cost Rates and Final Reimbursement for Indirect Costs

For each of the contractor's or grantee's accounting periods during the term of this contract or grant, the parties agree as follows:

1. (a) The distribution base for establishment of final overhead rates is _____.

(b) The distribution base for establishment of final G&A rates is _____.

2. The contractor/grantee will make no change in its established method of classifying or allocating indirect costs without the prior written approval of the contracting/grants officer.

3. Reimbursement for indirect costs shall be at final negotiated rates, but not in excess of the following ceiling rates:

For Accounting Period Ending	G&A Rate	Overhead Rate	
		Home Office	Field
Office			
xx-xx-xx	xx%	xx%	xx%
xx-xx-xx	xx%	xx%	xx%
xx-xx-xx	xx%	xx%	xx%

4. The government shall not be obligated to pay any additional amount on account of indirect costs above the ceiling rates established in the contract/grant. This advance understanding shall not change any monetary ceiling, cost limitation, or obligation established in the contract/grant."

End of Clause

Note: When the contractor's or grantee's accounting system does not provide for a separate G&A rate, the clause is to be modified by deleting numbered paragraph 1.(b) and the "G&A Rate" Column in numbered paragraph 3. OP/PS/OCC should be contacted for advice and guidance concerning the implementation of cost sharing and ceiling indirect cost rates.

7. Recoupment of Indirect Costs Due to Ceiling:

It is A.I.D. policy that contractors or grantees that agree to an indirect cost rate ceiling that is less than the government-wide NICRA rate in a contract or grant for cost sharing or other reasons shall not recoup the amounts occasioned by the reduction in the rates on other agreements with the U.S. Government. Therefore, the

organization must agree in writing not to recoup the reduction in the rates on other contracts or grants with the U.S. Government - the reduction must be taken from profit, fee or other non-governmental sources of revenues. In any instance where an indirect cost rate other than that specified in the NICRA is to be used in a contract or grant the contractor/grantee is to be required to acknowledge the above stipulations by providing a written acknowledgement to A.I.D. See the attached sample letter from the Contracting/Grant Officer to the contractor/grantee for signature acknowledging that fact.

The acknowledgement letter must be signed by an official who has the authority to bind the organization. Copies of each acknowledgement letter will be provided promptly to OP/PS/OCC by the Contracting/Grant Officer. In the case of for-profit firms, OP/PS/OCC will forward a copy of the letter to the cognizant audit agency. Non-profit firms agree by signing the letter to provide a copy of it to their auditing firm. This will help to ensure that the organization is unable to recoup the costs on subsequent government contracts or grants.

Attachments: Acknowledgement letter

SAMPLE

Contractor/Grantee
Address

SUBJECT: Deviation from the Negotiated Indirect Cost Rate
Agreement (NICRA)
Contract/Grant No. _____

Dear contractor/grantee:

The proposed subject contract or grant contains a deviation from the Negotiated Indirect Cost Rate Agreement (NICRA) between your firm/organization and the U.S. Government. The reduction in the agreed to NICRA rates is part of a cost-sharing or other ceiling arrangement. You must acknowledge by signing and returning this letter that the reduction in the indirect cost rate shall not be recouped on other contracts or grants with the U.S. Government - the reduction shall be taken from profit or fee.

If your organization is a for-profit firm, a copy of this letter containing your acknowledgment signature will be forwarded by the A.I.D. Office of Procurement to your cognizant audit agency. If your organization is non-profit, your signature on this letter constitutes agreement that you shall forward a copy of this letter (with your signature) to your auditing firm prior to their next audit under OMB Circular A-133.

An officer with the authority to bind your organization must sign and date this letter in the space indicated below. This signature indicates acceptance of and compliance with the above stated conditions. Return one (1) copy of this signed letter to the undersigned Contracting/Grants Officer.

Sincerely,

Contracting/Grants Officer

CONTRACTOR:

Name: _____

Title: _____

Date: _____