

FMS ARTICLE III. ALLOWABLE COSTS, PERIOD OF AVAILABILITY OF FUNDS, AND FEE OR PROFIT (DECEMBER 2014)

*Section A. Allowable costs.* This section, with the clarification provided in Section B, specifies which Federal cost principles must be used in determining the allowability of costs charged to this award, a subrecipient's costs charged to any cost-type subaward that you make under this award, and a contractor's costs charged to any cost-type procurement transaction into which you enter under this award. These cost principles also govern the allowable costs that you or a subrecipient of a subaward at any tier below this award may consider when establishing the amount of any fixed-amount subaward or fixed-price procurement transaction at the next lower tier. The set of cost principles to be used in each case depends on the type of entity incurring the cost under the award, subaward, or contract.

1. *General case.* If you, your subrecipient, or your contractor is:

a. *An institution of higher education,* the allowability of costs must be determined in accordance with provisions of Subpart E of OMB guidance in 2 CFR part 200 other than 2 CFR 200.400(g), supplemented by appendix III to that part.

b. *A hospital,* the allowability of costs must be determined in accordance with provisions of appendix IX to 2 CFR part 200, which currently specifies the cost principles in appendix IX to 45 CFR part 75 as the applicable cost principles.

c. *A nonprofit organization other than a hospital or institution of higher education,* the allowability of costs must be determined in accordance with provisions of Subpart E of OMB guidance in 2 CFR part 200 other than 2 CFR 200.400(g), supplemented by appendices IV and VIII to that part. In accordance with guidance in 2 CFR 200.401(c), a nonprofit organization listed in appendix VIII to 2 CFR part 200 is subject to the cost principles for for-profit entities specified in paragraph 1.e of this section.

d. *A State, local government, or Indian tribe,* the allowability of costs must be determined in accordance with applicable provisions of Subpart E of OMB guidance in 2 CFR part 200 other than 2 CFR 200.400(g), supplemented by appendices V through VII to that part.

e. *A for-profit entity (other than a hospital) or a nonprofit organization listed in appendix VIII to 2 CFR part 200:*

i. The allowability of costs must be determined in accordance with:

(A) The cost principles for commercial organizations in the Federal Acquisition Regulation (FAR) at Subpart 31.2 of 48 CFR part 31, as supplemented by provisions of the Defense Federal Acquisition Regulation Supplement (DFARS) at Subpart 231.2 of 48 CFR part 231; and

(B) For a for-profit entity, the additional provisions on allowability of audit costs, in 32 CFR 34.16(f).

ii. The indirect cost rate to use in that determination is:

(A) The for-profit entity's federally negotiated indirect cost rate if it has one.

(B) Subject to negotiation between you and the for-profit entity if it does not have a federally negotiated indirect cost rate. The rate that you negotiate may provide for reimbursement only of costs that are allowable in accordance with the cost principles specified in paragraph A.1.e.i of this article.

2. *Exception.* You may use your own cost principles in determining the allowability of a contractor's costs charged to a cost-type procurement transaction under this award—or in pricing for a fixed-price contract based on estimated costs—as long as your cost principles comply with the Federal cost principles that paragraph A.1 of this section identifies as applicable to the contractor.

*Section B. Clarifications concerning charges for professional journal publications.* For an entity that Section A of this article makes subject to the cost principles in Subpart E of 2 CFR part 200:

1. Costs of publishing in professional journals are allowable under 2 CFR 200.461(b) only if they are consistently applied across the organization. An organization may not charge costs of journal publications as direct costs to this award if it charges any of the same type of costs for other journal publications as indirect costs.

2. “Costs of publication or sharing of research results” in 2 CFR 200.461(b)(3) are the “charges for professional journal publications” described in 2 CFR 200.461(b) and subject to the conditions of 2 CFR 200.461(b)(1) and (2).

*Section C. Period of availability of funds.* You may charge to this award only:

1. Allowable costs incurred during the period of performance specified in this award, including any subsequent amendments to it;

2. Any pre-award costs that you are authorized (by either the terms and conditions of FMS Article IV or the DoD awarding official) to incur prior to the start of the period of performance, at your own risk, for purposes of the project or program under this award; and

3. Costs of publishing in professional journals incurred after the period of performance, as permitted under 2 CFR 200.461(b)(3), if:

a. We receive the request for payment for such costs no later than the date on which REP Article II requires you to submit the final financial report to us (or, if we grant your request for an extension of the due date, that later date on which the report is due); and

b. Your reported expenditures on the final financial report include the amount you disbursed for those costs.

*Section D. Fee or profit.*

1. You may not receive any fee or profit under this award.

2. You may not use funds available to you under this award to pay fee or profit to an entity of any type to which you make a subaward.

3. You may pay fee or profit to an entity with which you enter into a procurement transaction to purchase goods or general support services for your use in carrying out the project or program under the award.

APPENDIX D TO PART 1128—TERMS AND CONDITIONS FOR FMS ARTICLE IV, “REVISION OF BUDGET AND PROGRAM PLANS”

Unless a DoD Component reserves a section or paragraph or adds or modifies wording, as permitted by §§1128.410 through 1128.430, a DoD Component’s general terms and conditions must include the following wording for FMS Article IV.

FMS ARTICLE IV. REVISION OF BUDGET AND PROGRAM PLANS (DECEMBER 2014)

*Section A. Approved budget.* The approved budget of this award:

1. Is the most recent version of the budget that you submitted, and we approved (either at the time of the initial award or a more recent amendment), to summarize planned expenditures for project or program purposes.

2. Includes all Federal funding that we make available to you under this award to use for project or program purposes and any cost sharing or matching that you are required to provide under this award for those same purposes.

*Section B. Revisions requiring prior approval.*

1. *Non-construction activities.* You must request prior approval from us for any of the following program or budget revisions in non-construction activities:

a. A change in the scope or objective of the project or program under this award, even if there is no associated budget revision that requires our prior approval.

b. A change in a key person identified in the award cover pages.

c. The approved principal investigator’s or project director’s disengagement from the project for more than three months, or a 25 percent reduction in his or her time devoted to the project.

d. The inclusion of direct costs that require prior approval in accordance with the applicable cost principles, as identified in FMS Article III.

e. The transfer to other categories of expense of funds included in the approved budget for participant support costs, as defined at 2 CFR 200.75.

f. A subaward to another entity under which it will perform a portion of the substantive project or program under the award, if it was not included in the approved budget. This does not apply to your contracts for acquisition of supplies, equipment, or general support services you need to carry out the project or program.

g. Any change in the cost sharing or matching you provide under the award, as included in the approved budget, for which FMS Article VI requires prior approval.

h. A transfer of funds among direct cost categories or programs, functions, and activities, if the Federal share of the total value for your award exceeds the simplified acquisition threshold and the cumulative amount of the transfers exceeds or is expected to exceed 10 percent of the approved budget.

i. The need arises for additional Federal funds to complete the project or program.

2. *Construction activities.* You must request prior approval from us for any of the following program or budget revisions in construction activities:

a. A change in the scope or objective of the project or program under this award, even if there is no associated budget revision that requires our prior approval.

b. The need arises for additional Federal funds to complete the project or program.

c. The inclusion of direct costs that require prior approval in accordance with the applicable cost principles, as identified in FMS Article III.

3. *Funding transfers between construction and non-construction activities.* [Reserved]

*Section C. Pre-award costs, carry forward of unobligated balances, and one-time no-cost extensions.* You are authorized, without requesting prior approval from us, to:

1. Charge to this award after you receive it pre-award costs that you incurred, at your own risk, up to 90 calendar days before the start date of the period of performance, as long as they are costs that would be allowable charges to the project or program under the terms and conditions of FMS Article III if they were incurred during the period of performance.

2. Carry forward an unobligated balance to a subsequent period of performance under this award.

3. Initiate a one-time extension of the period of performance by up to 12 months, as long as:

a. You notify us in writing with the supporting reasons and revised end date of the period of performance at least 10 calendar days before the current end date.

b. The extension does not require any additional Federal funding.

c. The extension does not involve any change in the scope or objectives of the project or program.

*Section D. Procedures.*

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1. We will review each request you submit for prior approval for a budget or program change and, within 30 calendar days of our receipt of your request, we will respond to you in writing to either:

a. Notify you whether your request is approved; or

b. Inform you that we still are considering the request, in which case we will let you know when you may expect our decision.

2. [Reserved]

**APPENDIX E TO PART 1128—TERMS AND CONDITIONS FOR FMS ARTICLE V, “NON-FEDERAL AUDITS”**

Unless a DoD Component reserves Section B, as permitted by §1128.605, a DoD Component’s general terms and conditions must use the following wording for FMS Article V.

**FMS ARTICLE V. NON-FEDERAL AUDITS  
(DECEMBER 2014)**

*Section A. Requirements for entities subject to the Single Audit Act.* You and each subrecipient under this award that is an institution of higher education, nonprofit organization, State, local government, or Indian tribe must comply with the audit requirements specified in Subpart F of 2 CFR part 200, which is the OMB implementation of the Single Audit Act, as amended (31 U.S.C. chapter 75).

*Section B. Requirements for for-profit entities.* Any for-profit entity that receives a subaward from you under this award is subject to the audit requirements specified in 32 CFR 34.16. Your subaward terms and conditions will require the subrecipient to provide the reports to you if it is willing to do so, so that you can resolve audit findings that pertain specifically to your subaward (*e.g.*, disallowance of costs). If the for-profit entity is unwilling to agree to provide the auditor’s report to you, contact the grants officer for this award to discuss an alternative approach for carrying out audit oversight of the subaward. If the grants officer does not provide an alternative approach within 30 days of receiving your request, you may determine an approach to ensure the for-profit subrecipient’s compliance with the subaward terms and conditions, as described in OMB guidance at 2 CFR 200.501(h).

**APPENDIX F TO PART 1128—TERMS AND CONDITIONS FOR FMS ARTICLE VI, “COST SHARING OR MATCHING”**

Unless a DoD Component reserves FMS Article VI in its entirety, reserves one or more paragraphs within sections of the article, or includes added or alternate wording, as permitted by §§1128.610 through 1128.635, a DoD Component’s general terms and conditions must use the following wording for FMS Article VI.

**FMS ARTICLE VI. COST SHARING OR MATCHING  
(DECEMBER 2014)**

*Section A. Required cost sharing or matching.*

1. If any cost sharing or matching is required under this award, the total amount or percentage required is shown in the award cover pages and included in the approved budget. That cost sharing or matching includes all:

a. Cash contributions to the project or program either made by or through (if made by a third party) you and any subrecipients.

b. Third-party in-kind contributions to the project or program.

2. You must obtain our prior approval if you wish to:

a. Change the amount or percentage of cost sharing or matching required under this award.

b. [Reserved]

*Section B. Allowability as cost sharing or matching.* Each cash or third party in-kind contribution toward any cost sharing or matching required under this award, whether put forward by you or a subrecipient under a subaward that you make, is allowable as cost sharing or matching if:

1. You (or the subrecipient, if it is a subrecipient contribution) maintain records from which one may verify that the contribution was made to the project or program and, if it is a third-party in-kind contribution, its value.

2. The contribution is not counted as cost sharing or matching for any other Federal award.

3. The contribution is:

a. Allowable under the cost principles applicable to you (or the subrecipient, if it is a subrecipient contribution) under FMS Article III of these terms and conditions; and

b. Allocable to the project or program and reasonable.

4. The Government does not pay for the contribution through another Federal award, unless that award is under a program that has a Federal statute authorizing application of that program’s Federal funds to other Federal programs’ cost sharing or matching requirements.

5. The value of the contribution is not reimbursed by the Federal share of this award as either a direct or indirect cost.

6. The contribution conforms to the other terms and conditions of this award, including the award-specific terms and conditions.

*Section C. Allowability of unrecovered indirect costs as cost sharing or matching.* You may use your own or a subrecipient’s unrecovered indirect costs as cost sharing or matching under this award. Unrecovered indirect costs means the difference between the amount of indirect costs charged to the award and the amount that you and any subrecipients could have charged in accordance with your respective approved indirect cost rates,