Western Michigan University
Fixed-Price Agreements Policies and Procedures

Purpose

To outline the administrative requirements for formulating, monitoring, and closing-out fixed-price agreements.

Definitions

A fixed-price agreement is an agreement where the contractor pays a firm price for the agreed-upon work, regardless of the ultimate cost to complete the project. There is a level of risk involved in these types of agreements because the institution must complete all work, even if there are cost overruns. However, the institution may retain any unexpended balance that remains after the contracted work is complete.

For fixed-priced agreements, Office of the Vice President for Research Program Officers should use *OMB Circular No. A-21* as a guide to determine the allowable costs of the project. Use of *A-21* at the proposal stage will ensure that cost estimates are comparable to budgeting procedures used with other University contracts and will provide a basis for determining the reasonableness of the total contract price. With respect to awards, *A-21* is incorporated into federal grants and cost-reimbursement contracts, but should not be incorporated into fixed price agreements, whether federal or non-federal. This is because such agreements should not be bound by the prior approval requirements in *A-21*. The fixed price is the basis for payment. The costs incurred are not subject to compliance with cost principles after award and incurrence of costs is not subject to post-award audit. However, the pricing itself in a fixed price contract is subject to Federal Acquisition Regulation (FAR) on the development of costs and pricing.

Characteristics of a Fixed-Price Agreement

Fixed-price agreements will typically have the following characteristics:

- are similar to purchase orders where a work product is delivered, i.e., container of chemicals or a computer;
- are routine in nature;
- have a well defined statement of work;
- are where the outcome is relatively certain;
- have a failure rate of next to zero;
- are where the University bears the risk that a routine project does not come within the "costs" and the University has to cover those costs;
- normally short-term in nature (< 1 year); and
- costs are normally known.

Formulating the Fixed-Price Agreement

The Principal Investigator should work through the Office of Research and Sponsored Programs during the planning stages of contract development and negotiation to ensure the accuracy of the contract terms and conditions.

The following are vitally important in the formulation of the fixed price agreement and should be considered when preparing the fixed-price agreement.

- **The cost structure and payment schedule provides for:**
    - sufficient funding for the project;

- careful planning and timing of receipt of funds;
- use of simple and clear wording in compensation clause; no room for interpretation; and
- sufficient cash flow to keep the project on track.

- **The scope of work and schedule of deliverables/outcomes should:**
  - not make promises the Principal Investigator can't deliver;
  - refrain from guaranteeing certain results and use language such as "best efforts";
  - avoid ambiguous language – be specific about the outcomes anticipated;
  - not agree to deadlines that the Principal Investigator or the University Business offices cannot live up to; and
  - avoid agreeing to the submission of financial reports.

- **Fixed-price agreements**
  - do not typically require a submission of an itemized budget to the sponsor, however for internal monitoring an itemized budget is required; and
  - do carry F&A costs consistent with the University's rate policy on F&A cost.

Monitoring the Fixed-Price Agreement

It is the responsibility of the Principal Investigator to properly monitor the timing of tasks, deliverables, and final reporting of results. Most fixed-price agreements include a clause or special terms section regarding the submission and/or acceptance of a final report or product. This is usually tied to the final payment. If the terms are not met as provided by this section, then fixed-price or not, the institution has violated the agreement and total cost reimbursement may not be forth coming. **If a liability is incurred for late submission or any violation of the contract terms then the responsible unit will reimburse the appropriate account for the disallowance.** Therefore, it is vitally important that all parties comply with the conditions set-forth in the fixed-price agreement.

Closing Out the Fixed Price Agreement

To close out a fixed-price agreement all project activity must be completed. This includes:

- the completion of all deliverables required under the fixed-price agreement;
- all costs in fulfilling the requirements of the award have been charged to the account;
- the receipt of full payment from the sponsor; and
- the F&A costs have been recovered at the University's **current federally negotiated rate** to the extent funds are available.

Upon project completion, both residual and deficit balances must be transferred to a non-restricted fund account.

Residual Balances

If there is a residual balance in the fixed-price account, the balance will be transferred to the Principal Investigators F&A account.

Cost Overruns

If there is a cost overrun in the fixed-price account the amount must be covered by the department and/or Principal Investigator.

Non-Receipt of Sponsor Funds

If the sponsor does not pay in full, the department and/or Principal Investigator must cover the deficit amount.

Sources of Other Pertinent University Policies

- **WMU's Guidelines on Recovery of Facilities and Administrative (F&A) Costs**
- **WMU's Guidelines on Types of External Funding**

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