Western Michigan University
Kalamazoo, MI 49008

FIXED-PRICE AGREEMENTS PROCEDURE

1. Establish Fixed-Price Agreements

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

1.2. Cost proposals for fixed price contracts should be estimated on a cost basis consistent with Western Michigan University cost accounting policies. A detailed budget should be prepared for internal review and approval, even if not required by or submitted to the sponsor. Expenses should be budgeted based on anticipated reasonable costs.

1.3. For fixed-priced agreements, the Office Research and Innovation Program Officers will use *OMB Uniform Guidance 2 CFR 200 (UG)* as a guide to determine the allowable costs of the project. Use of *UG* at the proposal stage will ensure that cost estimates are comparable to budgeting procedures used for other University contracts and will provide a basis for determining the reasonableness of the total contract price. With respect to awards, *UG* 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 *UG*. 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

1.4. For fixed-priced agreements, *OMB Circular No. A-21* should be used 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. The fixed price is the basis for payment. The pricing itself in a fixed price contract is subject to Federal Acquisition Regulation (FAR) on the development of costs and pricing.

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

1.5.1. The cost structure and payment schedule provides for:

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

1.5.2. The scope of work and schedule of deliverables/outcomes should:

1.5.2.1. not make promises the Principal Investigator can't deliver;

1.5.2.2. refrain from guaranteeing certain results and use language such as "best efforts";

1.5.2.3. avoid ambiguous language – be specific about the outcomes anticipated;

1.5.2.4. not agree to deadlines that the Principal Investigator or the University Business offices cannot live up to; and

1.5.2.5. avoid agreeing to the submission of financial reports.

1.5.3. Fixed-price agreements

1.5.3.1. should not typically require a submission of an itemized budget to the sponsor, however for internal monitoring an itemized budget is required; and

1.5.3.2. do carry F&A costs consistent with the University's rate policy on F&A cost.

2. Monitor Fixed-Price Agreements

It is the responsibility of the Principal Investigator to properly monitor the timing of tasks, deliverables, and final reporting of results. Costs allocable to the project should be charged to the account as the project progresses in accordance with standard WMU cost accounting practices. 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.

3. Close Out Fixed-Price Agreements

Upon project completion, both residual and deficit balances must be transferred to a non-restricted fund account. To close out a fixed-price agreement all project activity must be completed. This includes:

3.1. the completion of all deliverables required under the fixed-price agreement;

3.2. all costs in fulfilling the requirements of the award have been charged to the account;

3.3. the receipt of full payment from the sponsor; and

3.4. the F&A costs have been recovered at the University's **current federally negotiated rate** to the extent funds are available.

Related Policies

Fixed Price Agreement Policy