Fixed Price Contracts Guidance

Purpose

This document provides pre-award and post-award guidance related to fixed-price agreements.

Position Statement

UNE enters into fixed-price agreements related to research, education, or public service mission of the University. UNE expects that fixed-price awards will incur expenses that closely match the income received. Charges to fixed price accounts must reflect all actual costs incurred – without exception. Projects proposed and awards completed under fixed price agreements are subject to the processes outlined in this guidance.

Definitions

A fixed-price agreement (sometimes called a firm-fixed price, firm-price, or fee-for-service contract) is an agreement whereby the contractor pays a pre-agreed price for the agreed-upon work, regardless of the actual cost to complete the project. Financial risk is higher than that of a cost reimbursable agreement, because the University is obligated to complete all work, even if project expenses exceed allowed billable amounts. In addition, depending on the terms of the agreement, the University may not receive payment until after certain milestones are met, or deliverables accepted. Therefore, problems (real or perceived) with performance can prevent or delay payment to the University, even though expenditures have already been incurred. Alternately, the University may also retain any unobligated balances that remain after contracted work is completed. These funds are sometimes referred to as “residual funds.”

Residual funds are defined as any unobligated, unspent balance remaining in a sponsored account at the conclusion of a fixed price agreement. A residual fund occurs when revenue exceeds the expense incurred to complete the project. Significant and repeated residual funds can call into question the accuracy of UNE's costing practices, and/or its accounting for and recording of costs related to a project.

Federal Acquisition Regulation (FAR) defines it as "A firm-fixed-price contract provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. This contract type places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss, (FAR 16.202-1)."

Characteristics of a Fixed-Price Agreement

Fixed-price agreements will typically have the following characteristics (not all characteristics have to be present in a fixed-price agreement):

- Well defined deliverables (e.g. a written report of findings)
- Work tends to be routine in nature;
- Project has a well-defined statement of work;
- The project outcome, or range of outcomes, is relatively predictable.
- Where the likelihood of non-performance by UNE is very small;
- Where UNE is willing to bear the risk (however small) of non-payment;
- Normally short-term in nature (< 1 year); and
- Costs are generally highly predictable

Fixed price contracts are best used when the principal investigator has reasonable prior experience with similar projects and can:

- Provide an accurate estimate of cost, and
- Define a tangible deliverable the sponsor will recognize and agree to upon completion.

Formulating the Fixed-Price Agreement

The Principal Investigator should work through the Office of Sponsored Programs during the pre-award stage of contract development and negotiation to ensure the accuracy of budgets and appropriateness of the contract terms and conditions.

Developing Cost Estimates: Given the increased financial risk inherent in fixed-price contracts, and the need to mitigate significant residual balances, developing cost estimates must be done with care. Using costing practices and standards described in OMB 2 CFR 200, even with fixed price agreements, will help insure that UNE limits financial risk and significantly reduce the occurrence and degree of residual balances.

UNE shall review fixed price contracts that show significant deviation between proposed costs and actual expenditures. If estimates are consistently and significantly higher than actual costs, the University is required to examine cost estimation procedures to address the problem.

Standards provided by OMB 2 CFR 200 used in developing cost estimates are that costs:

- must be necessary and reasonable to carry out the proposed project;
- are only allocated in proportion of benefit received by the project;
- are not prohibited by the sponsor or regulations; and
- are treated consistently across all programs, fiscal years, and direct and indirect costs

Review and Approval of Proposals and Awards with Fixed Price Contracts: The proposal process for fixed-price contracts is subject to the same internal reviews and approvals required for cost-reimbursable proposals and awards. A UNE proposal transmittal form (pink sheet) shall be prepared for each new fixed price agreement The Director of Research Administration is authorized on behalf of the University to approve proposals and negotiate contracts for sponsored activity, whether it is conducted under a grant or a contract. The principal investigator is not authorized to negotiate on behalf of UNE, either with its Sponsors or with subawardees or subcontractors.

The principal investigator must not begin any research until these approvals are obtained, and the contract is fully executed.

The cost structure and payment schedule for the fixed price agreement shall provide for:

- Sufficient funding for the project;
- Careful planning and timing of receipt of funds;
- Use of simple and clear wording in the 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 shall:

- Not make promises the Principal Investigator or UNE can't deliver;
- Refrain from guaranteeing certain results and will instead use language such as "best efforts";
- Avoid ambiguous language – be specific about the outcomes anticipated;
- Not agree to completion or reporting deadlines that the PI or the University Post Award Grants Management office cannot meet; and
- Avoid agreeing to the submission of financial expenditure reports which are only associated with cost-reimbursement agreements.

Fixed-price agreements

- Do not typically require the submission of an itemized budget to the sponsor, however for internal post-award monitoring purposes, an itemized budget is required; and
- Will include F&A costs consistent with the University's rate policy on F&A

Accounting for Fixed-Price Agreements

As stated under the University's Position Statement above, *the expectation is that fixed-price awards will have expenses that closely match the income* *received, and charges to fixed price accounts shall reflect all actual effort and related costs incurred*. Give these expectations, the University must have the ability to track budgets and related expenses by each deliverable, milestone or task. This level of tracking allows the University to analyze budgets and expenses related to specific deliverables when significant residual balances occur. University offers the following tracking options:

1. **Separate Project Numbers (recommended option):** Set-up separate Banner account numbers for each deliverable, milestone or task.
2. **Single Project Number with Class Codes:** Set-up one Banner project number and track the budget and expenses by using unique class codes for each deliverable, milestone or task.
3. **Tracking in an Alternative System:** UNE recognizes that tracking budgets and expenses with numerous deliverables under a fixed-price award can be complicated, especially when certain expenses can be attributed to different deliverables. In these circumstances, the University will allow budgets and expenses for multiple deliverables to be combined under one Banner account number as long as the following conditions are met:
    1. The Departmental Administrative Unit agrees to submit documents outlining how the budgets and expenses for each deliverable will be tracked. This outline must be approved by the UNE Post Award Grants Management office in advance.
    2. The Departmental Administrative Unit must be able to produce an accounting (budget and related expenses) for any deliverable within two business days of the request.

Monitoring the Fixed-Price Agreement

It is the responsibility of the Principal Investigator, the UNE Office of Sponsored Programs and the UNE Post Award Grants Management Office, to properly monitor the timing of tasks, deliverables, and final reporting of results. Most fixed-price agreements require the submission and acceptance of a final report or product. This is usually tied to the final payment. If the terms are not met as required, payment may be refused. **If a liability is incurred for violation of the contract terms, then the Principal Investigator or the department 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

Sponsor Approvals of Budget Deviations: While standards for developing cost principles are applied by the University for both fixed-price and cost-reimbursable grants and contracts, budget approval requirements identified in the federal regulations OMB 2 CFR 200 will not apply to awards for fixed-price contracts. A fixed-price contract by definition is not subject to any adjustment on the basis of the University's actual cost experience (FAR 16.202-1), and therefore, costs incurred are not subject to prior approvals by the Sponsor.

Once the University agrees to a fixed price award, it must produce the deliverables within the required time frame regardless of the actual cost of doing so. At project completion, the project account may approximate zero if costs were estimated accurately and the project went as planned, or may be positive if unanticipated efficiencies were realized.

Closing Out the Fixed Price Agreement

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

- All applicable PI and other staff time (including core staff charges, if applicable) was properly and fully charged to the award;
- 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 UNE rate agreed upon on the pink sheet (typically the full federal negotiated rate)

After verification that all costs were accurately charged to the fixed price contract and all deliverables were accepted by the sponsor, both residual and deficit balances shall be transferred to a non-restricted fund account within a reasonable period of time. In cases where a significant residual balance remains, the PI will be asked to provide an explanation for the deviation from estimated costs.

Residual Balances

When a residual balance occurs on a fixed price award, the balance is transferred to an unrestricted fund according to the following Disbursement Schedule outlined below. Residual balances on fixed price research awards should be used to further University research, educational or community service related activities.

Disbursement Schedule: Residual balances on fixed price awards will be disbursed according to the following order of precedence:

1. **Recovery of reduced or waived F&A:** If a reduced or waived F&A rate was approved at the time of the proposal and if there is a residual balance, the University shall first be reimbursed the difference between the full and reduced F&A costs (subject to UNE's "Updated Policy on Distribution of Recovery Funds" in effect at the time of reimbursement) incurred prior to distribution of a residual balance to a residual fund.
2. **Recovery of remaining applicable F&A:** Any remaining residual balances will incur facilities and administrative (F&A) costs at the University's full applicable federal rate (subject to UNE's "Updated Policy on Distribution of Recovery Funds" in effect at the time of reimbursement).
3. **Residual direct cost balances after recovery of applicable F&A** will follow the Updated Policy on Distribution of Recovery Funds, with all remaining funds distributed according to the same

distribution between PI/College/Central/Center (as applicable) at the time of disbursement.

Significant residual balances (greater than either $50k or 25% of the total award) calls into question the budget estimation process for the project and/or may indicate that some project costs were not appropriately charged to the project accounts. thereby leading to possible UNE subsidization of the project. Inflated prices can also lead to charges of violation of cost and pricing regulations if federal funds are involved. Furthermore, excessive residuals could threaten the non-profit status of the institution and/or subject the institution to unrelated business income tax liability. Consequently, the Provost or his/her designee must approve transfers of greater than $100k or 25% of the award total. Patterns of excessive residuals will be reviewed by OSP and the Post Award Grants Management office, and as necessary be referred to the appropriate UNE officials for investigation, action, and/or exception to the standard disbursement schedule indicated above.

Approved by Provost 1/17/25