MEMORANDUM

To: Deans, Directors, Department Heads, Principal Investigators, and Research Administrators
From: David Bond, Director, Sponsored Research Services
       Milagros Concepcion, Director, Sponsored Programs Accounting
Date: June 27, 2012

Subject: Fixed Price Close-Out Procedures

Effective July 1, 2012, there will be modifications to the steps currently followed during the closeout of certain fixed price agreements. These changes will affect projects with surplus balances greater than $5,000 and greater than 10% of the authorized award amount.

These procedural changes are being implemented at the recommendation of RIT’s Internal Audit, Compliance and Advancement (IACA) department, and are consistent with practices at other major research universities. These steps represent a formalization of current procedures to ensure that:

✓ closeout steps followed for fixed price contracts are consistent across the University, including the information/documentation gathered and retained;
✓ University leaders are well informed and therefore better able to provide oversight of management practices for fixed price agreements within their areas of responsibility; and
✓ an appropriate mechanism is in place to prevent and detect conduct that may expose the University to non-compliance risk.

Background

While the majority of sponsored projects received by RIT are cost reimbursement, sponsors sometimes utilize fixed price contracts to sponsor research. Fixed price contracts offer some advantages to the PI, but may involve significant financial risk to the University as the PI has agreed to perform the work regardless of the actual cost of conducting the project. Great care must be taken during the budget development and project negotiation stage to ensure the amount requested from the sponsor includes all anticipated allowable direct and indirect costs based on the applicable F&A rate. If the project was under priced and there is a deficit, the PI and/or Department, Enterprise/Research Center or College is responsible for funding the difference. If the project concludes with a surplus balance, the PI may retain any residual balance after verification by Sponsored Programs Accounting (SPA) that all costs were accurately charged to the contract and all deliverables were accepted by the sponsor.

It is important to note that Federal laws and regulations such as the Truth in Negotiations Act (TINA), the False Claims Act (FCA), and the Federal Acquisition Regulations (FAR) specifically govern the pricing of Federal fixed price contracts.
• TINA generally applies to contracts valued greater than $650,000. Under TINA, the government can recover for defective pricing resulting when contractors and/or subcontractors do not provide accurate, complete, and current pricing data during contract negotiations.

• The FCA protects the government against contractors knowingly submitting defective pricing claims and/or pricing with the proposal. The FCA is broader in its application and covers the entire life cycle of a contract, including pass-through awards.

Since large surpluses could expose the University to accusations of defective pricing; a careful, fully documented, and thoughtful process should be used when developing and negotiating fixed price contract budgets with external sponsors.

Summary of Procedural Changes

For projects with residual balances of $5,000 or more and greater than 10% of the authorized award amount at closeout:

- **Current:** SPA requests a detailed explanation from the PI to ensure all program deliverables have been met and all expenses have been properly charged to the project account.
- **Change:** SPA will request that the PI complete the *Fixed Price Agreement Closeout Form* to obtain the necessary information. The form is circulated for signature to the Department Chair, Dean, SPA, and Vice President for Research.

- **Current:** After obtaining all appropriate information, SPA evaluates patterns to prevent and detect any instances of abuse (or appearance of) and refers them to the appropriate offices.
- **Change:** Management, SPA, and OVPR collaboratively evaluate patterns to detect and prevent any instances of abuse (or appearance of) and implement measures to correct conduct that may expose the University to non-compliance risk.

If the PI has met all the specified program objectives at the end of the award period but will continue work on activities consistent with the original scope of work:

- **Current:** The project account is closed, the surplus balance returned to the PI’s discretionary account and any further charges are expensed against the PI’s discretionary account.
- **Change:** The PI has the option of requesting an “internal” extension of time for up to 120 days. The project account will remain open and the PI will spend from this account.

If you currently have active fixed price agreements or anticipate negotiating one in the future, be sure to read the Pricing, Expensing, and Closeout of Fixed Price Contracts document located at:

http://fintest.rit.edu/controller/sponsored/docs/FixedPriceContracts.pdf

The New Fixed Price Agreement Closeout Form can be located at:

http://finweb.rit.edu/controller/sponsored/docs/AgreementCloseoutForm.pdf

If you have any questions, contact your Senior Research Administrator for pre-award information or your Sponsored Programs Accounting Representative for post-award information.