

DOE's Oversight of Certain Contractor Defined Benefit Pension Plans And Its Effect on Contracts, Cost Accounting Standards Compliance, and Audits



Guiding Principles

For affected contracts, Contracting Officers: before requesting an audit, should advise auditors of the divergence of DOE requirements from those of Cost Accounting Standard 412 and Cost Accounting Standard 413; and when requesting the audit, direct the auditors to audit to DOE's requirements where incongruities between DOE's requirements and those of Cost Accounting Standard 412 or Cost Accounting Standard 413 occur.

References: DOE Order 350.1 And Cost Accounting Standards 412 and 413

Overview

This Chapter provides guidance regarding Cost Accounting Standards and DOE's oversight of defined benefit pension plans sponsored by DOE contractors under: (1) management and operating (M&O) contracts; and (2) any other facility management contracts (FMCs) where work had previously been performed under a DOE M&O contract. For purposes of this Chapter, a FMC is a DOE contract in which the successor contractor has been required to employ all or part of the former contractor's workforce and has assumed sponsorship of the employee pension and benefit plans, or one in which the contractor has retained sponsorship of benefit plans after the performance of the underlying work scope has been completed. FMCs include, but are not limited to, environmental remediation, infrastructure services and other site specific project completion contracts.

DOE's Pension Funding Requirements Versus Those of Cost Accounting Standards

DOE has oversight responsibility with respect to defined benefit pension plans sponsored by DOE contractors under: (1) M&O contracts; and (2) FMCs where work was previously performed under a DOE M&O contract. DOE's policy is to reimburse its M&O and FMC contractors for minimum contributions required under ERISA to their pension plans covering site employees.

To implement this policy, DOE includes the Contractor Requirements Document (CRD) of Chapter VI of DOE Order 350.1, Contractor Human Resource Management Programs, into each of the affected contracts. (In some cases, rather than including the CRD of Chapter VI of the Order in the contract, DOE has included the requirements of the CRD in a clause in section H of the contract. This Chapter uses the

term “CRD of DOE Order 350.1” or simply “CRD” to refer to either the CRD of Chapter VI of DOE Order 350.1 or a clause in section H of a contract incorporating the CRD’s requirements.)

As a result of the divergence of DOE’s policy from the requirements of Cost Accounting Standard 412 and Cost Accounting Standard 413, DOE contractors sometimes are not in compliance with certain aspects of Cost Accounting Standard 412 or Cost Accounting Standard 413. The M&O contract clause on Liability with Respect to Cost Accounting Standards (DEAR 970.5232-5) protects contractors from liability for not complying with Cost Accounting Standards if their failure to comply was due to DOE’s direction. The clause is required for M&O contracts. As discussed earlier, certain FMCs, while not M&O contracts, are former M&O contracts under which DOE chose to maintain its oversight of the contractor’s pension system and included the CRD. The Liability with respect to Cost Accounting Standards clause should be included in these contracts. Even if the Liability with respect to Cost Accounting Standards clause is not included in a particular contract, DOE will not disallow costs or otherwise penalize a contractor for Cost Accounting Standards non-compliance due to the contractor’s compliance with DOE direction.

The Liability with respect to Cost Accounting Standards clause does not waive Cost Accounting Standards. It only indemnifies the contractor for non-compliances with Cost Accounting Standards that are caused by the contractor’s following DOE written direction. The contractor must comply with all other terms of the contract (to the extent not precluded by DOE’s direction), including those relating to the timing of funding that are found in the cost principles applicable to the contract.

Guidance

1. Contracting Officers shall include the CRD of DOE Order 350.1 (or successor requirements implementing Departmental policy regarding reimbursement of pension contributions) and the Liability with Respect to Cost Accounting Standards clause in: M&O contracts; and other FMCs where work had previously been performed under a DOE M&O contract and the successor contractor has been required to employ all or part of the former contractor’s workforce and to sponsor the employee pension and benefit plans or retain sponsorship of benefit plans that survive the performance of work scope.
2. For any FMC that contains the CRD of DOE Order 350.1 (or other DOE requirements which diverge from CAS requirements) and not the Liability with Respect to Cost Accounting Standards clause, Contracting Officers shall not disallow any costs or otherwise penalize the contractors as a result of their non-compliance with Cost Accounting Standards due solely to their compliance with written DOE direction. In addition, the Contracting Officer shall add the Liability with Respect to Cost Accounting Standards clause, without obtaining consideration, to any affected contract without the clause as soon as practicable.
3. Before requesting an audit related to affected contracts, Contracting Officers shall advise auditors of the divergence of DOE requirements from Cost Accounting Standard 412 and Cost Accounting Standard 413 requirements. When requesting an audit of affected contracts, Contracting Officers shall direct auditors to audit to DOE’s requirements where incongruities with Cost Accounting Standard 412 and Cost Accounting Standard 413 occur.

Any exceptions to the above should be considered rare and unusual. Only in cases of a declared national emergency, natural disaster, or local power outage should exceptions, amendments, or other work-arounds be granted by the Head Contracting Authority (HCA).