PART 931 - CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 931.1 - Applicability

931.102 Fixed-price contracts.

The first sentence of FAR 31.102 is intended to mean that the Government uses the applicable subparts of FAR part 31 to:

(a) Price fixed-price prime contracts and modifications,

(b) Evaluate whether a prime contractor's (or prospective prime contractor's) proposed subcontract (or subcontract modification) prices are reasonable, and

(c) Determine whether contractor payments to subcontractors are allowable under FAR 31.204(b).

Subpart 931.2 - Contracts With Commercial Organizations

931.205 Selected costs.

931.205-18 Independent research and development and bid and proposal costs.

(c)

(1) Independent research and development (IR&D) costs are recoverable under DOE contracts when they are reasonable, allocable, allowable, and have a potential benefit or relationship to a DOE program. “DOE program” refers to the full DOE mission and its objectives. Bid and proposal (B&P) costs are recoverable under DOE contracts when they are reasonable, allocable, and not otherwise unallowable.

(2) [Reserved]

931.205-19 Insurance and indemnification.

(f) The contracting officer will insert the clause at 952.231-71, Insurance—litigation and claims, instead of FAR 52.228-7, in:

(1) Non-management and operating cost-reimbursement contracts exceeding $100,000,000; and

(2) Non-management and operating contracts exceeding $100,000,000 that include cost-reimbursable elements totaling more than $10,000,000 (for example, contracts with both fixed-price and cost-reimbursable line items where cost-reimbursable line items exceed $10,000,000, or time-and-materials contracts where the materials portion exceeds $10,000,000).

931.205-32 Pre-contract costs.

(a) To the extent practical, known pre-contract costs under DOE contracts should be managed by establishing advance understandings as described in FAR 31.110. Contracts that authorize pre-contract costs will include the “Date of Incurrence of Cost” clause at 952.231-70.

(b) The following limitations apply when establishing advance understandings for pre-contract costs:

(1) Pre-contract cost authorizations may not cover a period longer than 15 days unless the HCA approves a longer period through a written finding that the extension is reasonable. Otherwise, pre-contract cost authorizations may not be renewed or extended. A copy of the findings will be sent to the Senior Procurement Executive at the time of approval. If a longer period is needed, DOE will issue a letter contract.

(2) A management official above the contracting officer will review and approve all pre-contract cost authorizations.

(3) Retroactive authorization of pre-contract costs and predating contractual agreements are prohibited.

(4) Pre-contract cost authorizations may not allow a contractor to deliver or furnish goods or services before the contract is executed.

931.205-33 Professional and consultant service costs.

(f) If the contract includes the clause at FAR 952.231-71 or FAR 970.5228-1, or if it is a non-management and operating contract exceeding $100,000,000 with cost-reimbursable elements exceeding $10,000,000, then litigation and other legal costs are allowable only if:

• They are incurred in accordance with 10 CFR part 719, Contractor Legal Management Requirements; and

• They are not made unallowable by law, regulation, or contract terms.

931.205-47 Costs related to legal and other proceedings.

(h) Costs associated with whistleblower actions.

(1) Definitions for this paragraph (h):

Covered contractors and subcontractors means contractors and subcontractors with contracts exceeding $5,000,000.

Employee whistleblower action means any action an employee (or any person on the employee's behalf) files in Federal or state court for redress of a retaliatory act, and any administrative action an employee initiates under 29 CFR part 24, FAR subpart 3.9, 10 CFR part 708, or 10.U.S.C. 6242.

Retaliatory act means a discharge, demotion, pay reduction, coercion, restraint, threat, intimidation, or similar adverse action taken against an employee because of protected whistleblower activity under Federal or state law.

Settlement and award costs include defense costs and costs resulting from judicial orders, negotiated agreements, arbitration, or orders from Federal agencies or boards. They include compensatory damages, back pay, and reimbursement for a complainant's legal counsel.

(1) For whistleblower actions where a retaliatory act is alleged against a covered contractor or subcontractor, the contracting officer—

(i) May provisionally authorize reimbursement of costs in appropriate cases;

(ii) Must consult with the Office of General Counsel whistleblower costs point of contact, who will coordinate with other Headquarters points of contact as needed, before making a final determination; and

(iii) Must determine whether defense, settlement, and award costs are allowable on a case-by-case basis, considering the contract terms, applicable cost regulations, relevant facts, and Federal law and policy prohibiting reprisal against whistleblowers, , available at the conclusion of the employee whistleblower action.

(2) Covered contractors and subcontractors must segregate legal costs, including in-house counsel costs, associated with defending a whistleblower action so the costs are separately identifiable.

(1) If the contracting officer provisionally disallows employee whistleblower-related costs for a covered contractor or subcontractor, DOE-advanced funds may not be used to pay for defense, settlement, or award costs in that action.

(2) Contractor defense, settlement, and award costs related to suits brought by employees under section 2 of the Major Fraud Act of 1988 are not covered by this section.

PART 952 - SOLICITATION PROVISIONS AND CONTRACT CLAUSES

952.231-70 Date of incurrence of cost.

In accordance with 931.205-32, insert the following clause when advance understandings have been negotiated for costs incurred before the contract's effective date:

Date of Incurrence of Cost (DEVIATION JUNE 2026)

The Contractor will be entitled to reimbursement for costs incurred in an amount not to exceed

$________ on or after ________, which—if incurred after this contract had been executed—would have been reimbursable under the contract.

(End of clause)

952.231-71 Insurance—litigation and claims.

As required by 931.205-19(f), insert the following clause in applicable non-management and operating contracts:

Insurance—Litigation and Claims (DEVIATION JUNE 2026)

(a) The contractor must comply with 10 CFR part 719, Contractor Legal Management Requirements, if applicable.

(b)

(1) Except as stated in paragraph (b)(2), the contractor will obtain and maintain the bonds and insurance required by law or approved in writing by the Contracting Officer.

(2) With Contracting Officer approval, the contractor may maintain a self-insurance program under FAR 28.308; however, for workers' compensation, the contractor must be statutorily qualified.

(3) All required bonds and insurance will meet the form, amount, timing, and provider requirements set by the Contracting Officer.

(c) The contractor must submit for approval any additional bonds and insurance maintained in connection with contract performance for which it seeks reimbursement. If an insurance cost includes a portion related to unallowable costs and the insurance cost amount is identifiable, the allowable portion may be reimbursed as determined by the Contracting Officer.

(d) Except as stated in paragraph (f) or elsewhere in this contract, the contractor will be reimbursed—

(1) For the reasonable cost of contract-required or approved bonds and insurance; and

(2) For liabilities to third parties (and reasonable related expenses, including litigation costs) not covered by insurance, without regard to the contract's limitation of cost or limitation of funds clause.

(e) The Government's liability under paragraph (d) depends on the availability of appropriated funds. Nothing in this contract guarantees that Congress will provide additional funds in the future.

(f)

(1) The contractor may not be reimbursed for third-party liabilities, including liabilities to contractor employees, or directly associated costs (such as litigation costs, counsel fees, judgments, and settlements):

(i) If they are unallowable by law or under this contract (including cost limits in FAR 970.31 and FAR part 931);

(ii) If the contractor failed to maintain insurance required by law, this contract, or written direction of the Contracting Officer; or

(iii) If contractor managerial personnel caused the liability through:

(A) Willful misconduct;

(B) Lack of good faith; or

(C) Failure to exercise prudent business judgment (defined as acting as a prudent person would in competitive business conditions; for non-profit educational institutions, acting as a prudent person would under the circumstances when the decision was made).

(2) "Contractor's managerial personnel" is defined in clause 970.5245-1, Property.

(g)

(1) The contractor will separately account for all litigation costs, including counsel fees, judgments, and settlements. If the Contracting Officer provisionally disallows these costs, the contractor may not use DOE-advanced funds to finance the litigation.

(2) Punitive damages are unallowable unless they result from complying with specific contract terms or written instructions from the Contracting Officer.

(3) Insurance costs allocable to the liabilities described in paragraph (f) are unallowable.

(h) The contractor may purchase, at its own expense, insurance to cover unallowable or non-reimbursable costs incurred during contract performance.

(End of clause)