

PART 931 - CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 931.1 - Applicability

931.102 Fixed-price contracts.

~~The intent of~~ The first sentence of 48 CFR FAR 31.102 is intended to mean that the Government uses the applicable subparts of 48 CFR FAR part 31 ~~shall be used by the Government in~~ to:

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

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

~~(b) Determining the allowability of~~ (c) Determine whether contractor payments to subcontractors ~~in accordance with the provisions of 48 CFR~~ 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 ~~to the extent~~ when they are reasonable, allocable, ~~not otherwise unallowable~~ allowable, and they have a potential benefit or relationship to ~~the~~ a DOE program. ~~The term~~ "DOE program" ~~encompasses~~ refers to the full DOE ~~total~~ mission and its objectives. Bid and proposal (B&P) costs are recoverable under DOE contracts ~~to the extent~~ when they are reasonable, allocable, and not otherwise unallowable.

(2) [Reserved]

931.205-19 Insurance and indemnification.

(f) The contracting officer ~~shall~~will insert the clause at 952.231-71, Insurance—litigation and claims, instead of ~~the clause at 48 CFR 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 ~~exceeding~~totaling more than \$10,000,000 (~~e.g. for example,~~ contracts with both fixed-price and cost-reimbursable line items where ~~the~~ cost-reimbursable line items exceed \$10,000,000, or time-and-materials contracts where the materials ~~portions~~ ~~exceed~~portion exceeds \$10,000,000.).

931.205-32 Pre-contract costs.

(a) To the extent practical, known ~~expenditures of~~ pre-contract costs under DOE contracts should be ~~governed~~managed by establishing advance understandings as ~~contemplated by 48 CFR described in FAR 31.409-110.~~ Contracts that ~~include authorized precontract~~authorize pre-contract costs ~~shall~~will include the “Date of Incurrence of Cost” clause ~~specified at 952.231-70.~~

(b) The following limitations apply ~~to establishment of~~when establishing advance understandings ~~relative to~~for pre-contract costs:

(1) Pre-contract cost authorizations ~~shall~~may not ~~be used to cover a period in excess of~~longer than 15 days; unless the HCA approves a longer period ~~is approved by the HCA based upon~~through a written finding that ~~such an allowance~~the extension is reasonable, ~~and shall not be.~~ Otherwise, pre-contract cost authorizations may not be renewed or extended ~~or renewed.~~ A copy of the findings ~~shall~~will be ~~forwarded~~sent to the Senior Procurement Executive at the time of approval. If ~~prolonged coverage~~a longer period is ~~necessary,~~needed, DOE will issue a letter contract ~~shall be issued.~~

(2) ~~All pre-contract cost authorizations shall be reviewed and approved at A management level~~official above the contracting officer will review and approve all pre-contract cost authorizations.

(3) Retroactive ~~precontract cost authorization of pre-contract costs and the predating of~~ contractual agreements ~~shall not be used~~are prohibited.

(4) Pre-contract cost authorizations ~~shall~~may not ~~authorize the delivery~~allow a contractor to deliver or ~~furnishing of any~~furnish goods or services ~~from a contractor until after~~before the contract is executed.

931.205-33 Professional and consultant service costs.

(f) If the contract includes the clause at ~~48 CFR FAR~~ 952.231-71 or ~~the clause at 48 CFR FAR~~ 970.5228-1 ~~is included in the contract, or the contract~~ if it is a non-management and operating contract exceeding \$100,000,000 ~~that includes with~~ cost-reimbursable elements exceeding \$10,000,000 ~~(for example, contracts with both fixed price and cost reimbursable line items where the cost reimbursable line items exceed \$10,000,000 or time and materials contracts where the materials portions exceed \$10,000,000), then~~ litigation and other legal costs are ~~only~~ allowable only if both:

- They are incurred in accordance with 10 CFR part 719, Contractor Legal Management Requirements; and
- They are not ~~otherwise~~ made unallowable by law, regulation, or ~~the contract~~ terms of the contract.

931.205-47 Costs related to legal and other proceedings.

(~~h~~) Costs associated with whistleblower actions.

(1) Definitions for ~~purposes of~~ this paragraph (h):

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

Employee whistleblower action means any action ~~filed by an employee (or any person on the employee's behalf) files~~ in Federal or state court for redress of a retaliatory act ~~by a contractor~~, and any administrative ~~procedure initiated by action~~ an employee initiates under 29 CFR part 24, ~~48 CFR FAR~~ subpart 3.9, 10 CFR part 708, or ~~50 U.S.C. 2702~~ 10 U.S.C. 2702.

Retaliatory act means a discharge, demotion, ~~pay reduction in pay~~, coercion, restraint, threat, intimidation, or ~~other~~ similar negative adverse action taken against an employee ~~by a contractor as a result because of an employee's activity protected as a whistleblower activity by a under~~ Federal or state statute or regulation law.

Settlement and award costs ~~means include~~ defense costs and costs ~~arising~~ resulting from judicial orders, negotiated agreements, arbitration, or ~~an order orders~~ from a Federal ~~agency agencies~~ or board and ~~includes boards~~. They include compensatory damages, ~~underpayment for work performed back pay~~, and reimbursement for a ~~complainant employee's~~ complainant's legal counsel.

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

(i) May provisionally authorize reimbursement of costs ~~on a provisional basis~~, in appropriate cases;

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

——(H(iii)) Must determine ~~allowability of whether~~ defense, settlement, and award costs are allowable on a case-by-case basis ~~after~~, considering the ~~terms of the contract, relevant terms, applicable cost regulations, and the relevant facts, and circumstances, including~~ 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 ~~costs of in-house counsel, incurred in the defense of an employee costs, associated with defending a~~ whistleblower action so ~~that~~ the costs are separately identifiable.

(1) If ~~at the~~ contracting officer provisionally disallows employee whistleblower-related costs associated with an employee whistleblower action for a covered contractor or subcontractor, ~~funds DOE-advanced by the Department funds may not be used to finance costs connected with the pay for defense, settlement and, or award of an employee whistleblower costs in that action.~~

(2) Contractor defense, settlement, and award costs ~~incurred in connection with the defense of~~ related to suits brought by employees under section 2 of the Major Fraud Act of 1988 are ~~excluded from coverage of~~ 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 ~~regarding~~for costs incurred ~~prior to~~before the ~~contract~~contract's effective date:

Date of Incurrence of Cost (~~APR 1984~~DEVIATION JUNE 2026)

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

\$ ~~——~~ \$ on or after , which, ~~if~~ if incurred after this contract ~~has~~had been ~~entered into, executed~~ entered into, executed would have been reimbursable under the ~~provisions of this contract.~~

(End of clause)

952.231-71 Insurance—~~litigation and claims.~~

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

Insurance—~~Litigation and Claims~~ (~~DEC 2024~~DEVIATION JUNE 2026)

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

(b)

(1) Except as ~~provided~~ stated in paragraph (b)(2) ~~of this clause,~~, the contractor ~~shall procure~~ will obtain and maintain ~~such~~ the bonds and insurance ~~as required by law or approved in writing by the Contracting Officer.~~

(2) ~~The contractor may, with the approval of the~~ With Contracting Officer, ~~approval, the contractor may maintain a self-insurance program in accordance with~~ under FAR 28.308; ~~provided that, with respect to workers' however, for workers' compensation, the contractor is must be statutorily qualified pursuant to statutory authority.~~

(3) All required bonds and insurance ~~required by this clause shall be in a form and will meet the form, amount and for those periods as the Contracting Officer may require or approve and with sureties and insurers approved, timing, and provider requirements set by the Contracting Officer.~~

(c) The contractor ~~agrees to~~ must submit for the ~~Contracting Officer's approval, to the extent and in the manner required by the Contracting Officer,~~ any ~~other~~ additional bonds and insurance ~~that are maintained by the contractor in connection with the contract performance of this contract and for which the contractor it seeks reimbursement. If an insurance cost (whether a premium for commercial insurance or related to self insurance) includes a portion covering costs made related to unallowable elsewhere in the contract, costs and the share of the insurance cost for coverage for the unallowable cost is determinable, the portion of the cost that is otherwise an amount is identifiable, the allowable cost under this contract is reimbursable to the extent portion may be reimbursed as determined by the Contracting Officer.~~

(d) Except as ~~provided~~ stated in paragraph (f) ~~of this clause, or specifically disallowed or~~ elsewhere in this contract, the contractor ~~shall~~ will be reimbursed ~~□~~ —

(1) For ~~that portion of the reasonable cost of~~ contract-required or approved bonds and insurance ~~allocable to this contract required in accordance with contract terms or approved under this clause, and; and~~

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

(e) ~~The Government's~~Government's liability under paragraph (d) ~~of this clause is subject to depends on~~ the availability of appropriated funds. Nothing in this contract ~~shall be construed as implying guarantees that the Congress will, at a later date, appropriate provide additional funds sufficient to meet deficiencies in the future.~~

(f)

(1) ~~Notwithstanding any other provision of this contract,~~ The contractor ~~shall~~may not be reimbursed for third-party liabilities, including liabilities to third parties, including contractor employees, and/or directly associated costs which may include but are not limited to (such as litigation costs, counsel fees, judgmentjudgments, and settlements~~);~~

(i) ~~Which~~If they are otherwise unallowable by law or ~~the provisions of~~under this contract, (including ~~the cost reimbursement limitations contained~~limits in 48 CFR FAR 970.31, as ~~supplemented by 48 CFR and FAR part 931;~~);

(ii) ~~For which~~If the contractor has failed to insure or to maintain insurance as required by law, this contract, or ~~by the~~written direction of the Contracting Officer; or

(iii) ~~Which were caused by~~If contractor managerial personnel's ~~personnel~~caused the liability through:

(A) Willful misconduct;

(B) Lack of good faith; or

(C) Failure to exercise prudent business judgment, ~~which means failure to act in the same manner (defined as acting as a prudent person would in the conduct of competitive business; or, in the case of a conditions; for non-profit educational institution, failure to act in the manner that institutions, acting as a prudent person would under the circumstances prevailing at the timewhen the decision to incur the cost is was made-).~~

(2) ~~The term~~ ~~contractor's~~"Contractor's managerial personnel~~"~~" is defined in the ~~Property~~ clause ~~in 970.5245-1 in this contract,~~ Property.

(g)

~~(1)~~(1) The contractor will separately account for all litigation costs, including counsel fees, judgments, and settlements ~~shall be segregated and accounted for by the contractor separately.~~ If the Contracting Officer provisionally disallows ~~such~~these costs, ~~then~~the contractor may not use ~~funds DOE advanced by DOE under the contract funds~~to finance the litigation.

(2) Punitive damages are ~~not allowable~~unallowable unless ~~the act or failure to act which gave rise to the liability resulted~~they result from ~~compliance~~complying with specific contract terms and conditions of the contract or written instructions from the Contracting Officer.

(3) ~~The portion of the cost of insurance obtained by the contractor that is~~ Insurance costs allocable to ~~coverage of the~~ liabilities referred to described in paragraph (f) ~~of this clause is not allowable~~ are unallowable.

(h) The contractor may purchase, at its own expense ~~and not as an allowable cost~~ procure for its ~~own protection insurance to compensate the contractor for any~~, insurance to cover unallowable or non-reimbursable costs incurred ~~in connection with~~ during contract performance.

(End of clause)