

Department of Energy

931.205-18

fixed price or unit price contracts entered into as a result of sealed bidding. They may not be required for negotiated contracts.

928.103-3 Payment bonds.

A determination that is in the best interest of the Government to require payment bonds in connection with other than construction contracts may be made by the contracting officer on individual acquisitions.

928.103-70 Review of performance and payment bonds for other than construction.

A performance or payment bond, other than an annual bond, shall not antedate the contract to which it pertains.

Subpart 928.3—Insurance

928.301 Policy.

The DOE policies and procedures for indemnification of DOE contractors are set forth in FAR Part 50 and 950.

928.370 Service-type insurance policies.

(a) Service-type insurance policies are cost-reimbursement type contracts or subcontracts in which the insurer provides claim and loss adjustment services on a cost reimbursement basis, which satisfies state and Federal insurance requirements.

(b) Service-type insurance policies may be used with contracting officer approval, when one or more of the following conditions are present:

(1) Pure risk commercial insurance is not available or, if available, cost is not considered reasonable;

(2) Inherent risks in the contract are new and a part of the process of commercialization;

(3) The service-type insurance is needed to implement jointly funded projects; or

(4) The service-type insurance arrangement is considered in the Government's best interest.

PART 931—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 931.1—Applicability

Sec.

931.102 Fixed-price contracts.

Subpart 931.2—Contracts With Commercial Organizations

931.205-18 Independent research and development (IR&D) and bid and proposal (B&P) costs.

931.205-19 Insurance and Indemnification. (Department coverage-paragraph (h)).

931.205-32 Precontract costs.

931.205-33 xxx

931.205-47 Costs related to legal and other proceedings.

AUTHORITY: 42 U.S.C. 7101 *et seq.*; 41 U.S.C. 418(b); and 50 U.S.C. 2401 *et seq.*

Subpart 931.1—Applicability

931.102 Fixed-price contracts.

The intent of the first sentence of FAR 31.102 is that applicable subparts of FAR Part 31 shall be used by the Government in (a) pricing fixed-price prime contracts and modifications, (b) evaluating the reasonableness of a prime contractor's (or prospective prime contractor's) proposed subcontract (or subcontract modification) prices, and (c) determining the allowability of contractor payments to subcontractors in accordance with the provisions of FAR 31.204(b).

[49 FR 12011, Mar. 28, 1984]

Subpart 931.2—Contracts With Commercial Organizations

931.205-18 Independent research and development (IR&D) and bid and proposal (B&P) costs.

(c)(2) IR&D costs are recoverable under DOE contracts to the extent they are reasonable, allocable, not otherwise unallowable, and have potential benefit or relationship to the DOE program. The term "DOE program" encompasses the DOE total mission and its objectives. B&P costs are recoverable under DOE contracts to the extent they are reasonable, allocable, and not otherwise unallowable.

[60 FR 30004, June 7, 1995]

931.205-19 Insurance and Indemnification. (Department coverage-paragraph (h)).

(h) The contracting officer shall insert the clause at 48 CFR 952.231-71 in non-management and operating cost reimbursement contracts involving work performed at facilities owned or leased by the Department exceeding \$100,000,000.

[66 FR 4627, Jan. 18, 2001, as amended at 67 FR 14871, Mar. 28, 2002]

931.205-32 Precontract costs.

(a) To the extent practical, known expenditures of precontract costs under DOE contracts should be governed by establishing advance understandings as contemplated by FAR 31.109. Contracts that include authorized precontract costs shall include the "Date of Incurrence of Cost" clause specified at 952.231-70.

(b) The following limitations apply to establishment of advance understandings relative to precontract costs:

(1) Precontract cost authorizations shall not be used to cover a period in excess of 15 days, unless a longer period is approved by the HCA based upon a written finding that such an allowance is reasonable, and shall not be extended or renewed. A copy of the findings shall be forwarded to the Procurement Executive at the time of approval. If prolonged coverage is necessary, a letter contract shall be issued.

(2) All precontract cost authorizations shall be reviewed and approved at a management level above the contracting officer.

(3) Retroactive precontract cost authorization and the predating of contractual agreements shall not be used.

(4) Precontract cost authorizations shall not authorize the delivery or furnishing of any goods or services from a contractor until after the contract is executed.

[49 FR 12011, Mar. 28, 1984; 49 FR 38951, Oct. 2, 1984]

931.205-33 Professional and consultant service costs. (Department coverage-paragraph (g)).

(g)(1) Reasonable litigation and other legal expenses are allowable when incurred in accordance with 10 CFR part

719, Contractor Legal Management Requirements, if not otherwise made unallowable by law or provisions of the contract.

(2)(A) Cost reimbursement contracts involving work performed at facilities owned or leased by the Department for an amount exceeding \$100,000,000 are covered by this cost principle and 10 CFR part 719.

(B) This cost principle and 10 CFR part 719 are applicable to legal counsel retained by the Department itself for litigation and other legal services where the legal costs over the life of the matter for which counsel has been retained are expected to exceed \$100,000.

(3) Contractors described in paragraph (g)(2)(A) of this section are required to submit a Legal Management Plan within 60 days of execution of a contract.

[66 FR 4627, Jan. 18, 2001]

931.205-47 Costs related to legal and other proceedings. (DOE coverage-paragraph (h)).

(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 in Federal or state court for redress of a retaliatory act by a contractor and any administrative procedure initiated by an employee under 29 CFR Part 24, 48 CFR subpart 3.9, 10 CFR Part 708 or 42 U.S.C. 7239.

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

Settlement and award costs means defense costs and costs arising from judicial orders, negotiated agreements, arbitration, or an order from a Federal agency or board and includes compensatory damages, underpayment for work performed, and reimbursement

Department of Energy

932.102

for a complainant employee's legal counsel.

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

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

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

(iii) Must determine allowability of defense, settlement and award costs on a case-by-case basis after considering the terms of the contract, relevant 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.

(3) Covered contractors and subcontractors must segregate legal costs, including costs of in-house counsel, incurred in the defense of an employee whistleblower action so that the costs are separately identifiable.

(4) If a contracting officer provisionally disallows costs associated with an employee whistleblower action for a covered contractor or subcontractor, funds advanced by the Department may not be used to finance costs connected with the defense, settlement and award of an employee whistleblower action.

(5) Contractor defense, settlement and award costs incurred in connection with the defense of suits brought by employees under section 2 of the Major Fraud Act of 1988 are excluded from coverage of this section.

[65 FR 62301, Oct. 18, 2000]

PART 932—CONTRACT FINANCING

Sec.

932.006-4 Procedures.

Subpart 932.1—General

932.102 Description of contract financing methods.

Subpart 932.3—Loan Guarantees for Defense Production

932.304-2 Certificate of eligibility.

Subpart 932.4—Advance Payments for Non-Commercial Items

932.402 General.

932.407 Interest.

Subpart 932.5—Progress Payments Based on Costs

932.501-2 Unusual progress payments.

Subpart 932.6—Contract Debts

932.605 Responsibilities and cooperation among Government officials.

Subpart 932.8—Assignment of Claims

932.803 Policies.

Subpart 932.9—Prompt Payment

932.970 Implementing DOE policies and procedures.

Subpart 932.70—DOE Loan Guarantee Authority

932.7002 Authority.

932.7003 Policies.

932.7004 Procedures.

932.7004-1 Guaranteed loans for civilian programs.

932.7004-2 Criteria.

932.7004-3 Eligibility.

AUTHORITY: 42 U.S.C. 7254; 40 U.S.C. 486(c).

SOURCE: 49 FR 12011, Mar. 28, 1984, unless otherwise noted.

932.006-4 Procedures.

(a) The remedy coordination official shall follow the procedures identified in FAR 32.006-4.

(b) [Reserved]

[63 FR 5273, Feb. 2, 1998]

Subpart 932.1—General

932.102 Description of contract financing methods. (DOE coverage—paragraph (e))

(e)(2) Progress payments based on a percentage or stage of completion may be authorized by the Head of the Contracting Activity when a determination is made that progress payments based on costs cannot be practically employed and that there are adequate