

## Department of Energy

931.102

### 928.101 Bid guarantees.

#### 928.101-1 Policy on use.

In addition to the restriction on use of bid guarantees in 48 CFR 28.101-1(a), a bid guarantee may be required only for fixed price or unit price contracts entered into as a result of sealed bidding. They may not be required for negotiated contracts.

[61 FR 41708, Aug. 9, 1996, as amended at 75 FR 29459, May 26, 2010]

### 928.103 Performance and payment bonds for other than construction 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 48 CFR part 50 and part 950.

[61 FR 41708, Aug. 9, 1996, as amended at 74 FR 36366, July 22, 2009; 75 FR 29459, May 26, 2010]

### 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.

[61 FR 41708, Aug. 9, 1996, as amended at 74 FR 36366, July 22, 2009]

## PART 931—CONTRACT COST PRINCIPLES AND PROCEDURES

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AUTHORITY: 42 U.S.C. 7101 et seq. and 50 U.S.C. 2401 et seq.

### Subpart 931.1—Applicability

#### 931.102 Fixed-price contracts.

The intent of the first sentence of 48 CFR 31.102 is that applicable subparts of 48 CFR 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 48 CFR 31.204(b).

[49 FR 12011, Mar. 28, 1984, as amended at 75 FR 29459, May 26, 2010]

### Subpart 931.2—Contracts With Commercial Organizations

#### 931.205 Selected costs.

##### 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.

(f) The contracting officer shall insert the clause at 952.231-71, Insurance-litigation and claims, 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; 74 FR 36366, July 22, 2009]

##### 931.205-32 Pre-contract costs.

(a) To the extent practical, known expenditures of pre-contract costs under DOE contracts should be governed by establishing advance understandings as contemplated by 48 CFR 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 pre-contract costs:

(1) Pre-contract 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 Senior Procurement Executive at the time of approval. If prolonged coverage is nec-

essary, a letter contract shall be issued.

(2) All pre-contract 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) Pre-contract 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, as amended at 74 FR 36366, 36378, July 22, 2009; 75 FR 29459, May 26, 2010]

##### 931.205-33 Professional and consultant service costs.

(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.

(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 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, as amended at 74 FR 36366, July 22, 2009; 75 FR 29459, May 26, 2010]

**PART 932—CONTRACT FINANCING**

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932.006 Reduction or suspension of contract payments upon finding of fraud.

932.006-4 Procedures.

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932.102 Description of contract financing methods.

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932.304 Procedures.

932.304-2 Certificate of eligibility.

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932.402 General.

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**Subpart 932.5—Progress Payments Based on Costs**

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932.501-2 Unusual progress payments.

**Subpart 932.6—Contract Debts**

932.602 Responsibilities.

**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.

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