

## § 719.1

719.16 When must the Staffing and Resource Plan be submitted?

719.17 Are there any budgetary requirements?

### Subpart C—Engagement Letter

719.20 When must an engagement letter be submitted to Department Counsel?

719.21 What are the required elements of an engagement letter?

### Subpart D—Requests from Contractor Counsel to Initiate, Defend, and Settle Legal Matters

719.30 In what circumstances may the contractor initiate litigation, including appeals from adverse decisions?

719.31 When must the contractor initiate litigation against third parties?

719.32 What must the contractor do when it receives notice that it is a party to litigation?

719.33 In what circumstances must the contractor seek permission from the Department to enter a settlement agreement?

719.34 What documentation must the contractor provide to Department Counsel when it seeks permission to enter a settlement agreement?

719.35 When must the contractor provide a copy of an executed settlement agreement?

### Subpart E—Reimbursement of Costs Subject to this Part

719.40 What effect do the regulations of this part have on cost allowability?

719.41 How does the Department determine whether fees are reasonable?

719.42 What categories of costs are unallowable?

719.43 What is the treatment of travel costs?

719.44 What categories of costs require advance approval?

719.45 Are there any special procedures or requirements regarding subcontractor and retrospective insurance carrier legal costs?

719.46 Are costs covered by this part subject to audit?

719.47 What happens when more than one contractor is a party to a matter?

### Subpart F—Department Counsel

719.50 What authority does Department Counsel have?

719.51 What information must be forwarded to the General Counsel's Office concerning contractor submissions to Department Counsel under this part?

719.52 What types of field actions must be coordinated with the General Counsel?

## 10 CFR Ch. III (1–1–14 Edition)

### APPENDIX A TO PART 719—GUIDANCE FOR LEGAL RESOURCE MANAGEMENT

AUTHORITY: 42 U.S.C. 2201, 5814, 5815 and 7101, et seq.; 50 U.S.C. 2401, et seq.

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### Subpart A—General Provisions

#### § 719.1 What is the purpose of this part?

This part facilitates management of retained legal counsel and contractor legal costs, including litigation and legal matter costs. It requires the contractor to develop a Legal Management Plan, to document the analysis used to decide when to utilize outside counsel, and to document what law firm or individual attorney will be engaged as outside counsel. This part also requires the contractor to document the terms of the engagement with retained legal counsel. Payment of Department-retained law firm invoices and reimbursement of contractor legal costs under covered contracts are subject to compliance with this part.

#### § 719.2 What are the definitions of terms used in this part?

For purposes of this part:

*Alternative dispute resolution* includes, but is not limited to, processes such as mediation, neutral evaluation, mini-trials and arbitration.

*Contractor* means any person or entity with whom the Department contracts for the acquisition of goods or services.

*Covered contracts* means those contracts described in § 719.3 of this part.

*Days* means calendar days.

*Department* means the Department of Energy (DOE), including the National Nuclear Security Administration (NNSA).

*Department Counsel* means the attorney in the DOE or NNSA field office, or Headquarters office, designated as the contracting officer's representative and point of contact for a contractor or for Department retained legal counsel, for purposes of this part.

*General Counsel* means the DOE General Counsel for DOE legal matters and the NNSA General Counsel for NNSA legal matters.

## Department of Energy

## § 719.4

*Legal costs* means, but is not limited to, administrative expenses associated with the provision of legal services by retained legal counsel; the costs of legal services provided by retained legal counsel; the costs of the services, if the services are procured in connection with a legal matter, of accountants, consultants, experts or others retained by the contractor or by retained legal counsel; and any similar costs incurred by retained legal counsel or in connection with the services of retained legal counsel.

*Legal Management Plan* means a document required by subpart B of this part describing the contractor's practices for managing legal costs and legal matters for which it procures the services of retained legal counsel.

*Litigation* means a proceeding arising under or related to a contract between the contractor and the Department to which the contractor is a party in a State, tribal, territorial, foreign, or federal court or before an administrative body or an arbitrator.

*Retained legal counsel* means a licensed attorney working in the private sector who is retained by a contractor or the Department to provide legal services.

*Retrospective insurance* means any insurance policy under which the premium is not fixed but is subject to adjustments to reimburse the insurance carrier for actual losses incurred or paid (e.g. claims, settlements, damages, and legal costs). Retrospective insurance includes service-type insurance policies as described in 48 CFR 928.370.

*Settlement agreement* means a written agreement between a contractor and one or more parties pursuant to which one or more parties waives the right to pursue a legal claim in exchange for something of value.

*Significant matters* means legal matters involving significant issues as determined by Department Counsel and identified to a contractor in writing, and any legal matters where the amount of any legal costs, over the life of the matter, is expected to exceed \$100,000.

*Staffing and Resource Plan* means a statement prepared in accordance with subpart B of this part by retained legal

counsel that describes the method for managing a Significant Matter in litigation.

### § 719.3 What contracts are covered by this part?

(a) Unless excluded under § 719.5, this part covers the following three categories of contracts:

(1) All management and operating contracts;

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

(3) Non-management and operating contracts exceeding \$100,000,000 that include cost reimbursable elements exceeding \$10,000,000 (e.g., 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).

(b) This part also covers contracts otherwise not covered by paragraph (a) of this section but which contain a clause requiring compliance with this part.

(c) This part also covers any contract the Department awards directly to retained legal counsel exceeding \$100,000.

### § 719.4 Are law firms that are retained by contract by the Department covered by this part?

Legal counsel retained under fixed rate or other type of contract or other agreement by the Department to provide legal services must comply with the following if the legal costs over the life of the matter for which counsel has been retained are expected by the Department to exceed \$100,000 and retained legal counsel are so notified by the Department:

(a) Requirements related to Staffing and Resource Plans in subpart B of this part;

(b) Cost guidelines in subpart E of this part; and

(c) Engagement letter requirements in subpart C of this part if the retained legal counsel subcontracts legal work valued at \$25,000 or more (e.g., a law firm retained by the Department subcontracts with another law firm to provide \$26,000 in discovery-related legal work).