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matters identified within 30 days of notification or file a letter with the General Counsel disputing the determination of a deficiency.

§719.15 What are the requirements for a Staffing and Resource Plan?

(a) For significant matters in litigation, the contractor must require retained legal counsel to prepare a Staffing and Resource Plan. The contractor must then forward the Staffing and Resource Plan to Department Counsel.

(b) Retained legal counsel retained directly by the Department subject to this part must prepare a Staffing and Resource Plan and forward it to Department Counsel.

(c) A Staffing and Resource Plan must describe the following:

(1) Major phases likely to be involved in the handling of the matter;

(2) Timing and sequence of such phases;

(3) Projected cost for each phase of the representation; and

(4) Detailed description of resources that the retained legal counsel intends to devote to the representation.

(d) A Staffing and Resource Plan must include a budget, broken down by phases, including at a minimum the following phases:

(1) Matter assessment, development and administration;

(2) Pretrial pleadings and motions;

(3) Discovery;

(4) Trial preparation and trial; and

(5) Appeal.

(e) The contractor must notify Department Counsel before incurring retained legal counsel costs in excess of costs listed in the budget developed pursuant to paragraph (d) of this section.

§719.16 When must the Staffing and Resource Plan be submitted?

(a) The contractor or retained legal counsel must submit the Staffing and Resource Plan to Department Counsel within 30 days after the filing of an answer or a dispositive motion in lieu of an answer, 30 days after a determination that the cost is expected to exceed \$100,000, or 30 days after notification from Department Counsel that a matter is considered significant, whichever is sooner. The deadline for submitting

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the Staffing and Resource Plan may be extended by Department Counsel.

(b) Department Counsel may state objections to the Staffing and Resource Plan within 30 days of receipt of a Staffing and Resource Plan. When an objection is stated, the contractor or retained legal counsel must either revise the Staffing and Resource Plan to satisfy the objection within 30 days or file a letter with the General Counsel disputing the objection.

(c) Contractors must require retained legal counsel to update Staffing and Resource Plans annually or more frequently if there are significant changes in the matter. The contractor must submit the Staffing and Resource Plan updates to Department Counsel. Similarly, Department retained legal counsel must submit to Department Counsel annual Staffing and Resource Plan updates or more frequent updates if there are significant changes in the matter.

§719.17 Are there any budgetary requirements?

(a) Contractors required to submit a Legal Management Plan must also submit an annual legal budget to Department Counsel.

(b) The annual legal budget must include cost projections for significant matters at a level of detail reflective of the types of billable activities and the stage of each such matter.

(c) For informational purposes for both the contractor and Department Counsel, the contractor must submit a report to Department Counsel comparing its budgeted and actual legal costs within 30 days of the conclusion of the period covered by each annual legal budget. The Department recognizes, however, that there may be departures from the annual budget beyond the control of the contractor.

Subpart C—Engagement Letter

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

Contractors must submit a copy of an executed engagement letter between it and retained legal counsel to Department Counsel when the retained counsel is expected to provide \$25,000 or

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more in legal services for a particular matter. A copy of the executed engagement letter must be submitted to Department Counsel upon execution.

§ 719.21 What are the required elements of an engagement letter?

(a) The engagement letter must require retained legal counsel to assist the contractor in complying with this part and any supplemental guidance distributed under this part.

(b) At a minimum, the engagement letter must include the following:

(1) A process for review and documented approval of all billing by a contractor representative including the timing and scope of billing reviews.

(2) A statement that provision of records to the Government is not intended to constitute a waiver of any applicable legal privilege, protection, or immunity with respect to disclosure of these records to third parties. An exemption for specific records may be obtained where contractors can demonstrate that a particular situation may provide grounds for a waiver.

(3) A requirement that the contractor, the Department, and the Government Accountability Office have the right, upon request, and at reasonable times and locations to inspect, copy, and audit all records documenting billable fees and costs.

(4) A statement that all records must be retained for a period of six (6) years and three (3) months after the final payment or after final case disposition, whichever is later.

(5) Identification of all attorneys and staff who are assigned to the matter and the rate and basis of their compensation (i.e., hourly rates, fixed fees, contingency arrangement) and a process for obtaining approval of temporary adjustments in staffing levels or identified attorneys.

(6) An initial assessment of the matter by retained legal counsel, along with a commitment to provide updates as necessary.

(7) A description of billing procedures, including frequency of billing and billing statement format.

(8) A statement setting forth an agreement that the retained legal counsel will prepare a Staffing and Re-

source Plan in accordance with the requirements of § 719.15.

(9) A statement setting forth an agreement to consider alternative dispute resolution at the earliest possible stage and thereafter as appropriate where litigation is involved.

(10) A statement setting forth an agreement that retained legal counsel must comply with the cost guidelines in subpart E of this part.

(11) A statement setting forth an agreement that retained legal counsel will provide a certification concerning the costs submitted for reimbursement. The certification that must be included in bills or invoices submitted by retained legal counsel must appear as follows: "Under penalty of law, [the representative] acknowledges the expectation that the bill will be paid by the contractor and that the contractor will be reimbursed by the Federal Government through the U.S. Department of Energy, and, based on personal knowledge and a good faith belief, certifies that the bill is truthful and accurate, and that the services and charges set forth herein comply with the terms of engagement and the policies set forth in the Department of Energy's regulation and guidance on contractor legal management requirements, and that the costs and charges set forth herein are appropriate and related to the representation of the client." The certification must be signed and dated by a representative of the retained legal counsel. Invoices must contain all elements (e.g., date of service, description of service, name of attorney, etc.) set forth in the model bill format in Appendix A to this part.

(12) A statement setting forth agreement to identify and address promptly any professional conflicts of interest.

(c) There may be additional requirements for an engagement letter based on the needs of the contractor or the Departmental element requiring the services of the Department retained legal counsel.