Subpart 970.42—Contract Administration

Parent topic: PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

970.4207-302 Certificate of costs.

(a) The contracting officer shall require that management and operating contractors provide a submission, pursuant to 970.5232-2-(j), for settlement of costs incurred during the period stipulated on the submission and a certification that the costs included in the submission are allowable. The contracting officer shall assess a penalty pursuant to 970.5242-1 if unallowable costs are included in the submission. Unallowable costs are either expressly unallowable or determined unallowable.

(1) An expressly unallowable cost is a particular item or type of cost which, under the express provisions of an applicable law, regulation, or this contract, is specifically named and stated to be unallowable.

(2) A cost determined unallowable is one which, for that contractor—

(i) Was subject to a contracting officer's final decision and not appealed;

(ii) The Civilian Board of Contract Appeals or a court has previously ruled as unallowable; or

(iii) Was mutually agreed to be unallowable.

(b) If, during the review of the submission, the contracting officer determines that the submission contains an expressly unallowable cost or a cost determined to be unallowable prior to the submission, the contracting officer shall assess a penalty.

(c) If the contracting officer determines that a cost submitted by the contractor in its submission for settlement is:

(1) Expressly unallowable, then the contracting officer shall assess a penalty in an amount equal to the disallowed cost allocated to the contract plus interest on the paid portion of the disallowed cost. Interest shall be computed from the date of overpayment to the date of repayment using the interest rate specified by the Secretary of the Treasury pursuant to Public Law 92-41 (85 Stat. 97).

(2) Determined unallowable, then the contracting officer shall assess a penalty in an amount equal to two times the amount of the disallowed cost allocated to the contract.

(d) The contracting officer may waive the penalty provisions when:

(1) The contractor withdraws the submission before the formal initiation of an audit of the submission and submits a revised submission;

(2) The amount of the unallowable costs allocated to covered contracts is $10,000 or less; or

(3) The contractor demonstrates to the contracting officer's satisfaction that:

(i) It has established appropriate policies, personnel training, and an internal control and review system that provides assurances that unallowable costs subject to penalties are precluded from the contractor's submission for settlement of costs; and

(ii) The unallowable costs subject to the penalty were inadvertently incorporated into the submission.

(e) The Head of the Contracting Activity may waive the certification when—

(1) It determines that it would be in the best interest of the United States to waive such certification; and

(2) It states in writing the reasons for that determination and makes such determination available to the public.

970.4207-370 Contract clause.

The contracting officer shall insert the clause at 970.5242-1, Penalties for unallowable costs, in all management and operating solicitations and contracts.

970.4207-501 Contracting officer determination procedure.

(b)(4) A contracting officer shall not resolve any questioned costs until the contracting officer has obtained—

(i) Adequate documentation with respect to such costs; and

(ii) The opinion of the Department of Energy's auditor on the allowability of such costs if such costs have been the subject of a DOE audit.

(5) The contracting officer shall ensure that the documentation supporting the final settlement addresses the amount of the questioned costs and the subsequent disposition of such questioned costs.

(6) The contracting officer shall ensure, to the maximum extent practicable, that the Department of Energy's auditor is afforded an opportunity to attend any negotiation or meeting with the contractor regarding a determination of allowability.