

Department of Energy

§ 719.21

(d) When it is unclear whether a matter is significant, the contractor must consult with Department counsel on the question.

(e) The purpose of the staffing and resource plan is primarily informational, but Department counsel may state objections within 30 days of the submission of a staffing and resource plan. When an objection is stated, the contractor has 30 days to satisfy the objection or dispute the objection in a letter to the General Counsel.

§ 719.17 Are there any budgetary requirements?

(a) Contractors required to submit a legal management plan must also submit an annual legal budget covering then pending matters to Department counsel.

(b) The annual legal budget must include cost projections for known or existing matters for which reimbursable legal costs are expected to exceed \$100,000, 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 report on its success on staying within budget at the conclusion of the period covered by each annual legal budget. The Department recognizes, however, that there will be departures from the annual budget beyond the control of the contractor.

Subpart C—Engagement Letters

§ 719.20 When must an engagement letter be used?

Contractors must submit an engagement letter to retained legal counsel expected to provide \$25,000 or more in legal services for a particular matter and submit a copy of correspondence relating to § 719.21, including correspondence from retained legal counsel addressing any of the issues under § 719.21, to Department counsel.

§ 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 General Accounting Office, have the right upon request, 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 three (3) years after the final payment.

(c) The contractor must obtain the following information from retained counsel:

(1) 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.

(2) An initial assessment of the matter, along with a commitment to provide updates as necessary.

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

(d) The contractor must obtain retained counsel's agreement to the following:

(1) That in significant matters a staffing and resource plan for the conduct of the matter must be submitted by the retained legal counsel to the contractor in accordance with the requirements of §§ 719.15 and 719.16.

(2) That alternative dispute resolution must be considered at as early a stage as possible where litigation is involved.

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(3) That retained counsel must comply with the cost guidelines in subpart D of this part.

(4) That retained counsel must provide a certification concerning the costs submitted for reimbursement that is consistent with the certification in the Attachment to Appendix A to this part.

(5) That professional conflicts of interest issues must be identified and addressed promptly.

(e) Additional requirements may be included in an engagement letter based on the needs of the contractor or the office requiring the Department retained counsel.

Subpart D—Reimbursement of Costs Subject to This Part

§ 719.30 Is there a standard for determining cost reasonableness?

The standard for cost reasonableness determinations, one of the criteria for an allowability determination, is contained in the Federal Acquisition Regulation (FAR), at 48 CFR 31.201-3.

§ 719.31 How does the Department determine whether fees are reasonable?

In determining whether fees or rates charged by retained legal counsel are reasonable, the Department may consider:

(a) Whether the lowest reasonably achievable fees or rates (including any currently available or negotiable discounts) were obtained from retained legal counsel;

(b) Whether lower rates from other firms providing comparable services were available;

(c) Whether alternative rate structures such as flat, contingent, and other innovative proposals, were considered;

(d) The complexity of the legal matter and the expertise of the law firm in this area; and

(e) The factors listed in § 719.10(c).

§ 719.32 For what costs is the contractor, or Department retained counsel, limited to reimbursement of actual costs only?

All costs determined to be allowable are reimbursable for actual costs only,

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with no overhead or surcharge adjustments.

§ 719.33 What categories of costs are unallowable?

(a) Specific categories of unallowable costs are contained in the cost principles at 48 CFR (FAR) part 31 and 48 CFR (DEAR) part 931 and 970.31. See also 41 U.S.C. 256(e).

(b) The Department does not consider for reimbursement any costs incurred for entertainment or alcoholic beverages. See 48 CFR (FAR) 31.205-14 and 31.205-51 and 41 U.S.C. 256(e).

(c) Costs that are customarily or already included in billed hourly rates are not separately reimbursable.

(d) Interest charges that a contractor incurs on any outstanding (unpaid) bills from retained legal counsel are not reimbursable.

§ 719.34 What is the treatment for travel costs?

Travel and related expenses must at a minimum comply with the restrictions set forth in 48 CFR (FAR) 31.205-46, or 48 CFR (DEAR) 970.3102-05-46, as appropriate, to be reimbursable.

§ 719.35 What categories of costs require advance approval?

Costs for the following require specific justification or advance written approval from Department counsel to be considered for reimbursement:

(a) Computers or general application software, or non-routine computerized databases specifically created for a particular matter;

(b) Charges for materials or non-attorney services exceeding \$5,000;

(c) Secretarial and support services, word processing, or temporary support personnel;

(d) Attendance by more than one person at a deposition, court hearing, interview or meeting;

(e) Expert witnesses and consultants;

(f) Trade publications, books, treatises, background materials, and other similar documents;

(g) Professional or educational seminars and conferences;

(h) Preparation of bills or time spent responding to questions about bills from either the Department or the contractor;