(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.

970.4207–03–70 Contract clause.

The contracting officer shall insert the clause at 48 CFR 970.5242–1, Penalties for unallowable costs, in all management and operating solicitations and contracts.

970.4207–05–01 Contracting officer determination procedure. (DOE coverage-paragraph (b))

(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.

(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.

Subpart 970.43—Contract Modifications

970.4302 Changes.

970.4302–1 Contract clause.

The contracting officer shall insert the clause at 48 CFR 970.5243–1, Changes, in all management and operating contracts.

Subpart 970.44—Management and Operating Contractor Purchasing

970.4400 Scope.

This subpart prescribes policies and procedures concerning the purchasing systems and activities of management and operating contractors.

970.4401 Responsibilities.

970.4401–1 General.

(a) In the Department of Energy, overall responsibility for the oversight of the performance of management and operating contractors, including their purchasing activities, rests with the cognizant DOE contracting activity and, in particular, the Head of the Contracting Activity (HCA). Contracting officers are responsible for the management and operating contractors' conformance with this subpart and the applicable terms and conditions of their contracts, and for determining whether those purchasing activities provide timely and effective support to DOE programs.

(b) In carrying out their overall responsibilities, HCAs shall:

(1) Require management and operating contractors to maintain written descriptions of their individual purchasing systems and methods and further require that, upon award or extension of the contract, the entire written