

Subpart 970.37—Facilities Management Contracting

970.3770 Facilities management.

970.3770-1 Policy.

Contractors managing DOE facilities shall be required to comply with the DOE Directives applicable to facilities management.

970.3770-2 Contract clause.

The contracting officer shall insert the clause at 48 CFR 970.5237-2, Facilities Management, in all management and operating contracts.

Subpart 970.41—Acquisition of Utility Services

970.4102 Acquiring utility services.

970.4102-1 Policy.

(a) Utility services defined at 48 CFR 41.101 for the furnishing of electricity, gas (natural or manufactured), steam, water, and/or sewerage to facilities owned or leased by DOE shall be acquired directly by DOE and not by a contractor using a subcontractor arrangement, except as provided in paragraph (b) of this subsection.

(b) Where it is determined to be in the best interest of the Government, a DOE contracting activity may authorize a management and operating contractor for a facility to acquire such utility service for the facility, after requesting and receiving concurrence to make such an authorization from the Director, Public Utilities Branch, Headquarters. Any request for such concurrence should be included in the Utility Service Requirements and Options Studies required by DOE directives in subseries 4540 (Public Services). Alternatively, it may be made in a separate document submitted to the Director of that office early in the acquisition cycle. Any request shall set forth why it is in the best interest of the DOE to acquire utility service(s) by subcontract, *i.e.*, what the benefits are, such as economic advantage.

(c) The requirements of 48 CFR part 41, this section, and DOE directives in subseries 4540 shall be applied to a subcontract level acquisition for fur-

nishing utility services to a facility owned or leased by DOE.

Subpart 970.42—Contract Administration

970.4207-03-02 Certificate of costs.

(a) The contracting officer shall require that management and operating contractors provide a submission, pursuant to 48 CFR 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 48 CFR 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 Department's 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).