

**Appendix B—Bayou Sorrel Deletion Docket**

- Remedial Investigation Report, Vol. I and II, CH2M Hill, November 27, 1985.
- Feasibility Study Report, CH2M Hill and SRW Associates, January 31, 1986.
- Endangerment Assessment, Life Systems, Inc., February 21, 1986.
- EPA Record of Decision, USEPA Region 6, November 14, 1986.
- Remedial Concept Design, ERM-Southwest, Inc., March 18, 1987
- Ground Water Statistics Plan, ERM-Southwest, Inc., April 28, 1987.
- Operation and Maintenance Plan, ERM-Southwest, Inc., December 14, 1988.
- Health Assessment, ATSDR, April 6, 1989.
- Quality Assurance Project Plan, ERM-Southwest, Inc., April 24, 1989.
- Sampling and Analysis Plan, ERM-Southwest, Inc., October 26, 1990.
- Remedial Action Report, ERM-Southwest, Inc., October 30, 1990.
- EPA Final Closeout Report, USEPA Region 6, May 26, 1992.
- EPA Five-Year Review, USEPA Region 6, September 30, 1993.
- Health Consultation, ATSDR, May 8, 1995.
- Regional Arsenic Groundwater Information, ERM-Southwest, Inc., December 6, 1995.
- Ground Water Statistics Report Post-Construction Year 6, Vol. I and II, ERM-Southwest, Inc., December 30, 1996.
- EPA Risk Assessment Concurrence on Deletion, USEPA Region 6, January 15, 1997.
- Louisiana State Concurrence on Deletion, LDEQ, January 30, 1997.
- Notice of Intent to Delete, USEPA Region 6, February 21, 1997.

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**DEPARTMENT OF ENERGY****48 CFR Parts 932 and 970**

RIN 1991-AB29

**Acquisition Regulation: Contract Financing; Management and Operating Contracts**

**AGENCY:** Department of Energy.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Energy (DOE) proposes to amend its Acquisition Regulation to incorporate coverage required by the Federal Acquisition Streamlining Act of 1994. These amendments will clarify the allowability of costs reimbursed under Department of Energy contracts and establishes the responsibilities of the remedy coordination official within the Department.

**DATES:** Written comments must be submitted no later than August 4, 1997.

**ADDRESSES:** Comments should be addressed to: Terrence D. Sheppard,

Office of Policy (HR-51), Office of Procurement and Assistance Management, Department of Energy, 1000 Independence Avenue S.W., Washington, D.C. 20585.

**FOR FURTHER INFORMATION CONTACT:** Terrence D. Sheppard (202) 586-8193.

**SUPPLEMENTARY INFORMATION:**

- I. Background
- II. Section by Section Analysis
- III. Public Comments
- IV. Procedural Requirements
  - A. Review Under Executive Order 12866
  - B. Review Under Executive Order 12988
  - C. Review Under the Regulatory Flexibility Act
  - D. Review Under the Paperwork Reduction Act
  - E. Review Under the National Environmental Policy Act
  - F. Review Under Executive Order 12612

**I. Background**

This notice proposes to amend the Department of Energy Acquisition Regulation based on provisions in Sections 2051, 2151, and 2192 of the Federal Acquisition Streamlining Act of 1994 (the Act). These amendments establish: certification of cost submissions and assessment of penalties on unallowable costs; a remedy coordination official for payment requests suspected to be based on substantial evidence of fraud; parameters for resolution of questioned costs; guidance for application of cost principles; general prohibitions on severance payments to foreign nationals and compensation costs associated with a change in management control or ownership; clarification of employee morale, recreation, entertainment, executive branch lobbying, company furnished automobiles, and insurance costs which protect the contractor against defects in material or workmanship.

This rulemaking is intended to make only these specific changes. Additional rulemakings will address other aspects of the Act. On June 24, 1996, the Department of Energy published in the **Federal Register** (61 FR 32588) a notice of proposed rulemaking which also proposed changes to sections 970.3101-3, 970.5204-13, and 970.5204-14. Nothing in this proposed rulemaking conflicts with the proposed rulemaking of June 24, 1996.

**II. Section by Section Analysis**

1. The authority for Part 932 is restated.
2. Section 932.006-4, Procedures, is added which identifies the procedures the remedy coordination official within DOE shall follow.

3. The authority for Part 970 is restated.

4. Section 970.25 is added which provides the criteria under which the Head of the Contracting Activity (HCA) may waive the severance payment prohibitions at 970.3102-2(i)(2)(iv) and (v) and further directs the contracting officer to include a new solicitation provision 970.5204-XX addressing waiver of the restrictions which apply to foreign nationals' severance payments.

5. Section 970.3101-3 is amended by adding new paragraphs (b), (c), and (d). These new paragraphs establish requirements for the contracting officer to address the resolution of questioned costs; the documentation of questioned costs; and the attendance of the Department's auditor at negotiations, respectively.

6. Section 970.3101-7 is added to state the requirements for contractor certification of submissions for settlement of costs, penalties associated therewith, waiver provisions, and the prescribed contract clause.

7. Section 970.3102 is amended by designating the existing paragraph as (a) and adding a new paragraph (b) which provides guidance on applicability of the various cost principles.

8. Section 970.3102-2 is amended in paragraphs (i)(2) by adding a sentence at the end of the existing text to refer to new paragraphs (2)(iv) and (v); new paragraphs (2)(iv) and (v) are added which address severance payment for foreign nationals; new paragraph (vi) is added which refers the reader to 970.25 for the waiver criteria; and new paragraph (p) is added which makes unallowable those compensation costs associated with a change in management control or ownership.

9. Section 970.3102-5, Employee morale, health, welfare, food service, and dormitory costs, is amended in paragraph (a) to add wellness/fitness centers and delete the word "recreation"; a new paragraph (b) is added which addresses the allowability of recreation costs; existing paragraphs (b), (c), (d), and (e) are relabeled as (c), (d), (e), and (f), respectively; and cross references are revised.

10. 970.3102-7, Legislative lobbying costs, is retitled as Political activity costs. The existing paragraph is rewritten and a paragraph has been added to also make unallowable the costs associated with executive branch lobbying.

11. 970.3102-17(b) is retitled as "Government-owned, commercial rental, and company-furnished vehicles" and a new paragraph (3) is added which reflects the addition of

coverage addressing the allowability of company-furnished automobiles.

12. 970.3103 is amended in paragraph (b) to reflect the new title of 970.3102-7.

13. Section 970.3272, Reduction or suspension of advance, partial, or progress payments, is added which prescribes the DOE policies and procedures to be followed upon finding substantial evidence of fraud.

14. Section 970.5204-13 is amended as follows: paragraph (d)(8)(iv) is revised by adding "wellness/fitness centers" at the end of the sentence; paragraph (e)(11) is revised by removing the coverage on recreation costs which is moved to a new paragraph (38); paragraph (e)(31) is revised to reflect the addition of executive branch lobbying costs as unallowable; new paragraph (e)(37) is added which adds gifts to the list of unallowables and states that employee achievement and recognition costs are not gifts; and paragraph (e)(38) is added to address the allowability of recreation costs.

15. Section 970.5204-14 is amended as follows: paragraph (d)(8)(iv) is revised by adding "wellness/fitness centers" at the end of the sentence; paragraph (e)(9) is revised by removing the coverage on recreation costs which is moved to a new paragraph (e)(36); paragraph (e)(29) is revised to make executive branch lobbying costs unallowable; new paragraph (e)(35) adds gifts to the list of unallowables and states that employee achievement and recognition costs are not gifts; and new paragraph (e)(36) is added to address the allowability of recreation costs.

16. Section 970.5204-16 is amended to state the requirement for contractor certification of submissions for settlement of costs; NOTES 3 and 4 are deleted; and the existing paragraph (e) is redesignated as (e)(i) for integrated management and operating contractors and a new (e)(ii) is created for nonintegrated contractors.

17. Section 970.5204-17 is amended by retitling as Political activity costs. A new paragraph (6) is added which makes unallowable the costs associated with attempts to influence executive branch actions.

18. A new solicitation provision and contract clause are added at 970.5204-XX. The solicitation provision states that the HCA has waived the restrictions on foreign nationals' severance payments. The alternate 1, contract clause, states that the HCA will consider waiving the restrictions on foreign nationals' severance payments.

19. A new clause 970.5204-YY, Reduction or suspension of advance, partial, or progress payments, is added

which prescribes the DOE policies and procedures to be followed upon finding substantial evidence of fraud.

### III. Public Comments

Interested persons are invited to participate by submitting data, views, or arguments with respect to the proposed Department of Energy Acquisition Regulation amendments set forth in this notice. Three copies of written comments should be submitted to the address indicated in the ADDRESSES section of this notice. All comments received will be available for public inspection in the DOE Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. All written comments received by the date indicated in the DATES section of this notice and all other relevant information in the record will be carefully assessed and fully considered prior to publication of the final rule. Any information considered to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information and to treat it according to our determination (See 10 CFR 1004.11).

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the proposed rule should not have substantial impact on the nation's economy or a large number of individuals or businesses. Therefore, pursuant to Public Law 95-91, the DOE Organization Act, and the Administrative Procedure Act (5 U.S.C. 553), the Department does not plan to hold a public hearing on this proposed rule.

### IV. Procedural Requirements

#### A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

#### B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the

general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The Department of Energy has completed the required review and determined that, to the extent permitted by law, the regulations meet the relevant standards of Executive Order 12988.

#### C. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared.

#### D. Review Under the Paperwork Reduction Act

No new information or recordkeeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

#### E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR part 1021,

subpart D) implementing the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). Specifically, this rule is categorically excluded from NEPA review because the proposed amendments to the DEAR do not change the environmental effect of the rule being amended (categorical exclusion A5). Therefore, this rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

#### *F. Review Under Executive Order 12612*

Executive Order 12612 (52 FR 41685, October 30, 1987) requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the National Government and the States, or in the distribution of power and responsibilities among the various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires the preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. This proposed rule, when finalized, will revise certain policy and procedural requirements. States which contract with DOE will be subject to this rule. However, DOE has determined that this rule will not have a substantial direct effect on the institutional interests or traditional functions of the States.

#### **List of Subjects in 48 CFR Parts 932 and 970**

Government procurement.

Issued in Washington, D.C. on May 27, 1997.

**Richard H. Hopf,**

*Deputy Assistant Secretary for Procurement and Assistance Management.*

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

1. The authority citation for Part 932 continues to read as follows:

**Authority:** 42 U.S.C. 7254; 40 U.S.C. 486(c).

#### **PART 932—CONTRACT FINANCING**

2. Section 932.006–4 is added before Subpart 932.1 to read as follows:

##### **932.006–4 Procedures.**

(a) The remedy coordination official shall follow the procedures identified in FAR 32.006–4.

(b) [Reserved]

3. The authority citation for Part 970 continues to read as follows:

**Authority:** Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec 644 of the Department of Energy Organization Act, Public Law 95–91 (42 U.S.C. 7254).

#### **PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS**

4. Subpart 970.25 is added to read as follows:

##### **970.25 Foreign acquisition.**

**Subpart 970.2501—Severance payments for foreign nationals.**

##### **970.2501 Severance payments for foreign nationals.**

(a) The Head of the Contracting Activity may waive the application of the provisions of 48 CFR 970.3102–2(i)(2) (iv) and (v) in accordance with 41 U.S.C. 256(e)(2) if:

(1) The application of the provisions would adversely affect the continuation of a program, project, or activity that provides significant support services for Department of Energy employees posted outside the United States;

(2) The contractor has taken, or plans to take, appropriate actions within its control to minimize the amount and number of incidents of payment of severance pay to employees under the contract who are foreign nationals; and

(3) The payment of severance pay under the contract is necessary to comply with a law that is generally applicable to a significant number of businesses in the country in which the foreign national receiving the payment performed services or is necessary to comply with a collective bargaining agreement.

(b) *Solicitation provision and contract clause.* The solicitation provision at 970.5204–XX, Waiver of Limitations on Severance Payments to Foreign Nationals, shall be included in solicitations and resulting contracts involving support services for Department of Energy operations outside of the United States expected to exceed \$500,000, when, prior to the solicitation, the limitations on severance to foreign nationals has been waived. Use the Alternate 1 contract clause in solicitations and resulting contracts, when the Head of the Contracting Activity may waive the limitations on severance to foreign nationals after contract award.

5. Section 970.3101–3 is amended by adding paragraphs (b), (c), and (d) to read as follows:

##### **970.3101–3 General basis for reimbursement of costs.**

\* \* \* \* \*

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

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

(2) The opinion of the Department of Energy's auditor on the allowability of such costs.

(c) 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.

(d) 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.

6. Section 970.3101–7 is added to read as follows:

##### **970.3101–7 Cost submission, certification, penalties, and waivers.**

(a) The contracting officer shall require that management and operating contractors provide a submission 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 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 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 Pub. L. 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 this 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 is determined that it would be in the best interest to waive such certification; and

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

7. Section 970.3102 is amended by removing the last sentence of the existing paragraph, designating the existing paragraph as (a) and adding a new paragraph (b) to read as follows.

#### **970.3102 Application of cost principles.**

\* \* \* \* \*

(b) This section does not cover every element of cost. Failure to include any item of cost does not imply that it is either allowable or unallowable. The determination of allowability shall be based on the principles and standards in this subpart and the treatment of similar or related selected items. When more than one paragraph in this section is relevant to a contractor cost, the cost shall be apportioned among the applicable subsections, and the determination of allowability of each portion shall be based on the guidance contained in the applicable subsection. As an example, the cost of meals while in a travel status would normally be allowable if reasonable. However, the cost of alcoholic beverages associated

with a meal would be unallowable. In no case shall costs made specifically unallowable under one cost principle be made allowable under another cost principle.

8. Section 970.3102-2 is amended by adding a sentence at the end of paragraph (i)(2) introductory text and adding new paragraphs (i)(2) (iv), (v), (vi), and (p) to read as follows:

#### **970.3102-2 Compensation for personal services.**

\* \* \* \* \*

(i) \* \* \*

(2) \* \* \* In addition, paragraphs (i)(2)(iv) and (v) of this section apply if the severance cost is for foreign nationals employed outside the United States.

\* \* \* \* \*

(iv) Notwithstanding the provision of paragraph (c) of this section, which references geographic area, under 41 U.S.C. 256(e)(1)(M), the costs of severance payments to foreign nationals employed under a service contract performed outside the United States are unallowable to the extent that such payments exceed amounts typically paid to employees providing similar services in the same industry in the United States.

(v) Further, under 41 U.S.C. 256(e)(1)(N), the costs of severance payments referred to in paragraph (i)(2)(iv) of this section are unallowable if the termination of employment is the result of the closing of, or curtailment of, activities at a United States facility in that country at the request of the government of that country.

(vi) The Head of the Contracting Activity may waive the application of the provisions of (i)(2)(iv) and (v) of this section under the conditions specified in 48 CFR 970.25.

\* \* \* \* \*

(p) *Special compensation.* The following costs are unallowable:

(1) Special compensation to employees pursuant to agreements which permit payments in excess of the contractor's normal severance pay practices, if their employment terminates following a change in the management control over, or ownership of, the contractor or a substantial portion of its assets.

(2) Special compensation to employees pursuant to agreements which permit payments resulting from a change, whether actual or prospective, in the management control over, or ownership of, the contractor or a portion of its assets which is contingent upon the employee remaining with the contractor for a stated period of time.

9. Section 970.3102-5 is revised to read as follows:

#### **970.3102-5 Employee morale, health, welfare, food service, and dormitory costs.**

(a) Employee morale, health, and welfare activities are those services or benefits provided by the contractor to its employees to improve working conditions, employer-employee relations, employee morale, and employee performance. These activities include such items as house or employee publications, health or first-aid clinics, wellness/fitness centers, employee counseling services, awards for performance or awards made in recognition of employee achievements pursuant to an established contractor plan or policy, and, for the purpose of this section, food service and dormitory costs. However, these activities do not include, and should be differentiated from compensation for personal services as defined in 970.3102-2. Food and dormitory services include operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations, or similar types of services for the contractor's employees at or near the contractor's facilities or site of the contract work.

(b) Costs of recreation, registration fees of employees participating in competitive fitness promotions, team activities, and sporting events are unallowable, except for the costs of employees' participation in company sponsored intramural sports teams or employee' organizations designed to improve company loyalty, team work, or physical fitness.

(c) Except as limited by paragraph (d) of this section, the aggregate of costs incurred on account of all activities mentioned in paragraph (a) of this section, less income generated by all such activities, is allowable to the extent that the net aggregate cost of all such activities, as well as the net cost of each individual activity, is reasonable and allocable to the contract work. Additionally, advance understandings with respect to the costs mentioned in paragraph (a) of this section are to be reached prior to the incurrence of these costs as required in 48 CFR 970.3101-6.

(d) Losses from the operation of food or dormitory services may be included as costs incurred under paragraph (c) of this section only if the contractor's objective is to operate such services at least on a break-even basis. Losses sustained because food services or lodging accommodations are furnished without charge or at prices or rates which obviously would not be

conductive to accomplishment of this objective are not allowable, except in those instances where the contractor can demonstrate that unusual circumstances exist, such that, even with efficient management, operation of the services on a break-even basis would require charging inordinately high prices, or prices or rates higher than those charged by commercial establishments offering the same services in the same geographical areas. Typical examples of such unusual circumstances are:

(1) Where the contractor must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available, or

(2) Where it is necessary to operate a facility at a lower volume than the facility could economically support. Cost of food and dormitory services shall include an allocable share of indirect expenses pertaining to these activities.

(e) In those situations where the contractor has an arrangement authorizing an employee association to provide or operate a service such as vending machines in the contractor's plant, and retain the profits derived therefrom, such profits shall be treated in the same manner as if the contractor were providing the service, except as provided in paragraph (f) of this section.

(f) Contributions by the contractor to an employee organization, including funds set over from vending machines receipts or similar sources, may be included as cost incurred under paragraph (c) of this section, only to the extent that the contractor demonstrates that an equivalent amount of the costs incurred by the employee organization would be allowable, if incurred by the contractor directly.

10. Section 970.3102-7 is revised to read as follows:

**970.3102-7 Political activity costs.**

The following costs are unallowable, except for costs associated with providing information pursuant to 970.5204-17, unless approved by the contracting officer: Contractor costs incurred to influence either directly or indirectly—

(a) Legislative action on any matter pending before Congress, a State legislature, or a legislative body of a political subdivision of a State; or

(b) Federal, State, or local executive branch action on regulatory and contract matters, including costs incurred in regard to contract proposals.

11. Section 970.3102-17 Travel costs, is amended by revising the paragraph heading for (b) and by adding paragraph (b)(3) to read as follows:

**970.3102-17 Travel costs.**

\* \* \* \* \*

(b) Government-owned, commercial rental, and company-furnished vehicles.\* \* \*

(3) The costs of contractor-owned or -leased vehicles include the costs of lease, operation, maintenance, depreciation, insurance, and other similar costs. These costs are unallowable except as approved by the contracting officer. Except, no cost shall be allowed for the cost of company-furnished vehicles that are authorized for personal use by the employees.

\* \* \* \* \*

12. Section 970.3103 is amended by revising paragraph (b) to read as follows:

**970.3103 Contract clauses.**

\* \* \* \* \*

(b) The political activity cost prohibition clause at 48 CFR 970.5204-17 shall be included in all M&O contracts.

\* \* \* \* \*

13. Section 970.3272 is added to subpart 970.32 to read as follows:

**970.3272 Reduction or suspension of advance, partial, or progress payments.**

(a) The procedures prescribed at FAR 32.006 shall be followed.

(b) The agency head has delegated their responsibilities under this section to the Senior Procurement Executive.

(c) The remedy coordination official is responsible for receiving, assessing, and making recommendations to the Senior Procurement Executive.

(d) The contracting officer shall insert the clause at 48 CFR 970.5204-XX, Reduction or suspension of contract payments, in management and operating contracts.

14. Section 970.5204-13, Allowable costs and fixed-fee (Management and Operating contracts), is amended by revising clause paragraphs (d)(8)(iv), (e)(11), (e)(31); and adding new paragraphs (e) (37) and (38) to read as follows:

**970.5204-13 Allowable costs and fixed-fee (management and operating contracts).**

\* \* \* \* \*

(d) \* \* \*

(8) \* \* \*

(iv) Employee relations, welfare, morale, etc.; programs including incentive or suggestion awards; employee counseling services, health or first-aid clinics; house or employee publications; and wellness/fitness centers;

\* \* \* \* \*

(e) \* \* \*

(11) Entertainment, including costs of amusement, diversion, social activities; and directly associated costs such as tickets to shows or sports events, meals, lodging,

rentals, transportation, and gratuities; costs of membership in any social, dining or country club or organization.

\* \* \* \* \*

(31) Contractor costs incurred to influence either directly or indirectly—

(i) Legislative action on any matter pending before Congress, a State legislature, or a legislative body of a political subdivision of a State; or

(ii) Federal, State, or local executive branch action on regulatory and contract matters, including costs incurred in regard to contract proposals, as described in the "Political Activity Cost Prohibition" clause of this contract.

\* \* \* \* \*

(37) Costs of gifts; however, gifts do not include awards for performance or awards made in recognition of employee achievements pursuant to an established contractor plan or policy.

(38) The costs of recreation, registration fees of employees participating in competitive fitness promotions, team activities, and sporting events except for the costs of employees' participation in company sponsored intramural sports teams or employee organizations designed to improve company loyalty, team work, or physical fitness.

15. Section 970.5204-14 is amended by revising clause paragraphs (d)(8)(iv), (e)(9), (e)(29); and adding new paragraphs (e)(35) and (e)(36) to read as follows:

**970.5204-14 Allowable costs and fixed-fee (support contracts).**

\* \* \* \* \*

(d) \* \* \*

(8) \* \* \*

(iv) Employee relations, welfare, morale, etc.; programs including incentive or suggestion awards; employee counseling services, health or first-aid clinics; and house or employee publications; and wellness/fitness centers;

\* \* \* \* \*

(e) \* \* \*

(9) Entertainment, including costs of amusement, diversion, social activities; and directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities; costs of membership in any social, dining or country club or organization.

\* \* \* \* \*

(29) Contractor costs incurred to influence either directly or indirectly—

(i) Legislative action on any matter pending before Congress, a State legislature, or a legislative body of a political subdivision of a State; or

(ii) Federal, State, or local executive branch action on regulatory and contract matters, including costs incurred in regard to contract proposals are not allowable contract costs and shall not be reimbursed by DOE.

\* \* \* \* \*

(35) Costs of gifts; however, gifts do not include awards for performance or awards made in recognition of employee

achievements pursuant to an established contractor plan or policy.

(36) The costs of recreation, registration fees of employees participating in competitive fitness promotions, team activities, and sporting events except for the costs of employees' participation in company sponsored intramural sports teams or employee organizations designed to improve company loyalty, team work, or physical fitness.

16. Section 970.5204-16 is amended in the clause by removing **Notes 3 and 4** and revising paragraph (e) to read as follows:

**970.5204-16 Payments and advances.**

\* \* \* \* \*

(e)(i) *Review and approval of costs incurred.* The contractor shall prepare and submit annually as of September 30, a voucher for the total of net expenditures accrued (i.e., net costs incurred) for the period covered by the voucher. The contractor shall certify the voucher subject to the penalty provisions for unallowable costs as stated in sections 306(b) and (h) of the Federal Property and Administrative Services of 1949 (41 U.S.C. 256), as amended. DOE, after audit and appropriate adjustment, will approve such voucher. This approval by DOE will constitute an acknowledgment by DOE that the net costs incurred are allowable under the contract and that they have been recorded in the accounts maintained by the contractor in accordance with DOE accounting policies, but will not relieve the contractor of responsibility for DOE's assets in its care, for appropriate subsequent adjustments, or for errors later becoming known to DOE.

(ii) Nonintegrated contractors shall prepare and submit a voucher for the total of net expenditures incurred for the period covered by the voucher. It is anticipated that this will be an annual submission unless otherwise agreed to by the contracting officer. The contractor shall certify the voucher subject to the penalty provisions for unallowable costs as stated in sections 306 (b) and (h) of the Federal Property and Administrative Services of 1949 (41 U.S.C. 256), as amended.

\* \* \* \* \*

17. Section 970.5204-17 is amended by revising the section heading and clause heading and adding clause paragraph (a)(6) to read as follows:

**970.5204-17 Political activity cost prohibition.**

\* \* \* \* \*

**Political Activity Cost Prohibition (XXX 199X)**

(a) \* \* \*

(6) Contractor costs incurred to influence (directly or indirectly) Federal, State, or local executive branch action on regulatory and contract matters, including costs incurred in regard to contract proposals.

\* \* \* \* \*

18. Section 970.5204-XX is added to read as follows:

**970.5204-XX Waiver of limitations on severance payments to foreign nationals.**

As prescribed in 48 CFR 970.25, insert the following solicitation provision, or its alternate 1, clause:

Waiver of Limitations on Severance Payments to Foreign Nationals (XXXX 199X) Pursuant to Department of Energy

Acquisition Regulation (DEAR) 48 CFR 970.25, the cost allowability limitations in (DEAR) 48 CFR 970.3102-2(i), (iv) and (v) are waived for this contract.

*Alternate 1* (XXXX 199X). Substitute the following paragraph for the foregoing solicitation provision when the waiver of limitations to severance payments for foreign nationals has not been predetermined by the Department.

Pursuant to Department of Energy Acquisition Regulation (DEAR) 48 CFR 970.25, the Department will consider waiving the cost allowability limitations in (DEAR) 48 CFR 970.3102-2(i), (iv) and (v) for this contract.

19. Section 970.5204-YY is added to read as follows:

**970.5204-YY Reduction or suspension of advance, partial, or progress payments upon finding of substantial evidence of fraud.**

As prescribed in 48 CFR 970.3272, insert the following clause:

Reduction or Suspension of Advance, Partial, or Progress Payments (XXXX-199X)

(a) The contracting officer may reduce or suspend further advance, partial, or progress payments to the contractor upon a written determination by the Secretary that substantial evidence exists that the contractor's request for advance, partial, or progress payment is based on fraud.

(b) The contractor shall be afforded a reasonable opportunity to respond in writing.

[End of Clause]

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