

Department of Energy

§ 719.10

§ 719.4 Are law firms that are retained by the Department covered by this part?

Retained legal counsel under fixed rate or other type of contract with the Department itself to provide legal services must comply with the following where the legal costs over the life of the matter for which counsel has been retained are expected to exceed \$100,000:

- (a) Requirements related to staffing and resource plans in subpart B of this part,
- (b) Engagement letter requirements if legal work is contracted out, and
- (c) Cost guidelines in subpart D of this part.

§ 719.5 What contracts are not covered by this part?

This part does not cover:

- (a) Fixed price contracts;
- (b) Cost reimbursement contracts for an amount less than \$100,000,000; or
- (c) Contracts for an amount exceeding \$100,000,000 involving work not performed at a government owned or leased site.

§ 719.6 Are there any types of legal matters not included in the coverage of this part?

Matters not covered by this part include:

- (a) Matters handled by counsel retained by an insurance carrier;
- (b) Routine intellectual property law support services;
- (c) Routine workers and unemployment compensation matters and labor arbitrations; and
- (d) Routine matters handled by counsel retained through a GSA supply schedule.

§ 719.7 Is there a procedure for exceptions or deviations from this part?

- (a) Requests for exceptions or deviations from this part by contractors must be made in writing to Department counsel and approved by the General Counsel. If an alternate procedure is proposed for compliance with an individual requirement in this part, that procedure must be included in the written request by the contractor.
- (b) The General Counsel may authorize exceptions based on a recommenda-

tion of Department counsel. The General Counsel may also establish exceptions to this part based on current field office and contractor practices which satisfy the purpose of these requirements.

(c) Exceptions to this part which are also a deviation from the cost principles (see subpart D of this part) must be approved by the Procurement Executive. See 48 CFR (FAR) 31.101. Written requests from contractors for a deviation to a cost principle must be submitted to the contracting officer, with a copy provided to Department counsel.

Subpart B—Legal Management Plan

§ 719.10 What information must be included in the legal management plan?

The legal management plan must include the following items:

- (a) A description of the legal matters that may necessitate handling by retained legal counsel.
- (b) A discussion of the factors the contractor must consider in determining whether to handle a particular matter utilizing retained legal counsel.
- (c) An outline of the factors the contractor must consider in selecting retained legal counsel, including:
 - (1) Competition;
 - (2) Past performance and proficiency shown by previously retained counsel;
 - (3) Particular expertise in a specific area of the law;
 - (4) Familiarity with the Department's activity at the particular site and the prevalent issues associated with facility history and current operations;
 - (5) Location of retained legal counsel relative to:
 - (i) The site involved in the matter,
 - (ii) Any forum in which the matter will be processed, and
 - (iii) Where a significant portion of the work will be performed;
 - (6) Experience as an advocate in alternative dispute resolution procedures such as mediation;
 - (7) Actual or potential conflicts of interest; and

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(8) The means and rate of compensation (*e.g.*, hourly billing, fixed fee, blended fees, etc.).

(d) A description of:

(1) The system that the contractor will use to review each case to determine whether and when alternative dispute resolution is appropriate;

(2) The role of in house counsel in cost management;

(3) The contractor's process for review and approval of invoices from outside law firms or consultants;

(4) The contractor's strategy for interaction with, and supervision of, retained legal counsel;

(5) How appropriate interaction with the contracting officer and Department counsel will be ensured; and,

(6) The contractor's corporate approach to legal decision making.

§ 719.11 Who must submit a legal management plan?

Contractors identified under paragraphs (a) and (b) in § 719.3 must submit a legal management plan.

§ 719.12 When must the plan be submitted?

Contractors identified under paragraphs (a) and (b) in § 719.3 must submit a legal management plan within 60 days following the execution of a contract with the Department.

§ 719.13 Who at the Department must receive and review the plan?

The contractors identified under paragraphs (a) and (b) in § 719.3 must file a legal management plan with Department counsel.

§ 719.14 Will the Department notify the contractor concerning the adequacy or inadequacy of the submitted plan?

(a) The Department will notify the contractor within 30 days of the contractor's submission of the plan of any deficiencies relating to requirements in § 719.10.

(b) The contractor must either correct identified deficiencies within 30 days of notice of the deficiency or file a letter with the General Counsel disputing the determination of a deficiency.

10 CFR Ch. III (1–1–10 Edition)

§ 719.15 What are the requirements for a staffing and resource plan?

(a) For significant matters, the contractor must require retained legal counsel providing legal services to prepare a staffing and resource plan as provided in this section. The contractor must then forward the staffing and resource plan to Department counsel. Department retained counsel subject to this part must prepare a staffing and resource plan and forward it to Department counsel.

(b) A staffing and resource plan is a plan describing:

(1) Major phases likely to be involved in the handling of the matter;

(2) Timing and sequence of such phases;

(3) Projected cost for each phase of the representation; and

(4) Numbers and mix of resources, when applicable, that the retained legal counsel intends to devote to the representation.

(c) For significant matters in litigation, in addition to the generalized annual budget required by § 719.17 a staffing and resource plan must include a budget, broken down by phases, including at a minimum:

(1) Matter assessment, development and administration;

(2) Pretrial pleadings and motions;

(3) Discovery;

(4) Trial preparation and trial; and

(5) Appeal.

§ 719.16 When must the staffing and resource plan be submitted?

(a) For significant matters in litigation, the contractor or Department retained counsel must submit the staffing and resource within 30 days after the filing of an answer or a dispositive motion in lieu of an answer, or 30 days after a determination that the cost is expected to exceed \$100,000.

(b) For significant legal services matters, the contractor or Department retained counsel must submit the staffing and resource plan within 30 days following execution of an engagement letter.

(c) Contractors and Department retained counsel must submit updates to staffing and resource plans annually or sooner if significant changes occur in the matter.