

§ 719.41

§ 719.41 What information must be forwarded to the General Counsel's Office concerning contractor submissions to Department counsel under this part?

Department counsel must submit through the General Counsel reporting system, the approved costs and status updates for all matters involving retained counsel, including but not limited to contractor litigation. The reports are to be received by the 15th day of the month following the end of each quarter of the fiscal year.

§ 719.42 What types of field actions must be coordinated with Headquarters?

(a) Requests from contractors for exception from this entire part must be coordinated with Headquarters.

(b) Requests from contractors for approval to initiate or defend litigation, or to appeal from adverse decisions, where legal issues of first impression, sensitive issues, issues of significance to the Department nationwide or issues of broad applicability to the Government that might adversely impact its operations are involved must be coordinated by Department counsel with the Deputy General Counsel for Litigation or his/her designee.

(c) Department field counsel must inform the General Counsel of any significant matter, as defined in this part, and must coordinate any action involving a significant matter with the General Counsel, or his/her designee, as directed by the General Counsel or his/her designee.

APPENDIX TO PART 719—GUIDANCE FOR LEGAL RESOURCE MANAGEMENT

Management and Administration of Outside Legal Services

- 1.0 Initiation of Litigation
- 2.0 Defense of Litigation
 - 2.1 Disapproval of Defensive Litigation
 - 3.0 Notice to the Department of Significant Matters and Litigation
- 4.0 Alternative Dispute Resolution
- 5.0 Cost Allowability Issues
- 5.1 Underlying Cause for Incurrence of Costs
- 5.2 Fees and Other Charges
- 6.0 Role of Department Counsel as the Contracting Officer's Representative
- 7.0 Future Amendments to Guidance

10 CFR Ch. III (1–1–10 Edition)

Attachment—Contractor Litigation and Legal Costs, Model Bill Certification and Format

Management and Administration of Outside Legal Services

This guidance is intended to assist contractors and the Department's contracting officers and counsel in managing the costs of outside legal services. This guidance is also intended to assist retained legal counsel who provide services to the Department or to the Department's contractors.

1.0 Initiation of Litigation

(A) The Insurance—Litigation and Claims clause (48 CFR (DEAR) 970.5228–1) in the Department's facility management contracts provides that the contractor may not initiate litigation, including appeals from adverse decisions, without the prior authorization or approval of Department counsel acting in his/her capacity as the Department's contracting officer representative. The following are the minimum informational requirements for requests for authorization or approval under that clause:

- (1) Identification of the proposed parties;
- (2) The nature of the proposed action;
- (3) Relief sought;
- (4) Venue;
- (5) Proposed representation and reason for selection;
- (6) An analysis of the issues and the likelihood of success, and any time limitation associated with the requested approval;
- (7) The estimated costs associated with the proposed action, including whether outside counsel has agreed to a contingent fee arrangement;
- (8) Whether, for any reason, the contractor will assume any part of the costs of the action;
- (9) A description of any attempts to resolve the issues that would be the subject of the litigation, such as through mediation or other means of alternative dispute resolution; and
- (10) A discussion of why initiating litigation would prove beneficial to the contractor and to the Government.

(B) Department counsel should advise the contracting officer concerning each request and must provide assistance to the contracting officer in communicating the Department's decision to the contractor.

2.0 Defense of Litigation

(A) In accordance with the Insurance—Litigation and Claims clause, the contractor must immediately notify Department counsel, acting in his/her capacity as contracting officer representative, of the initiation of litigation against the contractor. Department counsel will advise the contractor as to: