

## Department of Energy

## 970.3102-05-6

procedures for penalty assessment provisions and the related clause prescription.

[65 FR 81009, Dec. 22, 2000, as amended at 74 FR 36373, July 22, 2009]

### 970.3102-3-70 Home office expenses.

(a) For on-site work, DOE's fee for management and operating contracts, determined under the policy of and calculated per the procedures in 970.1504-1-3, generally provides adequate compensation for home or corporate office general and administrative expenses incurred in the general management of the contractor's business as a whole.

(1) DOE recognizes that some Home Office Expenses are incurred for the benefit of a management and operating contract. DOE has elected to recognize that benefit through fee due to the difficulty of determining the dollar value applicable to any management and operating contract. The difficulty arises because:

(i) The general construct of a management and operating contract results in minimal Home Office involvement in the contract work, and

(ii) Conventional Home Office Expense allocation techniques that use bases such as total operating costs, labor dollars, hours etc., are not appropriate because they inherently assume significant contractor investment (in terms of its own resources, such as, labor, material, overhead, etc.). Contractor investments are minimal under DOE's operating and management contracts. The contracts are totally financed by DOE advance payments, and DOE provides government-owned facilities, property, and other needed resources.

(2) From time to time, the fee for a management and operating contract may not be adequate compensation for Home Office Expenses incurred for the benefit of the contract. An indication that such a case exists is the need for significant home office support to deal with issues at the site that occur without the fault or negligence of the contractor, for example, the need for home office legal support to deal with third party, environmental, safety, or health issues.

(3) In such a case, the contracting officer, after obtaining the HCA's ap-

proval, may consider a contractor request for additional compensation. The contractor may request—

(i) Fee in addition to its normal fee (but see 970.1504-1-3(b)(1) if the contract is for the management and operation of a laboratory); or

(ii) Compensation on the basis of actual cost.

(4) Because the contract's fee provides some compensation for Home Office Expenses, the contractor's request for additional compensation must always be for an amount less than the Home Office Expenses that are incurred for the benefit of the management and operating contract.

(b) For off-site work, the DOE allows Home Office Expenses under architect-engineer, supply and research contracts with commercial contractors performing the work in their own facilities. Home Office Expenses may, however, be included for reimbursement under such DOE off-site architect-engineer, supply and research contracts, only to the extent that they are determined, after careful examination, to be allowable, reasonable, and properly allocable to the work. Work performed in a contractor's own facilities under a management and operating or construction contract may likewise be allowed to bear the properly allocable portion of allowable Home Office Expenses.

[65 FR 81009, Dec. 22, 2000, as amended at 74 FR 36373, July 22, 2009]

### 970.3102-05 Selected costs.

#### 970.3102-05-4 Bonding costs.

(d) The allowability of bonding costs shall be determined pursuant to 970.5228-1, Insurance-litigation and claims.

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#### 970.3102-05-6 Compensation for personal services.

(a)(6) In determining the reasonableness of compensation, the compensation of each individual contractor employee normally need not be subjected to review and approval. Generally, the compensation paid individual employees should be left to the judgment of contractors subject to the limitations