

**Subpart WW—Washington**

2. Section 52.2470 is amended by adding paragraph (c) (76) to read as follows:

**§ 52.2470 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(76) On March 24, 1989, the Washington Department of Ecology submitted a plan for attaining and maintaining the NAAQS for PM10 in the Yakima PM10 moderate nonattainment area requesting EPA's review and approval. The plan was amended with additional submittals between 1992 and 1995.

(i) Incorporation by reference.

(A) The attainment plan is contained in the following documents: a submittal of March 24, 1989, adopted that same date, from Washington State Department of Ecology, titled, *State Implementation Plan for Particulate Matter—Yakima Area A Plan for Attaining and Maintaining the National Ambient Air Quality Standard for PM10*; a supplement to the plan adopted August 19, 1992, titled, *Supplement State Implementation Plan for Particulate Matter (PM10) in Yakima, WA* and an addendum adopted February 3, 1994 on contingency measures.

(B) Portions of Restated Regulation I of the Yakima County Clean Air Authority, effective December 15, 1995, including Article I; Article II except Section 2.01; Article III; Article IV; Article V except Section 5.09; Article VIII; Article IX; Article XI; Article XII except Section 12.02; and, Article XIII except Sections 13.04 and 13.05.

(ii) Additional material:

(A) August 19, 1992: A modeling and inventory supplement to the original plan.

(B) March 10, 1995: A supplemental information package primarily on emissions and modeling.

(C) June 27, 1995: A supplemental letter on monitoring, public notice and emissions.

(D) August 17, 1995: A supplemental emissions analysis.

(E) November 3, 1995: More emissions analysis and the maintenance demonstration.

[FR Doc. 98-2492 Filed 1-30-98; 8:45 am]

BILLING CODE 6560-50-F

**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: Final rule.

**SUMMARY:** The Department of Energy (DOE) amends 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 establish the responsibilities of the remedy coordination official within the Department.

**DATES:** This final rule is effective March 4, 1998.

**FOR FURTHER INFORMATION CONTACT:** Terrence D. Sheppard, Office of Policy (HR-51), Office of Procurement and Assistance Policy, Department of Energy, 1000 Independence Avenue S.W., Washington, D.C. 20585, (202) 586-8193 (Phone), (202) 586-0545 (Facsimile), terry.sheppard@hq.doe.gov (Internet).

**SUPPLEMENTARY INFORMATION:**

I. Background

II. Resolution of Comments

III. 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
- G. Review Under Small Business Regulatory Enforcement Fairness Act of 1996
- H. Review Under the Unfunded Mandates Reform Act of 1995

**I. Background**

On June 4, 1997 the Department of Energy published in the **Federal Register** (62 FR 30558) a notice of proposed rulemaking to amend the Department's acquisition regulations based on selected 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.

The public comment period closed August 4, 1997. The Department received comments from three entities. Today's final rulemaking adopts the amendments in the notice of proposed rulemaking with certain changes discussed under the Resolution of Comments section.

**II. Resolution of Comments**

Three entities responded with 20 total comments. A comment resolution package has been prepared and is part of the file. The Department has considered and evaluated all the comments received during the comment period. Comments that resulted in changes to the proposed rulemaking are summarized below.

*Comment:* It was stated that, as written, the proposed language under Political Activity Costs addressing unallowable costs associated with attempting to influence executive or legislative actions could be construed to make unallowable the costs of negotiations.

*Response:* Concur. DOE has modified its coverage by deleting a portion of the last sentence of the proposed coverage. The final rule makes the following changes to the June 4, 1997, proposed rulemaking: 970.3102-7(b), 970.5204-13(e)(31)(ii), 970.5204-14(e)(29)(ii), and 970.5204-17(a)(6) were revised by deleting language which addressed costs associated with proposals.

*Comment:* Proposed changes to the Payments and Advances clause, 970.5204-16, would complicate other DOE efforts at streamlining.

*Response:* Concur. The proposed change has been deleted from the final rulemaking.

*Comment:* As written, DOE appears to disallow the cost of local travel at 970.3102-17.

*Response:* It was not our intent to disallow the costs of local business travel and we do not believe we have done so. However, the coverage could be clearer. Accordingly, DOE has modified its proposed coverage to ensure a distinction between company-furnished automobiles used for company business, which can be allowable if approved by the contracting officer and personal use of company

furnished automobiles. It does prohibit, as does FAR 31.205-46(f), that portion of the costs that relate to personal use. DEAR 970.3102-17(b)(3) was revised by clarifying the distinction between costs of company-furnished automobiles that can be allowable if approved by the contracting officer and the cost of company-furnished automobiles.

### III. 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 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 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.

#### G. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, the Department of Energy will report to Congress promulgation of the rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(3).

#### H. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) generally requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a Federal Mandate with costs to State, local or tribal governments, or to the private sector, of \$100 million or more.

This rulemaking only affects private sector entities, and the impact is less than \$100 million.

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

Government procurement.

Issued in Washington, D.C. on January 5, 1998.

**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 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, Pub. L. 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.****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 970.5204-84, 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 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 this 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 50 U.S.C. 1215.

(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) The Head of the contracting Activity 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 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 paragraphs (i)(2)(iv) and (v) of this section under the conditions specified in subpart 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 conducive to operation on a break-even basis 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 executive body of a political subdivision of a State action on regulatory and contract matters.

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. That portion of the

cost of company-furnished automobiles that relates to personal use by employees, including transportation to and from work is unallowable.

\* \* \* \* \*

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 read as follows:

**Subpart 970.32—Contract Financing**

**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 970.5204-85, 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 executive body of a political subdivision of a State action on regulatory and contract matters 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 as described in the "Political Activity Cost Prohibition" clause of this contract.

\* \* \* \* \*

(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 970.5204-17 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 (Dec. 1997)

(a) \* \* \*

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

\* \* \* \* \*

17. Section 970.5204-84 is added to read as follows:

**970.5204-84 Waiver of limitations on severance payments to foreign nationals.**

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

Waiver of Limitations on Severance Payments to Foreign Nationals (Dec. 1997).

Pursuant to Department of Energy Acquisition Regulation (DEAR) subpart 970.25, the cost allowability limitations in (DEAR) subpart 970.3102-2(i)(iv) and (v) are waived for this contract.

Alternate 1 (Dec. 1997). 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) subpart 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.

18. Section 970.5204-85 is added to read as follows:

**970.5204-85 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 (Dec. 1997)

(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]

[FR Doc. 98-2049 Filed 1-30-98; 8:45 am]

BILLING CODE 6450-01-P