

Prescription: Insert in all management and operating (M&O) contracts, non-M&O major site and facility contracts, and contracts that include DOE Order 350.1.

For use in M&O and non-M&O cost reimbursement solicitations and contracts where work had been previously performed under a DOE M&O contract and the successor Contractor is required to employ all or part of the former Contractor's workforce and assumed the management and administration of long-tailed insurance claims (i.e., post closure insured/self-insured claims) that survive performance of the contract work scope. Contracts in this latter category include, but are not limited to, environmental remediation, infrastructure services and other site-specific project completion contracts.

Clause DOE-H-2073, Risk Management and Insurance Programs (DEC 2014)

Contractor officials shall ensure that the requirements set forth below are applied in the establishment and administration of DOE-funded prime cost reimbursement contracts for management and operation of DOE facilities and other designated long-lived onsite contracts for which the contractor has established separate operating business units.

## 1. BASIC REQUIREMENTS

- (a) Maintain commercial insurance or a self-insured program, (i.e., any insurance policy or coverage that protects the contractor from the risk of legal liability for adverse actions associated with its operation, including malpractice, injury, or negligence) as required by the terms of the contract. Types of insurance include automobile, general liability, and other third party liability insurance. Other forms of coverage must be justified as necessary in the operation of the Department facility and/or the performance of the contract, and approved by the DOE.
  
- (b) Contractors shall not purchase insurance to cover public liability for nuclear incidents without DOE authorization (See DEAR 970.5070, Indemnification, and DEAR 950.70, Nuclear Indemnification of DOE Contractors).

- (c) Demonstrate that insurance programs and costs comply with the cost limitations and exclusions at FAR 28.307, Insurance Under Cost Reimbursement Contracts, FAR 31.205-19, Insurance and Indemnification, DEAR 952.231-71 Insurance-Litigation and Claims, and DEAR 970.5228-1, Insurance-Litigation and Claims.
  
- (d) Demonstrate that the insurance program is being conducted in the government's best interest and at reasonable cost.
  
- (e) The contractor shall submit copies of all insurance policies or insurance arrangements to the Contracting Officer no later than 30 days after the purchase date.
  
- (f) When purchasing commercial insurance, the contractor shall use a competitive process to ensure costs are reasonable.
  
- (g) Ensure self-insurance programs include the following elements:
  - (1) Compliance with criteria set forth in FAR 28.308, Self-Insurance. Approval of self-insurance is predicated upon submission of verifiable proof that the self-insurance charge does not exceed the cost of purchased insurance. This includes hybrid plans (i.e., commercially purchased insurance with self-insured retention (SIR) such as large deductible, matching deductible, retrospective rating cash flow plans, and other plans where insurance reserves are under the control of the insured). The SIR components of such plans are self-insurance and are subject to the approval and submission requirements of FAR 28.308, as applicable.
  
  - (2) Demonstration of full compliance with applicable state and federal regulations and Related professional administration necessary for participation in alternative insurance programs.

- (3) Safeguards to ensure third party claims and claims settlements are processed in accordance with approved procedures.
  
- (4) Accounting of self-insurance charges.
  
- (5) Accrual of self-insurance reserve. The Contracting Officer's approval is required and predicated upon the following:
  - (i) The claims reserve shall be held in a special fund or interest bearing account.
  
  - (ii) Submission of a formal written statement to the Contracting Officer stating that use of the reserve is exclusively for the payment of insurance claims and losses, and that DOE shall receive its equitable share of any excess funds or reserve.
  
  - (iii) Annual accounting and justification as to the reasonableness of the claims reserve submitted for Contracting Officer's review.
  
  - (iv) Claim reserves, not payable within the year the loss occurred, are discounted to present value based on the prevailing Treasury rate.
  
- (h) Separately identify and account for interest cost on a Letter of Credit used to guarantee self-insured retention, as an unallowable cost and omitted from charges to the DOE contract.
  
- (i) Comply with the Contracting Officer's written direction for ensuring the continuation of insurance coverage and settlement of incurred and/or open claims and payments of premiums owed or owing to the insurer for prior DOE contractors.

2. PLAN EXPERIENCE REPORTING. The Contractor shall:

(a) provide the Contracting Officer with annual experience reports for each type of insurance (e.g., automobile and general liability), listing the following for each category:

(1) The amount paid for each claim.

(2) The amount reserved for each claim.

(3) The direct expenses related to each claim.

(4) A summary for the year showing total number of claims.

(5) A total amount for claims paid.

(6) A total amount reserved for claims.

(7) The total amount of direct expenses.

(b) provide the Contracting Officer with an annual report of insurance costs and/or self- insurance charges. When applicable, separately identify total policy expenses (e.g., commissions, premiums, and costs for claims servicing) and major claims during the year, including those expected to become major claims (e.g., those claims valued at \$100,000 or greater).

- (c) provide additional claim financial experience data as may be requested on a case-by- case basis.

3. TERMINATING OPERATIONS. The Contractor shall:

- (a) ensure protection of the government's interest through proper recording of cancellation credits due to policy terminations and/or experience rating.
- (b) identify and provide continuing insurance policy administration and management requirements to a successor, other DOE contractor, or as specified by the Contracting Officer.
- (c) reach agreement with DOE on the handling and settlement of self-insurance claims incurred but not reported at the time of contract termination; otherwise, the contractor shall retain this liability.

4. SUCCESSOR CONTRACTOR OR INSURANCE POLICY CANCELLATION. The Contractor shall:

- (a) obtain the written approval of the Contracting Officer for any change in program direction; and
- (b) ensure insurance coverage replacement is maintained as required and/or approved by the Contracting Officer.

(End of Clause)