

## Department of Energy

## § 719.12

### **§ 719.8 Does the provision of protected documents from the contractor to the Department constitute a waiver of privilege?**

Contractors are required to provide detailed information about third-party claims and litigation to the Department. The Department and its contractors typically share common legal and strategic interests relating to pending or threatened litigation. The common interest between the parties is primarily rooted in the fact that the Department reimburses contractors for allowable costs incurred when litigation is threatened or initiated against contractors. However, other sources of the common interest between the Department and its contractors may include, but are not limited to, an interest in completion of the agency's important mission work and an interest in safe and efficient operation of the Department's facilities. To the extent documents associated with compliance with this part (e.g., Staffing and Resource Plans, invoices, engagement letters, settlement authority requests, and draft pleadings) are protected from disclosure to third parties because the items constitute attorney work product and/or involve attorney client communications, the contractor's provision of these items to the Department does not constitute a waiver of privilege. As long as the Department and the contractor share a common interest in the outcome of legal matters, this mutual legal interest permits the parties to share privileged material without waiving any applicable privilege.

## **Subpart B—Legal Management Plan, Staffing and Resource Plan and Annual Legal Budget**

### **§ 719.10 Who must submit a Legal Management Plan?**

Contractors who are parties to contracts identified under § 719.3(a) and (b) must submit a Legal Management Plan.

### **§ 719.11 When must a Legal Management Plan be submitted or revised?**

(a) Contractors must submit a Legal Management Plan to Department

Counsel within 60 days following award of the contract. The deadline for submitting the Legal Management Plan may be extended by Department Counsel.

(b) Contractors must submit a revised Legal Management Plan upon request of Department Counsel within 60 days of receipt of the Department Counsel's request. The request for a revised Legal Management Plan shall include an explanation of the request. The deadline for submitting the Legal Management Plan may be extended by the Department Counsel.

### **§ 719.12 What information must be included in the Legal Management Plan?**

The Legal Management Plan must include the following items:

(a) A description of the contractor's in-house counsel resources at the time the Legal Management Plan is submitted, including areas of expertise and an explanation of the types of matters expected to be handled in-house.

(b) A description of the legal matters that may necessitate engagement of retained legal counsel.

(c) A description of the factors the contractor will consider in determining whether to handle a particular matter utilizing retained legal counsel.

(d) An outline of the factors the contractor must consider in selecting retained legal counsel, including:

- (1) Cost;
- (2) Past performance of 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) The location 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