

## ATTACHMENT

### J.4 LEGAL MANAGEMENT PLAN

1. **Retention of Counsel:** Contractor has determined that the following legal matters may necessitate handling by retained counsel:
  - a. Any matter appealed to the Board of Industrial Insurance Appeals (BIIA) or any higher level court by the Claimant;
  - b. Any matter which Contractor/DOE determines should be appealed to BIIA or any higher level court;
  - c. Any matter involving complex or novel issues, which may require the expertise of an attorney, even if the matter is still pending before the Department of Labor & Industries (L&I);
  - d. Any matter in which Contractor believes DOE's interests are best served through having legal representation.
  
2. **Utilization of Outside Counsel:** The following factors are to be considered when determining whether to utilize retained counsel for a particular legal matter:
  - a. The strength of DOE's position and possible negative precedent that may result from failing to retain counsel to pursue the matter;
  - b. The potential ultimate exposure to DOE for payment of benefits;
  - c. Likelihood of prevailing; and
  - d. The projected costs for legal services to pursue litigation.
  
3. **Selection Criteria:** In selecting retained counsel, the following factors have been considered:
  - a. How competitive the attorney's rates and results are, compared to other attorneys in the relevant geographic area;
  - b. The attorney's reputation for performance and proficiency in handling workers' compensation claims in the State of Washington;
  - c. The extent of the attorney's expertise and years of practice;
  - d. The attorney's familiarity with DOE activities at the Hanford Site, including various issues unique to the operations at Hanford;
  - e. The attorney's geographic location relative to the location of the Hanford Site and the location of the tribunal handling the matter;
  - f. Any potential conflict(s) of interest; and
  - g. The attorney's means and rates of compensation.

4. **Current Outside Counsel Approved for Retention:** After taking the above enumerated factors into consideration, Contractor has selected and retained, the following attorneys approved under the prior third party administrator's contract:

Wallace, Klor, Mann P.C.  
5800 Meadows Road, Suite 220  
Lake Oswego, Oregon 97035

Mark Dynan, Esq.  
2102 N Pearl Suite D400  
Tacoma, WA 98406

The rates that have been negotiated with each firm for the attorneys and staff which are authorize to perform services on behalf of the Contractor and DOE shall be listed in the Engagement Letter. These rates may not be changed without DOE approval.

5. **Approval of New Outside Counsel and Letter of Engagement:** Should Contractor decide to utilize the services of an attorney not listed above, Contractor will do so only after careful consideration of the factors set forth above. Furthermore, Contractor will secure DOE approval of such retained counsel and will obtain counsel's agreement to abide by all requirements imposed by DOE and Contractor in an Engagement Letter. In determining which attorney will be assigned a particular matter, Contractor will primarily consider the geographical location of the attorney and the nature of the legal issues to be addressed.

Whenever new counsel is retained, they will receive an Engagement Letter from Contractor, requesting his/her services on a particular matter. The Engagement Letter will be from the adjuster handling that matter, and it will include the names and negotiated rates for each attorney and staff person that will be authorized to perform services on Contractor/DOE's behalf. Any increase in rates must be approved by DOE. Contractor will address all service instructions in this LMP with the approved attorney(s) through the Letter of Engagement, which will direct that the Contractor/DOE expect that every member of the firm who is authorized to perform services will read and acquire an understanding of the Engagement Letter. A copy of the executed Engagement Letter must be submitted to the COR within a reasonable time following execution, but not later than fourteen (14) days.

The engagement letter will specify that the attorney must copy all pleadings and correspondence to Contractor's Program Manager and that costs for legal

services on any particular matter may not exceed \$25,000.00 without prior written approval from Contractor.

If retained counsel anticipates exceeding \$25,000.00 in costs for legal services on a particular matter, he/she will be required to submit a letter outlining a history of the matter, identifying the current stage of litigation, analyzing the potential outcome(s) should the matter proceed forward, summarizing their recommendations for further action, and providing a detailed estimate of the costs which may be incurred if the matter proceeds forward. This letter will be sent to Contractor's Program Manager, who will review and then forward to Contracting Officer's Representative (COR) for review and approval. If approval is granted by DOE, then Contractor's Richland Program Manager will notify retained counsel accordingly.

In addition, the engagement letter will include the following: A statement that provision of records to the Government is not intended to constitute a waiver of any applicable legal privilege, protection, or immunity with respect to disclosure of such records to third parties; notification that the Contractor, DOE, and the Government Accountability Office have the right to inspect, copy, and audit all records documenting billable fees and costs; and, a statement that all records must be retained for a period of six (6) years and three (3) months after the final payment or after final case disposition, whichever is later.

Contractor will secure agreements from retained counsel to follow appropriate billing format as set forth in "Attachment – Contractor Litigation and Legal Costs, Model Bill Format" of Appendix A to 10 CFR Part 719, and to submit invoices on a monthly basis. The engagement letter will not address "significant matters" as defined in 10 CFR Part 719 because it is highly unlikely that any one case will result in legal fees in excess of \$100,000.00. Contractor and DOE recognize that there is a mediation proceeding once the matter is referred to the BIIA and that Alternative Dispute Resolution (ADR) is not a part of this process of adjudication.

6. **Litigation Management and Cost Containment:**

- a. To ensure effective litigation management and cost containment, Contractor's Program Manager will be copied on any and all correspondence to and from retained counsel, as well as all pleadings and other correspondence submitted by retained counsel in any particular matter.
- b. All retained counsel will be required to timely submit invoices for their services in accordance with DOE and Contractor requirements. Each invoice will be reviewed by the adjuster handling the particular file or by

the adjuster's manager to determine if the invoice meets the requirements of the Engagement Letter Any questions may be addressed with retained counsel. Once Contractor is satisfied that the invoice is acceptable, Contractor will approve same and forward to DOE for review and approval. Each invoice will be accompanied by a cover sheet requesting approval and indicating if the invoice costs are related to a Superior Court claim.

- c. Contractor will provide a year-end report on legal costs within 30 days of the end of each fiscal year.
- d. Contractor will engage in frequent interaction with and provide continuous oversight of retained counsel, to include the following:
  - (1) All correspondence and pleadings will be copied to Contractor's Program Manager;
  - (2) All correspondence and pleadings will be copied to the adjuster;
  - (3) All correspondence and pleadings will be reviewed by adjuster and Program Manager;
  - (4) Retained counsel will provide a quarterly status report on all open files;
  - (5) Periodic communication via telephone and/or e-mail will take place as needed between retained counsel and Contractor; and
  - (6) Retained counsel will be responsive to any inquiries from Contractor and/or DOE.
- e. Contractor will attempt to ensure appropriate interaction between retained counsel and DOE's Contracting Officer Representative (COR), Contracting Officer (CO) and DOE/RL Counsel through the following:
  - (1) Periodic meetings with on-site DOE contractors and DOE's COR;
  - (2) Contractor will act as liaison between retained counsel and DOE's CO and DOE/RL Counsel, and will ensure open and effective communication; and
  - (3) Contractor notification to DOE/RL Counsel and/or DOE CO and/or COR regarding any litigation issues which may be particularly sensitive or potentially problematical.

- 7. **Approach to Legal Decision Making**: Contractor's approach to legal decision making is to at all times proceed in a manner that protects the interests of DOE, and to do so in a fair and lawful manner, in accordance with

the applicable statutes, rules, and regulations by the State of Washington. Implementation of this approach will be accomplished as follows:

When an adjuster or manager identifies a situation which may require legal analysis or which is indicative of the need for legal representation, Contractor's Program Manager will be provided a memorandum which outlines the potential legal issues. Contractor's Program Manager will then review the matter and determine whether it needs to be forwarded for review by DOE. If so, the Program Manager will advise the COR of the situation and provide recommendations and/or request guidance if needed. In certain circumstances, Contractor's Program Manager will contact the COR regarding the matter. Contractor will then take whatever action is authorized or directed by DOE.

- b. Prior to participating in settlement discussions or alternative dispute resolution regarding any workers' compensation litigation arising under this Contract, the Contractor shall seek written approval by the Contracting Officer. The Contractor's retained counsel shall provide justification for any proposed settlement or alternative dispute resolution via the Contractor to the Department of Energy Richland Operations Chief Counsel. Contractor shall provide the justification in sufficient time prior to the proposed settlement discussions or alternative dispute resolution to allow for Contracting Officer review and approval.
8. **Revisions:** This Legal Management Plan will be updated or modified on an as-needed basis.