



ACQUISITION LETTER

This Acquisition Letter is issued under the authority of the Senior Procurement Executives of DOE and NNSA. It is intended for use by procurement professions of DOE and NNSA, primarily Contracting Officers, and other officials of DOE and NNSA that are involved in the acquisition process. Other parties are welcome to its information, but definitive interpretations of its effect on contracts, and related procedures if any, may only be made by DOE and NNSA Contracting Officers.

Subject: Home Office Expenses for Management and Operating Contracts

References:

DEAR 970.3102-3-70	Home office expenses
FAR 15.404-1	Proposal analysis techniques
FAR 31.109	Advance agreements
FAR Appendix B Subpart 9904.403	Allocation of home office expenses to segments

When Is this Acquisition Letter (AL) Effective?

This AL is effective immediately upon issuance.

When Does this AL Expire?

This AL remains in effect until superseded or canceled.

Who Is the Intended Audience For this AL?

Department of Energy (DOE) Contracting Officers who are responsible for determining the allowability, if any, and amount of home office expense under management and operation (M&O) contracts are the audience for this AL.

Who Is the Point of Contact For this AL?

Contact Michael Righi of the Contract and Financial Assistance Policy Division, Office of Policy, Office of Procurement and Assistance Management at (202) 287-1337 or at Michael.Righi@hq.doe.gov.

Need More Information on ALs?

Visit the website at <http://energy.gov/management/office-management/operational-management/procurement-and-acquisition/guidance-procurement> for information on Acquisition Letters and other policy issues.

What Is the Purpose Of this AL?

DOE Acquisition Regulation (DEAR) 970.3102-3-70, “Home office expenses,” establishes DOE policy for reimbursement of home office expenses under a M&O contract. This AL provides application guidance to contracting officers on how to: (1) determine if they should reimburse any home office expenses; (2) calculate a reasonable amount in advance (fixed amount or ceiling) for such expenses; (3) document the rationale for their determinations and calculations; (4) obtain appropriate reviews; and (5) ensure they pay only for what they negotiated.

What Types of Contracts Are Affected by this AL?

This AL applies only to M&O contracts.

What Is the Background Of this AL?

DEAR 970.3102-3-70

DOE Policy is based on the assumption that the M&O contract structure obviates the need for routine contractor home office involvement. However, in accordance with DEAR 970.3102-3-70, “Home office expenses,” the contracting officer may, with Head of Contracting Activity (HCA) approval, consider a contractor’s request for additional compensation when there is more than minimal home office involvement in the M&O contract work that is not due to the fault or negligence of the contractor, and the request meets all of the other criteria for allowability under the Federal Acquisition Regulation (FAR) and DEAR. Examples could include home office legal support to deal with third party, environmental, safety, or health issues and corporate oversight to ensure strict adherence to critical DOE policies. (NOTE: The HCA’s approval to consider a contractor’s request is not approval to agree to an amount with the contractor; see “Procurement Executive Review” paragraph.)

Any additional compensation a contracting officer approves shall be only for non-routine contractor home office involvement in the M&O contract effort. The additional compensation may be in the form of “fee in addition to normal fee” or in the form of “compensation on the basis of actual cost.” In practice, the former form is seldom used, and activities that recognize some home office expenses typically utilize ceilings (reimburse the contractor’s home actual office expenses up to a amount that was determined in advance) or fixed amounts (establish, in advance, an amount the contractor will receive for home office expenses that does not depend on the costs the contractor subsequently actually incurs). Since the decision making process for determining additional compensation on the basis of actual cost is the same as the process for determining additional fee, this AL does not discuss fee separately.

Office of Inspector General (OIG) Reports

The OIG has questioned the effectiveness of the contracting officer’s/field chief financial officer’s: reviews of contractors’ requests for consideration of additional compensation for home office expenses; analyses of the structure of home office expenses; determinations of ceilings or fixed amounts for

approved expenses; documentation of the rationale for agreeing to such ceilings or fixed amounts; and reimbursements of actual costs under negotiated ceilings.

The OIG has found a lack of documentation of the distinction between home expenses and other expenses and fees that contracting activities were paying, causing a risk that home office expenses reimbursed under one category of cost could be recognized again under another category, such as additional fee or in the guise of another form of cost.

The OIG has also found potentially unallowable costs in some contractors' billings.

What Guidance Included in this AL?

1. What's new for Contracting Officers?

The following paragraphs (titled General, Review and Analysis, Reimbursement, Documentation, Senior Procurement Executive Review, and Audit) inform the contracting officer of the officials who must be involved (the field chief financial officer (CFO), the HCA, the Senior Procurement Executive, and audit personnel) in a home office expense determination, how to make the determination, and what must be documented.

General

A contracting officer's first responsibility in managing home office expenses is to assess whether the contractor's request meets the requirements of DEAR for paying any additional compensation at all. If it does, the contracting officer must negotiate in advance the specific activity costs eligible for reimbursement that are reasonable and otherwise allowable costs under the contract. The eligible amount may be in the form of a reimbursement of actual costs up to a ceiling or a fixed amount based on an informed estimate of the costs expected to be incurred.

The contracting officer must ensure that in agreeing to the reimbursement of costs for home office expenses that such reimbursement does not duplicate other reimbursements for the same expenses; therefore, the contracting officer must be cognizant of the distinction between home expenses and other expenses and fees that the contractor receives under the contract. Home office expenses reimbursed under one category of cost may not be recognized in any other form of compensation under the contract.

Review and Analysis

Considering the Contractor's Request:

The contracting officer shall review a contractor's request consistent with the requirements of DEAR 970.3102-3-70 (including its requirement to obtain the HCA's approval). In order for its request to be eligible for approval, the contractor must demonstrate that: there is more than minimal home office involvement in the M&O contract work that is not due to the fault or negligence of the contractor; and the request meets all of the other criteria for allowability under the FAR and DEAR.

Form and Amount of Reimbursement:

Reimbursement of home office expenses that meet the criteria of DEAR may be in the form of either actual allowable costs incurred, up to a ceiling, or an agreed to fixed amount based upon an estimate of the allowable costs that will be incurred during the contract.

Reimbursement of actual costs up to a ceiling

The contracting officer, in consultation with the field CFO, shall approve contractor requests for reimbursement of home office expenses on the basis of actual costs consistent with DEAR 970.3102-3-70. An advance agreement (FAR 31.109) shall be established that identifies with reasonable specificity the costs that may be reimbursed consistent with the contracting officer's determination that the costs meet the criteria of DEAR 970.3102-3-70. In no case shall the contracting officer approve reimbursement of costs inconsistent with the DEAR or otherwise unallowable under FAR. The contracting officer should use appropriate proposal analysis techniques from FAR 15.404-1 in determining the ceiling amount.

Additionally, to the extent that the contracting activity's process calls for the contractor to submit detailed requests for reimbursement of actual costs to the chief financial officer/contracting officer, the contracting officer must ensure the requests are reviewed for obvious incongruities with the terms of the contract, take all prudent action, and call the attention of the OIG and the contractor's internal control group to apparent issues.

Fixed amount

Any fixed amount agreed to shall be the subject of an advance agreement (FAR 31.109). The fixed amount shall be based on estimates of anticipated actual costs associated with approved home office activities, consistent with DEAR and FAR, using the appropriate proposal analysis techniques from FAR 15.404-1. In no event shall the fixed amount include estimates of costs unallowable under FAR.

Documentation

The contracting officer's decisions, made in consultation with the field CFO, regarding both whether to pay any additional compensation for home office expenses and in what amount, must be based on an established process. The contracting officer must document the process results in sufficient detail to demonstrate that the contemplated amount is consistent with the DEAR and FAR.

Senior Procurement Executive Review

Prior to approving a contractor's request for reimbursement of home office expenses, the contracting officer shall provide the appropriate Senior Procurement Executive a copy of: the proposed advance agreement; the contract file documentation of the rationale for considering any reimbursement in accordance with the DEAR 970.3102-3-70 criteria; and the analyses performed either to determine the specific costs to be reimbursed as actual costs (and to determine the appropriate ceiling) or to determine the costs to consider in determining the fixed amount. The procurement executive will provide advice or recommendations as appropriate within ten business days of receipt.

Audit

The contracting officer shall:

- when utilizing reimbursement of actual costs up to a ceiling, request, as appropriate, an audit of costs incurred for home office expenses to ensure only allowable costs are being reimbursed; and
- when utilizing a fixed amount, obtain an audit of the costs the contractor proposes in support of the fixed amount before agreeing to the amount to ensure that only allowable costs are included in the contractor's proposal and to support the determination of the reasonableness of any costs considered in negotiating an equitable amount.

2. *What's new for Other Officials Involved in the Acquisition Process?*

With the exception of the specific requirement that the Senior Procurement Executive be involved, this AL requires nothing new in the acquisition process. The involvement of other officials discussed in this AL was either already required by DEAR or inherent to the determinations being made. As always, the HCA approves the Contracting Officer's request to consider a contractor's request for reimbursement of home office expense, the field CFO is consulted by the Contracting Officer in approving a contractor's request, and audit personnel provide audit advice on costs incurred or proposed.

3. *Who has what responsibility for implementing this AL's guidance?*

The Contracting Officer has the responsibility of implementing this AL.

4. *What changes implemented by this AL's guidance affect current contracts, future contracts, or both?*

This AL's guidance affects the contracting officer's determination of amounts of home office expense on current (if not already determined) and future contracts. The primary change is the Contracting Officer must provide the Senior Procurement Executive advance notice before approving a contractor's request for reimbursement of home office expenses. (The HCA's involvement is required by DEAR, and the CFO's and audit personnel's involvement is inherent in determinations of costs incurred and fixed amounts.)