

## ALLOWABLE FOOD AND BEVERAGE COSTS AT DEPARTMENT OF ENERGY (DOE) AND CONTRACTOR SPONSORED CONFERENCES



### *Guiding Principles*

- ✓ Effective oversight systems are essential to ensuring the high quality/integrity of costs charged to contracts
- ✓ Collaboration and cooperation are required to maintain timely, effective control processes

### Overview

This guide chapter discusses how Contracting Officers should help ensure only allowable food and beverage costs are charged to contracts (both management and operating contracts and other than management and operating contracts) that involve DOE and contractor sponsored conferences. The chapter reminds Contracting Officers of the requirements of DOE Order 110.3A, Conference Management, related Federal and Departmental regulations, Departmental procurement policy, and governing contract terms and conditions. Finally, the chapter points out contractual and administrative requirements and the attendant responsibilities of Contracting Officers.

### DOE Order 110.3A, Conference Management

DOE Order 110.3A establishes requirements and responsibilities for managing conferences sponsored or co-sponsored by DOE. It covers a wide range of topics, including who must approve a conference, how to pick a conference site, how many DOE and DOE contractor employees should attend, and how to minimize costs. Regarding allowable food and beverage costs, the Order states, among other things, that DOE will reimburse such costs only if they are: (1) incurred where the principle purpose of the conference is to disseminate trade, business, professional, or technical information, or to stimulate production per contract requirements; (2) not for entertainment or alcoholic beverages; (3) incidental to the conference; (4) incurred when attendance at the location where meals are provided or refreshments are served is important for the attendee's full participation in the conference; and (5) part of a formal conference that also includes substantial functions occurring separately from where the food is served.

## **Federal Acquisition Regulation (FAR)**

The FAR cost principles, found at FAR Part 31, are incorporated into a management and operating contract via its Payments and advances clause (Department of Energy Acquisition Regulation (DEAR) 970.5232-2) and into an other than management and operating contract via the Allowable cost and payment clause (DEAR 952.216-7). Those cost principles state that for a cost to be allowable, it must be allocable to the contract, reasonable, and not specifically unallowable per FAR Part 31. Two cost principles directly related to conference costs are found at FAR 31.205-43 (Trade, business, technical and professional activity costs) and FAR 31.205-14 (Entertainment costs). The gist of these cost principles is covered in DOE Order 110.3A, which was discussed in the preceding paragraph. The concept of reasonableness and how it applies to a food and beverage cost incurred at a conference will be discussed below under “Departmental Procurement Policy.”

## **Department of Energy Acquisition Regulation (DEAR)**

The DEAR cost principles do not include any additional cost principles to the FAR that specifically cover allowable food and beverage costs that involve DOE and contractor sponsored conferences.

## **Departmental Procurement Policy**

As stated above, the concept of reasonableness applies in determining if a cost, including a food and beverage cost incurred at a conference, is allowable. FAR Part 31 provides a discussion of reasonableness, which is included in a more detailed discussion in Acquisition Letter 2005-12, Meal Cost in Management and Operating Contracts. While that Acquisition Letter does not focus on the allowability of food and beverage cost incurred at a conference, its explanation of the concept of reasonableness is applicable to all DOE contracts (both management and operating contracts and other than management and operating contracts).

As Acquisition Letter 2005-12 states, FAR 31.201-3 provides that a cost is allowable for reimbursement under a Government cost-type contract where that cost is, in its nature and amount, not excessive compared to that which would be incurred by a prudent person in the conduct of competitive business. What is reasonable depends upon a variety of considerations and circumstances, including: (1) whether it is the type of cost generally recognized as ordinary and necessary for the conduct of the contractor's business or the contract's performance; (2) generally accepted sound business practices; (3) the contractor's responsibilities to the Government, other customers, the owners of the business, employees, and the public at large; and (4) any significant deviations from the contractor's established practices.

A reasonableness test (both nature and amount) must be met for any cost to be allowable—that is, to be allowable, both the nature of the reimbursement and its amount must be reasonable for the specific circumstances under which they are incurred. For example, prudent business people do not routinely pay the costs of their employees' meals. An employee working late does not routinely receive a free meal—the nature of the expense is not reasonable. An occasion could arise, however, in which the Government imposed a last minute stringent deadline, and the contractor, at the last minute, told a critical employee to work late and paid for her meal. The nature of this expense is reasonable. However, even if the nature of the expense is reasonable, part of the expense could be unallowable because it is excessive. So in the previous example, if the contractor provided a lobster and steak meal to the employee, the amount of the expense would be unreasonable and only the cost of a standard meal would be allowable.

Contracting Officers should use the following criteria (DOE's benchmarks of allowable/unallowable food and beverage costs, which are based on Department of Justice guidance) in determining the reasonableness of food and beverage costs charged to contracts that involve DOE and DOE contractor sponsored conferences.

1. The amount by which the cost per person of any meal provided exceeds 150% of the locality's meals and incidental expenses (M&IE) rate for that meal should be examined closely. For example, if dinner will be provided at a locality with a \$56.00 per day M&IE rate with a \$29.00 per dinner M&IE rate (see [www.gsa.gov/mie](http://www.gsa.gov/mie)), the cost of the dinner provided at a conference should not exceed \$43.50 ( $\$29.00 \times 150\%$ ) per person. The amount by which the cost per person of any meal exceeds 150% of the locality's M&IE rate for the meal calculated using this methodology should in almost every case be determined unallowable.
2. The number of meals provided should be reviewed for reasonableness under the circumstances of the conference's professional activities and goals.
3. The amount by which the cost per person for refreshments provided in one day exceeds 25% of the locality's per day M&IE rate should in almost every case be determined unallowable. For example, if the locality's per day M&IE rate is \$56.00, then the cost per person of refreshments provided at a conference cannot exceed \$14.00 ( $\$56.00 \times 25\%$ ) per day.

## Contract Terms and Conditions

Contract terms and conditions incorporate, either directly or by reference, all of the requirements of DOE Order 110.3A, Conference Management, related Federal and Departmental regulations, and Departmental procurement policy.

## Contractual and Administrative Requirements and Contracting Officer Responsibilities

Audit Plans: The Contracting Officer must ensure, as part of his or her review of the contractor's proposed Annual Audit Plan (see Acquisition Guide Chapter 70.4) or other audit planning documents as appropriate, that the plan places appropriate emphasis on the audit of conference costs in accordance with the requirements of DOE Order 110.3A, Conference Management, related Federal and Departmental regulations, and Departmental procurement policy.

Review of contractor internal policies, procedures, and internal controls: As part of the Contracting Officer's review and approval of the Contractor's Purchasing System, the Contracting Officer: must review contractor internal policies, procedures, and internal controls on conferences; ensure their compliance with the requirements discussed in this Guide chapter; ensure the contractor has implemented the internal policies, procedures, and internal controls; and, for DOE M&O contracts, require, in coordination with the Office of Inspector General or other audit organization as appropriate, the contractor to direct its internal audit staff to ensure adherence to the internal policies, procedures, and internal controls.

### Model Language to Communicate the Department's Expectations to Contractors

The following language is provided for those situations where the Contracting Officer deems it prudent to notify the Contractor in writing regarding what the Department will consider reasonable for food and beverage costs provided at a conference.

*The contractor is responsible for ensuring that only allowable food and beverage costs are charged to the contract regarding Department of Energy and contractor sponsored conferences. Regarding the reasonableness of such costs, the contractor shall adhere to the following criteria. The Government will apply these criteria in determining the reasonableness of food and beverage costs charged to the contract.*

*The amount by which the cost per person of any meal provided exceeds 150% of the locality's meals and incidental expenses (M&IE) rate for that meal will be examined closely. For example, if dinner will be provided in a locality with a \$56.00 per day M&IE rate with a \$29.00 per dinner M&IE rate (see [www.gsa.gov/mie](http://www.gsa.gov/mie)), the cost of the dinner provided at a conference should not exceed \$43.50 ( $\$29.00 \times 150\%$ ) per person. The amount by which the cost per person of any meal exceeds 150% of the locality's M&IE rate for the meal calculated using this methodology will be unallowable unless the contractor provides sufficient evidence to substantiate the amount is reasonable.*

*The number of meals provided must be reasonable under the circumstances of the conference's professional activities and goals.*

*The amount by which the cost per person of refreshments provided in one day exceeds 25% of the locality's per day M&IE rate will in almost every case be unallowable. For example, if the locality's per day M&IE rate is \$56.00, then the cost per person of refreshments provided at a conference cannot exceed \$14.00 ( $\$56.00 \times 25\%$ ) per day.*