



ACQUISITION LETTER

This Acquisition Letter is issued under the authority of the Senior Procurement Executives of DOE and NNSA

Subject: Implementation of Division D, Title III and Title V, and Division E, Title VI and Title VII of the Consolidated Appropriations Act, 2014, Pub. L. No. 113-76

References:

Consolidated Appropriations Act, 2014,
Pub.L. No. 113-76

Division D, Title III, Sections
301(a), 304, 305 and 318, Title V,
Sections 501, 502 and 503, Title VI,
Section 627, and Title VII, Sections
733, 735 and 742
Division E, Titles VI and VII

When is this Acquisition Letter (AL) effective?

The statutory provisions addressed in this AL are effective as of the enactment date of the Consolidated Appropriations Act, 2014, enacted January 17, 2014.

When does this AL expire?

This AL is in effect for FY 14. This AL and all previous ALs on appropriations will be archived after the end of the applicable AL. Generally, the guidance will remain in effect when obligating dollars appropriated under that applicable Act. Please request assistance from your local counsel for applicability after the end of an FY.

Who is the point of contact?

For DOE, contact Jason Taylor of the Contract and Financial Assistance Policy Division, Office of Policy at (202) 287-1560 or at Jason.Taylor@hq.doe.gov or for NNSA, contact NNSA at (505) 845-4337.

Who is the intended audience?

Department of Energy (DOE) and National Nuclear Security Administration (NNSA)
Contracting Officers.

What is the purpose?

The purpose of this AL is to provide information and guidance regarding the Department of Energy's (DOE or Department) implementation of Division D, Title III and Title V, and Division E, Title VI and Title VII of the Consolidated Appropriations Act, 2014, Pub. L. No. 113-76 (2014 Act). The Congressional notification requirements of the Act will be addressed in a separate Acquisition Letter/Financial Assistance Letter.

What types of contracts are affected by this AL?

This AL applies to all DOE and NNSA solicitations and contract actions including task and delivery orders funded with fiscal year 2014 appropriated funds.

What guidance is included in this AL?

Appropriations Act

- I. Section 301(a) Unfunded Requests for Proposals**
- II. Section 304 Construction of High-hazard Nuclear Facilities**
- III. Section 305 Independent Cost Estimate (ICE) for Critical Decision (CD)-2 and CD-3 DOE O 413.3B Construction Projects**
- IV. Section 318 Small Business Goals**
- V. Section 501 Lobbying Restrictions**
- VI. Section 502 Felony Criminal Violations**
- VII. Section 503 Unpaid Federal Tax Liability**
- VIII. Section 627 ARRA Reporting**
- IX. Section 733 Prohibition on Contracting with Inverted Domestic Corporations**
- X. Section 735 Any Payment for the Election for a Federal Office or to a Political Committee**
- XI. Section 742 Reporting on Conference Spending**

NOTE: Section 301(b) and 301(c) will be addressed in a separate AL.

I. SECTION 301(a) UNFUNDED REQUESTS FOR PROPOSALS

What is the law?

None of the funds appropriated by this Act may be used to initiate or resume any program, project or activity, or to initiate Requests for Proposals (RFPs) or similar arrangements (including request for quotations, requests for information and funding opportunity announcements) for a program, project or activity if the program, project or activity has not been funded by Congress.

What is the scope of this requirement?

Division D of the Consolidated Appropriations Act, 2014 requires that funds appropriated by the Act not be used to prepare or initiate RFPs or similar arrangements (including request for quotations, requests for information and funding opportunity announcements) for a program, project or activity if the program, project or activity has not been funded.

What procedures need to be followed to implement this requirement?

Before preparing or initiating a RFP or similar arrangements (including request for quotations or requests for information) in support of a program, project or activity, the Contracting Officer shall work with the program office and the program budget office officials to ensure the program or project is funded.

II SECTION 304 CONSTRUCTION OF HIGH-HAZARD NUCLEAR FACILITIES

What is the law?

None of the funds made available in title III of this Act shall be used for the construction of facilities classified as high-hazard nuclear facilities under 10 C.F.R. Part 830 unless independent oversight is conducted by the Office of Health, Safety, and Security to ensure the project is in compliance with nuclear safety requirements.

What is the scope of this requirement?

Section 304 of Division D of the Consolidated Appropriations Act, applies to all solicitations and awards of DOE contracts that include the construction of facilities classified as DOE nuclear facilities (hazard category 1, 2, or 3) under 10 C.F.R. Part 830 under which funds are made available by this Act. This requirement applies to subcontract actions, including subcontracts under an M&O prime contract using these appropriated funds.

What procedures need to be followed to implement this requirement?

When funding the construction of DOE nuclear facilities (hazard category 1, 2, or 3), the contracting officer shall work with the designated federal project director (FPD) to ensure that the Office of Health, Safety, and Security (HSS) performs the required independent review of the project and contract management for positive nuclear safety culture and resolution of nuclear safety-related design issues, and should obtain copy of the review(s). Until the contracting officer receives the HSS independent review(s), the contracting officer shall not obligate Consolidation Appropriations Act of 2014 funds for the construction of DOE nuclear facilities (hazard category 1, 2, and 3).

III. SECTION 305 INDEPENDENT COST ESTIMATE (ICE) FOR CRITICAL DECISION (CD) CD-2 AND CD-3 DOE ORDER 413.3B CONSTRUCTION PROJECTS

What is the law?

None of the funds made available in title III of this Act may be used to approve critical decision-2 or critical decision-3 under Department of Energy Order 413.3B, or any successive departmental guidance, for construction projects where the total project cost exceeds \$100,000,000 until a separate independent cost estimate has been developed for the project for that critical decision.

What is the scope of this requirement?

Section 305 of Division D of the Consolidated Appropriations Act, 2014 applies to all DOE solicitations and awards that include DOE Order (DOE O) 413.3B construction work where a project with a total project cost (TPC) exceeds \$100,000,000. No funds are available until a separate independent cost estimate (ICE) has been developed for the project for CD-2 or CD-3. This requirement applies to subcontract actions, including subcontract under an M&O prime contract using these appropriated funds.

What procedures need to be followed to implement this requirement?

For a DOE O 413.3B construction project with a total project cost (TPC) or high end cost range exceeding \$100,000,000, the contracting officer shall work with the designated FPD to ensure that an independent cost estimate (ICE) led by the Office of Engineering and Construction Management (OECM) is conducted prior to submission of CD-2 or CD-3 for approval by the acquisition executive (AE).

IV. SECTION 318 SMALL BUSINESS GOALS

What is the law?

First tier subcontracts that are awarded by Management and Operating contractors to small business concerns, small business concerns owned and controlled by service disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women, shall be considered toward the annually established agency and Government-wide goals for procurement contracts awarded.

What procedures need to be followed to implement this requirement?

Implementation procedures for Section 318 will be addressed in a separate Acquisition Letter.

V. SECTION 501 LOBBYING RESTRICTION

What is the law?

None of the funds appropriated by this Act may be used in any way, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. § 1913.

What is the scope of this requirement?

Division D of the Consolidated Appropriations Act, 2014 applies to all solicitations and awards of DOE contracts under which funds appropriated in the Act are obligated.

What procedures need to be followed to implement this requirement?

The following clause shall be incorporated into solicitations and awards of contracts where the expenditure of funds is made available under the Consolidated Appropriations Act, 2014:

Lobbying Restriction

The Contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. § 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

(End of Clause)

VI. SECTION 502 FELONY CRIMINAL VIOLATIONS.

What is the law?

None of the funds made available by this Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to any corporation that was convicted (or had an officer or agent of such corporation acting on behalf of the corporation convicted) of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation, or such officer or agent, and made a determination that this further action is not necessary to protect the interests of the Government.

What is the scope of this requirement?

Section 502 of Division D of the Consolidated Appropriations Act, 2014 applies to all new DOE contracts funded by the Act that are to be awarded to a corporation.

What procedures need to be followed to implement this requirement?

DOE intends to issue a revised class deviation to FAR 52.209-5 to implement this requirement until the FAR can be amended.

VII. SECTION 503 UNPAID FEDERAL TAX LIABILITY

What is the law?

None of the funds made available by this Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government.

What is the scope of this requirement?

Section 503 of Division D of the Consolidated Appropriations Act, 2014 applies to all new DOE contracts funded by the Act that are to be awarded to a corporation.

What procedures need to be followed to implement this requirement?

DOE intends to issue a revised class deviation to FAR 52.209-5 to implement this requirement until the FAR can be amended.

VIII. SECTION 627 ARRA REPORTING

What is the law?

Subsection (c) and subsections (e) through (h) of section 1512 of title XV of Division A of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) are repealed effective February 1, 2014.

What is the scope of this requirement?

Section 627 of Division E of the Consolidated Appropriations Act, 2014 applies to all awards funded by Pub. L. 111-5.

What procedures need to be followed to implement this requirement?

The requirement to report into Recovery.gov is repealed. Some awards will replace this requirement with reporting into fSRS.

A FAR deviation and implementing guidance will be issued separately.

IX. SECTION 733 PROHIBITION ON CONTRACTING WITH INVERTED DOMESTIC CORPORATIONS

What is the law?

None of the funds appropriated by this Act or otherwise made available by this or any other Act may be used for any Federal Government contract with any foreign incorporated entity which is treated as an inverted domestic corporation under section 835(b) of the Homeland Security Act of 2002 (6 U.S.C. 395(b)) or any subsidiary of such an entity.

What is the scope of this requirement?

Section 733 of Division E of the Consolidated Appropriations Act, 2014 applies to all solicitations and awards of DOE contracts under which funds appropriated or otherwise made available by this or any other Act providing FY 2014 appropriations.

What procedures need to be followed to implement this requirement?

Federal Acquisition Regulation (FAR) 9.108 implements the prohibition on contracting with inverted domestic corporations and prescribes the applicable solicitation provision and contract clause. In each solicitation and contract using funds appropriated in Fiscal Year 2014, unless waived in accordance with FAR 9.108-4, the contracting officer shall use the provision 52.209-2, Prohibition on Contracting with Inverted Domestic Corporations – Representation, and clause 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations, respectively.

X. SECTION 735 ANY PAYMENT FOR THE ELECTION FOR A FEDERAL OFFICE OR TO A POLITICAL COMMITTEE

What is the law?

(a) None of the funds made available in this or any other Act may be used to recommend or require any entity submitting an offer for a Federal contract to disclose any of the following information as a condition of submitting the offer:

(1) Any payment consisting of a contribution, expenditure, independent expenditure, or disbursement for an electioneering communication that is made by the entity, its officers or directors, or any of its affiliates or subsidiaries to a candidate for election for Federal office or to a political committee, or that is otherwise made with respect to any election for Federal office.

(2) Any disbursement of funds (other than a payment described in paragraph (1)) made by the entity, its officers or directors, or any of its affiliates or subsidiaries to any person with the intent or the reasonable expectation that the person will use the funds to make a payment described in paragraph (1).

(b) In this section, each of the terms “contribution”, “expenditure”, “independent expenditure”, “electioneering communication”, “candidate”, “election”, and “Federal office” has the meaning given such term in the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.).

What is the scope of this requirement?

Section 735 of the Consolidated Appropriations Act, 2014 applies to all solicitations and awards of DOE contracts under which funds appropriated or otherwise made available by this Act or any act providing supplementary FY 2014 appropriations.

What procedures need to be followed to implement this requirement?

Contracting Officers may not recommend or require any entity submitting an offer for a Federal contract to disclose any of the above described information as a condition of submitting the offer via solicitation provision or any other communication.

XI. SECTION 742 REPORTING ON CONFERENCE SPENDING

What is the law?

(a) The head of any Executive branch department, agency, board, commission, or office funded by this or any other appropriations Act shall submit annual reports to the Inspector General or senior ethics official for any entity without an Inspector General, regarding the costs and contracting procedures related to each conference held by any such department, agency, board, commission, or office during fiscal year 2014 for which the cost to the United States Government was more than \$100,000.

(b) Each report submitted shall include, for each conference described in subsection (a) held during the applicable period--

- (1) a description of its purpose;
- (2) the number of participants attending;
- (3) a detailed statement of the costs to the United States Government, including--
 - (A) the cost of any food or beverages;
 - (B) the cost of any audio-visual services;
 - (C) the cost of employee or contractor travel to and from the conference; and
 - (D) a discussion of the methodology used to determine which costs relate to the conference; and
- (4) a description of the contracting procedures used including--
 - (A) whether contracts were awarded on a competitive basis; and
 - (B) a discussion of any cost comparison conducted by the departmental component or office in evaluating potential contractors for the conference.

(c) Within 15 days of the date of a conference held by any Executive branch department, agency, board, commission, or office funded by this or any other appropriations Act during fiscal year 2014 for which the cost to the United States Government was more than \$20,000, the head of any such department, agency, board, commission, or office shall notify the Inspector General or senior ethics official for any entity without an Inspector General, of the date, location, and number of employees attending such conference.

(d) A grant or contract funded by amounts appropriated by this or any other appropriations Act to an Executive branch agency may not be used for the purpose of defraying the costs of a conference described in subsection (c) that is not directly and programmatically related to the purpose for which the grant or contract was awarded, such as a conference held in connection with planning, training, assessment, review, or other routine purposes related to a project funded by the grant or contract.

(e) None of the funds made available in this or any other appropriations Act may be used for travel and conference activities that are not in compliance with Office of Management and Budget Memorandum M-12-12 dated May 11, 2012.

What is the scope of this requirement?

Section 742 of Division E of the Consolidated Appropriations Act, 2014 applies to all solicitations and awards or contracts funded by this, or any other appropriations act during fiscal year 2014.

What procedures need to be followed to implement this requirement?

When a contract contemplates expenditure of funds for a conference, the Contracting Officer must ensure that the purpose of such conference is directly and programmatically related to the purpose for which the contract was awarded (i.e. within the general scope of the contract).

The following clause shall be incorporated into solicitations and awards of all non-M&O contracts (and should be added to existing service contracts) funded by the Consolidated and Further Continuing Appropriations Act, 2014 (or any other appropriations act during fiscal year 2014):

H.XX Conference Spending

The Contractor agrees that:

- a) No cost associated with conference activities shall be allowable under this contract unless the conference is directly and programmatically related to the purpose of the contract, and the specific work authorization/order/task directing the conference activities.*
- b) The Contractor shall follow the most current guidance issued by DOE concerning reporting of conference related activities and spending. The Contractor shall request and obtain approval (if \$100,000 or greater), and report all conference activities through the Conference Management Reporting and Approval Tool on the DOE iPortal at <https://iportal.doe.gov>.*
- (c) Once the Contractor has received notification that approval (if net estimated DOE expenses exceed \$100,000) or registration (if net DOE expenses are \$100,000 or less) within the Conference Management Database has taken place, the contractor shall provide documentation to the Contracting Officer of the approval or registration. Notification of approval or registration consists of evidence of one of the following--*
 - (1) The Conference Management Database Approval Comments field reflects "Approved" if DOE expenses are equal to or exceed \$100,000; or*
 - (2) The Conference Management Database Event Status field is locked and the Approval Comments field reflects "Approval Not Needed at Current Estimates," if net DOE expenses will be \$100,000 or less.*
- (d) Upon receipt of the evidence in (c) above, the Contracting Officer will provide approval for the Contractor to begin incurring costs for the conference. Contracting Officer approval to begin incurring costs does not constitute a determination of allowability of the costs.*
- (e) The Contractor and its employees as well as conference sponsors, hosts and attendees shall aggressively seek to limit costs associated with a conference. Conference expenditures shall be kept to the minimum necessary to carry out the Department's mission and must be consistent with applicable portions of the Federal Travel Regulation, and 48 CFR chapter 1, the Federal Acquisition Regulation.*
- (f) DOE will review proposed conference activities based on estimated cost and attendance to ensure federal funds are used for purposes that are appropriate, cost effective, and important to the core mission. However, only the Contracting Officer has authority to determine if the costs incurred by the Contractor are allowable, allocable, and reasonable.*
- (g) The Contractor shall establish sufficient management controls to ensure the costs related to conferences it invoices the Government for are allowable, allocable and reasonable.*
- (h) The Contractor shall ensure its conference attendees conduct themselves with the highest level of professionalism and ethical behavior consistent with that expected of DOE employees.*

(End of Clause)

The following clause shall be incorporated into solicitations and awards of new M&O contracts, and should be added to existing M&O contracts:

H.XX Conference Spending (Management and Operating Contracts)

The Contractor agrees that:

- a) *No cost associated with conference activities shall be allowable under this contract unless the conference is directly and programmatically related to the purpose of the contract and the specific work authorization/order/task directing the conference activities.*
- b) *The Contractor shall follow the most current guidance issued by DOE concerning reporting of conference related activities and spending. The Contractor shall request, obtain approval (if \$100,000 or greater), and report all conference activities through the Conference Management Reporting and Approval Tool on the DOE iPortal at <https://iportal.doe.gov>.*
- c) *While a conference may be approved by DOE based on estimated cost and attendance to ensure federal funds are used for purposes that are appropriate, cost effective, and important to the core mission, only the Contracting Officer has authority to determine if the costs incurred by the Contractor are allowable, allocable, and reasonable.*
- d) *The Contractor and its employees, its sponsors, hosts and attendees shall aggressively seek to limit costs associated with a conference. Conference expenditures shall be kept to the minimum necessary to carry out the Department's mission and consistent with applicable portions of the Federal Travel Regulation, and 48 CFR chapter 1, the Federal Acquisition Regulation.*
- e) *The Contractor shall ensure its conference attendees conduct themselves with the highest level of professionalism and ethical behavior consistent with that expected of DOE employees.*
- f) *The Contracting Officer will ensure conference activities are included in the Contractor's annual audit plan.*

(End of Clause)