



ACQUISITION LETTER

This Acquisition Letter is issued under the authority of the Senior Procurement Executive of DOE. It is intended for use by procurement professions of DOE, primarily Contracting Officers, and other officials of DOE 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 Contracting Officers.

Subject: Benchmark Compensation Amount for Individual Executive Salary Actions

References:

FAR 31.205-6	Compensation for personal services
DEAR 970.3102-05-6	Compensation for personal services
DEAR 970.5232-2	Payments and Advances
NNSA BOP-003-0601	NNSA Contractor Human Resources (CHR) Policy Guidance
41 U.S.C. § 4304	Specific costs not allowable
10 U.S.C. § 2324	Allowable costs under defense contracts
DOE AL 2013-04	Contractor Executive Compensation
Public Law 113-67, Section 702	Bipartisan Budget Act of 2013

When Is this Acquisition Letter (AL) Effective?

This Acquisition Letter (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This AL remains in effect until superseded or canceled.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?

Heads of Contracting Activity (HCAs) and Contracting Officers (COs) responsible for administering and managing Department of Energy (DOE)/National Nuclear Security Administration (NNSA) management and operating (M&O) contracts, non-M&O major site and facility contracts, and contracts that require DOE approval of individual compensation for the top contractor official and other key personnel.

Who Is the Point of Contact?

DOE Contact: Joel Gonzalez, Industrial Relations Specialist, Contractor Human Resources Policy Division (MA-612) at (202) 287-1752 or joel.gonzalez@hq.doe.gov.

NNSA Contact: Raymond Baca, Supervisory Contractor Industrial Relations Specialist at (505) 845-6274 or Raymond.Baca@nnsa.doe.gov.

Visit our website at

For additional information on ALs and other issues, visit our website at <http://energy.gov/management/office-management/operational-management/procurement-and-acquisition>.

What is the Purpose of this AL?

Executive compensation is an important subject of review in the federal government's procurement and acquisition of goods and services. The purpose of this AL is to establish the attached form, "Compensation Subject to the Compensation CAP" as the minimum required documentation to support a DOE/NNSA CO's conclusion that approved allowable costs do not exceed the compensation cap.

What Types of Contracts Are Affected by this AL?

This AL applies to M&O contracts, non M&O major site & facility contracts, and other cost reimbursable contracts that require DOE approval of individual compensation for the top contractor official and other key personnel.

What Is the Background Information?

The OFPP Cost Accounting Standards Board Executive Compensation, Benchmark Maximum Allowable Amount

Section 702 of the Bipartisan Budget Act of 2013, P.L. 113-67, enacted December 26, 2013, repealed the benchmark executive compensation amount governed by 41 U.S.C. 1127. Section 702 applies only with respect to costs of compensation incurred under contracts entered into on or after the date that is 180 days after the date of enactment (effective June 24, 2014). For contracts entered into before the effective date of section 702, the Department limits the maximum compensation of contractors' senior executives by adhering to the OFPP benchmark executive compensation cap, applicable provisions of the Federal Acquisition Regulations (FAR), DOE Order 350.1, and DOE policies on the maximum salary for the top contractor management official. The benchmark amount does not limit the amount of compensation that an executive may otherwise receive, but the compensation costs in excess of the benchmark amount are unallowable costs for Government contract purposes.

Section 702(a)(1) of the Bipartisan Budget Act of 2013, P.L. 113-67 (December 26, 2013), codified at 41 U.S.C. 4304(16) lowered the allowable cost ceiling for contractor and subcontractor employee compensation to \$487,000 per fiscal year, adjusted annually based on the Employment Cost Index (ECI). The new compensation cap applies to costs incurred under contracts entered into on or after June 24, 2014 (180 days after enactment of P.L. 113-67).

What Is the Guidance Contained in this AL?

FAR 31.205-6 provides information relative to allowability and reasonableness for employee compensation. Paragraph (p) establishes limitations on the compensation of the senior executives. Compensation is defined as " ...the total amount of wages, salary, bonuses, deferred compensation, and employer contributions to defined contribution pension plans for the fiscal year, whether paid, earned, or otherwise accruing, as recorded in the contractor's cost accounting records for the fiscal year."

The base salary is only one component of compensation as defined in the FAR. Use of the attached form will ensure that approved allowable costs for compensation are consistent with the compensation cap. The form is specifically designed to serve as the minimum required documentation to support DOE/NNSA CO's conclusion that approved allowable costs do not exceed the compensation cap. The form identifies the types of compensation that are included in the calculation of the compensation cap, with space provided to document amounts by category to ensure approved allowable costs do not exceed the compensation cap. While contractor executives' can earn more than the amount identified as the compensation cap, any compensation costs in excess of the compensation cap are unallowable costs for government contracting purposes.

The completed form shall be submitted to the Office of Acquisition and Project Management, Contractor Human Resources Policy Division (MA-612) or to the Office of Acquisition Management for NNSA as applicable, on an annual basis no later than January 15 of each year for all positions for which DOE made an executive compensation allowability determination.

ATTACHMENT

Compensation Subject to the Compensation CAP

DOE Reimbursable Compensation	Amount
Base Salary/Wages	\$
Bonuses/Incentive Compensation*	\$
Deferred Compensation** (e.g., Contributions to nonqualified pension plans, including employer contributions to executive only pension plans such as Supplemental Executive Retirement Plan, Excess Benefit Plans or Top Hat pension plans). Note: Contributions to a qualified pension plan are not to be included in this calculation.	\$
Employer contributions to Employee Stock Ownership Plans (ESOPs).	\$
Employer Contributions to Defined Contribution Pension Plans	\$
Total Compensation	\$

* Bonuses are only included in the calculation of the cap if allowable under the applicable DOE contract.

** Awards made by an employer to compensate an employee in a future cost accounting period(s) for services rendered in one/more prior cost accounting periods. Note that in some cases a DOE contractor reimburses their parent company, where applicable, for fringe benefit costs for executives under the contract that also work for the parent. Contractors should provide DOE with the portion of fringe benefit costs that meets the criteria for compensation under the OFPP cap.