

**Department of Energy
Acquisition Regulation**

**No. AL 2013-10
June 19, 2013**



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 professionals 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: Nondisplacement of Qualified Workers under Service Contracts

References:

Executive Order 13495
FAR 22.12
FAR 52.222-17
DEAR 970.5244-1

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This AL remains in effect until superseded or canceled.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) and National Nuclear Security Agency (NNSA) Contracting Officers are the audience for this AL.

Who Is the Point of Contact For this AL?

DOE Contracting Officers may contact Jason Taylor of the Contracts and Financial Assistance Policy Division, Office of Policy, Office of Acquisition and Project Management by phone at (202) 287-1560 or by email at Jason.Taylor@hq.doe.gov. For National Nuclear Security Administration (NNSA) questions, contact Ken West at (202) 586-6681.

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?

The purpose of this AL is to provide guidance to Contracting Officers on the proper implementation of the new nondisplacement requirements contained in Executive Order (EO) 13495, and part 9 of Title 29 of the Code of Federal Regulations.

What Types of Contracts Are Affected by this AL?

This AL applies to Management & Operating (M&O) contracts only.

What Is the Background Of this AL?

On January 30, 2009, President Obama signed EO 13495, Nondisplacement of Qualified Workers under Service Contracts. This Order establishes that when a service contract expires and a follow-on contract is awarded for the same or similar services at the same location, the Federal Government's procurement interests in economy and efficiency are better served when a successor contractor hires the predecessor's employees. Section 1 of the EO sets forth a general Federal policy that service contracts and solicitations for service contracts shall include a clause that requires the contractor and its subcontractors, under a contract that succeeds a contract for performance of the same or similar services at the same location, to offer employees employed under the predecessor contract, whose employment will be terminated as a result of the award of the successor contract, a right of first refusal of employment under the contract in positions for which they are qualified.

On August 29, 2011, DOL issued a Final Rule establishing Part 9 of Title 29 of the CFR to address the EO's requirements. The DOL regulation was not effective until the FAR Council implemented FAR Case 2011-028, "Nondisplacement of Qualified Workers under Service Contracts." The FAR case, effective January 18, 2013, added FAR subpart 22.12, Nondisplacement of Qualified Workers under Service Contracts, and the associated clause at FAR 52.222-17, Nondisplacement of Qualified Workers.

What Guidance is Included in this AL?

1. What's new for Contracting Officers?

M&O contracts are not subject to the Service Contract Act (SCA). See 29 C.F.R. § 4.107(b). However, the contracts the M&O contractors enter into with service contractors are subject to the SCA and Department of Energy Acquisition Regulation (DEAR) 970.2210. The new nondisplacement requirements must be applied to all SCA covered contracts, including applicable M&O subcontracts for services. Accordingly, the attached class deviation to the DEAR has been approved to revise clause 970.5244-1, Contractor Purchasing System, paragraph (x), Subcontract Flowdown Requirements, to add a new subparagraph which requires the M&O contractor to include FAR clause 52.222-17 in all service subcontracts issued on or after January 18, 2013. Contracting Officers must immediately commence negotiations to add the revised DEAR clause to their contracts.

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

This AL requires nothing new from other officials involved in the acquisition process.

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?*

The changes required by this AL affect current and future M&O contracts.