



ACQUISITION LETTER

This Acquisition Letter is issued under the authority of the Senior Procurement Executive 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 NNSA Contracting Officers.

Subject: Contractor Workforce Restructuring

References:

DOE Order 350.3, Chg. 1 “Labor Standards Compliance, Contractor Labor Relations, and Contractor Workforce Restructuring Programs.”

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This AL remains in effect until superseded or canceled.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?

Department of Energy (DOE) and National Nuclear Security Administration (NNSA) Heads of Contracting Activity (HCAs) and Contracting Officers (COs) responsible for administering and managing DOE/NNSA management and operating (M&O) contracts, non-M&O major site and facility contracts, and contracts that require DOE/NNSA approval of contractor workforce restructuring actions.

Who Is the Point of Contact?

Department of Energy (DOE) contact: Jeanne Teng Lupardo, Attorney-Advisor at 202-586-1695 or jeanne.lupardo@hq.doe.gov

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

Need More Information on ALs and FALs?

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?

The purpose of the AL is to communicate the revisions to the contractual requirements related to contractor workforce restructuring, and require COs to modify contracts, as appropriate, to reflect changes highlighted under the Section “What is the Guidance Contained in this AL.” The revisions reflect recommendations approved by the Deputy Secretary under the Regulatory Reform Initiative.

What Types of Contracts Are Affected by this AL?

This AL applies to M&O contracts, non-M&O major site and facility management contracts, and contracts that include provisions for DOE reimbursement of contractor workforce restructuring costs.

What Is the Background Information?

On January 30, 2017, the President issued Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs.” In support of the Executive Order, a Regulatory Reform Task Force was established to review selected focus areas, including contractor human resources requirements, for the purpose of improving laboratory/contractor efficiency and/or decreasing costs while maintaining an appropriate level of DOE oversight.

A Contractor Human Resources Working Group was chartered to analyze requirements and recommend reforms to achieve the goals of Executive Order 13771. The Contractor Human Resources Working Group identified an opportunity to eliminate the approval process for voluntary workforce restructurings, raise the approval threshold for involuntary restructurings (from 50 to 100), and implement process improvements to streamline approvals of involuntary workforce restructuring actions. These opportunities were forwarded as recommendations to the Regulatory Reform Task Force and approved by the Deputy Secretary.

The recommendations approved by the Deputy Secretary are as follows:

- Revise current workforce restructuring policies to require notification instead of approval of laboratory/contractor voluntary separation programs of 100 or more if consistent with the following parameters: 1) in accordance with approved laboratory and contractor policies and contract requirements; 2) no enhanced benefits (severance or pension); 3) no backfilling or re-employment of employees for a one-year period after severance is paid; 4) business case submitted 5 days in advance of notification date that includes maximum number of voluntary separations, maximum dollars, positions/skills impacted; reasons separations are needed, including how conducting a Self-Select Voluntary Separation Program will better position the contractor to

conduct the mission work; copies of the self-select application and any employee waivers or releases of claims, and a communication plan; and 5) voluntary separations offered to employees in a non-discriminatory and legally compliant manner. The contractor is responsible and accountable for conducting and defending all voluntary separation actions in compliance with applicable laws, regulations, and the contract terms and conditions.

- Increase DOE approval thresholds for contractor involuntary workforce restructuring actions from 50 to 100 (notification only required for voluntary restructuring).
- Implement process improvements including:
 - i. Delegate approval of enhanced severance benefits (benefits that are not consistent with the approved laboratory/contractor corporate policies) from S-1/S-2 to the Under Secretary.
 - ii. In order to provide substantive and helpful comments and to work with the contractors on approaches to reduce risk, Under Secretaries/designees, in consultation with appropriate functional offices, such as general counsel and contractor human resources, will review and approve any involuntary workforce restructuring Specific Plan, within 10 business days of submission of a complete package by the contractor unless the contractor is notified of issues necessitating an extension of time. Should DOE request additional information from the Contractor regarding any Specific Plan or diversity analysis, the Contractor will respond to such request within 3 business days.

DOE Order 350.3, Chapter III, Reductions in Contractor Employment, was revised to reflect the recommendations approved by the Deputy Secretary on September 10, 2018.

What Is the Guidance Contained in this AL?

Contracting Officers will have to take appropriate actions, including modifying existing contracts as appropriate to incorporate the recommendations approved by the Deputy Secretary as reflected in the attached H clause no later than May 31, 2019. As part of this action, the Contracting Officer should review the contract to ensure that other contract provisions do not conflict with these revisions. If the site seeks to deviate from the changes in the attached H clauses because of site specific conditions, the CO may make modifications to the attached H clauses with advance approval by the HCA and concurrence from the Office of Acquisition Management. Advance approval will only be granted in exceptional or unique site circumstances. An example of an exceptional or unique circumstance is where site-wide displacement rights exist.

Additionally, in determining allowability of costs associated with: a) any self-select voluntary separation program(s) for which the Contractor provides only notification; and b) any involuntary separation programs conducted without CO approval, and specifically, in determining whether the Contractor exercised prudent business judgment under Department of Energy Acquisition Regulation 48 C.F.R. 952.231-71(f), the Contracting Officer will take into account the results of any designated legal counsel review of those programs. The designated legal counsel should consult with the Office of the Assistant General Counsel for Contractor Human Resources on issues arising out of its Responsibilities, as set forth in DOE Order 350.3, Chg. 1, Ch. III.