

**Department of Energy  
Acquisition Regulation**

**No. AL-2012-03  
Date: October 24, 2011**



# 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 professions 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:** The Allowability of Incurred Costs Due to Contractor Errors

**References:**

FAR 31.201-2            Determining Allowability  
FAR 31.201-3            Determining Reasonableness

**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This AL remains in effect until superseded or canceled.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) Contracting Officers who are responsible for determining the allowability of incurred costs due to contractor errors are the audience for this AL.

**Who Is the Point of Contact For this AL?**

DOE Contracting Officers may contact Michael Righi of the Contract and Financial Assistance Policy Division, Office of Policy, Office of Procurement and Assistance Management at (202) 287-1337 or at [Michael.Righi@hq.doe.gov](mailto:Michael.Righi@hq.doe.gov).

**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 additional application guidance on determining the allowability of incurred costs due to contractor errors.

## **What Types of Contracts Are Affected by this AL?**

This AL applies to all contracts, including management and operating contracts, whose price or cost reimbursement is based on estimated or incurred costs.

## **What Is the Background Of this AL?**

The standards for allowability of contractor costs are found at Federal Acquisition Regulation (FAR) Subpart 31.2. FAR 31.201-2 reads: “(a) A cost is allowable only when the cost complies with all of the following requirements: (1) Reasonableness ... (4) Terms of the contract. (5) Any limitations set forth in this subpart.”

Specifically unallowable costs are covered by requirement (5), and FAR subpart 31.2 reflects Government-wide policy limitations (cost principles on selected costs at FAR 31.205) that specifically preclude certain costs from being allowable that otherwise meet the other criteria for allowability. Expressly unallowable costs, (i.e., costs explicitly spelled out in FAR 31.205 as unallowable, such as alcohol) when incurred by DOE contractors are always unallowable, regardless of the reason for their incurrence.

Determining the allowability of costs that are not specifically unallowable, but that may be unallowable because they are not reasonable, requires the exercise of judgment by the contracting officer. Determining the allowability of incurred costs that are due to contractor errors are in this category.

With respect to requirement (1) above on “Reasonableness,” FAR 31.201-3 provides that a cost is reasonable if it is, in 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, 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 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.

If it were possible for a contractor to operate a zero error financial system at no cost, no incurred cost due to error would be allowable because it would be unreasonable. Since this is not possible, the cost-reimbursement contractor and the government must make prudent business judgments about the benefit versus cost of the contractor's financial system. It would not generally be prudent, for example, to spend \$100,000 to save \$10 in cost.

## **What Guidance Included in this AL?**

### *1. What's new for Contracting Officers?*

There is nothing new for Contracting Officers in this guidance, which informs the Contracting Officer of the FAR requirements and provides application guidance for those requirements.

If a contractor working under a cost-reimbursement contract incurs a cost due to its error, the cost may or may not be unallowable. If a contractor's employee on authorized travel, for example, mistakenly accepts additional insurance on a rental car, the cost of the insurance is due to an error. If the contractor was managing its travel costs in accordance with generally accepted sound business practices (that is, it was maintaining financial systems that included reasonable controls to mitigate errors), the cost is generally allowable. But if the contractor was grossly disregarding its contractual obligations, the cost is unreasonable and consequently not allowable.

If the contractor is routinely incurring errors whose costs are unallowable, the contracting officer should review the appropriateness of the contractor's corrective actions and appropriately reflect the incurrence of the errors and the corrective actions in the contractor's performance rating.

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?*

Since nothing new for Contracting Officers is included in this guidance, which informs the Contracting Officer of the FAR requirements and provides application guidance for those requirements, this AL's guidance does not significantly affect current contracts or future contracts. The guidance should enhance efficiency in communicating FAR requirement to all affected parties.