



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: Contractor Executive Compensation

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

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This AL remains in effect until superseded or canceled. This Acquisition Letter cancels and replaces AL 2007-02, which remains available in Acquisition Letter Archives on the Office of Acquisition and Project Management homepage.

Who Is the Intended Audience For this AL?

Heads of Contracting Activity (HCA) and Contracting Officers (CO) responsible for administering and managing DOE management and operating (M&O) contracts, and non-M&O major site and facility contracts, contracts that include DOE Order 350.1, and other cost reimbursable contracts that require DOE approval of individual compensation for the top contractor official and other key personnel.

Who Is the Point of Contact?

Department of Energy (DOE) Contact: Robert M. Myers, Director, Contractor Human Resources Policy Division (MA-612) at (202) 287-1584 or robert.myers@hq.doe.gov.

or

National Nuclear Security Administration (NNSA) Contact: Supervisory Contractor Industrial Relations Specialist at (505) 845-4222.

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 this AL is to provide guidance on: (1) the compensation of contractor senior executives under all contracts; and (2) the salary of the top contractor management official under M&O contracts, and non-M&O major site & facility contracts, contracts that include DOE Order 350.1, and other cost reimbursable contracts that require DOE approval of individual compensation for the top contractor official.

What Types of Contracts Are Affected by this AL?

This AL applies to managing M&O contracts, non M&O major site & facility contracts, contracts that include DOE Order 350.1, 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 Office of Federal Procurement Policy (OFPP) Cost Accounting Standards Board Executive Compensation, Maximum Allowable Amount for Compensation of Contractors' Senior Executives

The OFPP determines the benchmark executive compensation amount as required by Section 39 of the OFPP Act, as amended (41 U.S.C. 435). 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. Each fiscal year, OFPP issues the "benchmark compensation amount" as the upper limit on compensation of "contractor senior executives." The allowability of the compensation costs for the senior executives of Government contractors is capped by statute (10 U.S.C. 2324(e)(1)(p) and 41 U.S.C. 256(e)(1)(p)) at a benchmark executive compensation amount. 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.

What Is the Guidance Contained in this AL?

- I. The following applies to the determination of the allowability of the **compensation** of all contractors' senior executives per the OFPP benchmark compensation amount:
 - For M&O and non-M&O contracts, see FAR 31.205-6 (p);
 - In addition, for M&O contracts, see DEAR 970.5232-2, DEAR 970.3102-05-6, and FAR 31.205-6 (p);

- In addition for NNSA, further follow the procedures contained in NNSA BOP 003-0601.
- II. To approve the **salary** of the top contractor management official for M&O contracts and non-M&O major site & facility contracts, contracts that include DOE 350.1, and other cost reimbursable contracts that require DOE approval of individual compensation for the top contractor official:
- A. Heads of Contracting Activities in DOE and Site Office Managers in the National Nuclear Security Administration (NNSA) may approve the **salary** in accordance with the requirements in paragraph B below. If they don't adhere to the requirements below, they must obtain approval from the DOE or NNSA Senior Procurement Executive, who will consult with the Cognizant Program Secretarial Officer or the Deputy or Assistant Administrator prior to approval.
- B. For DOE the Heads of Contracting Activities, and for NNSA the Site Office Managers shall:
- (1) For DOE notify the Cognizant Program Secretarial Officer, and for NNSA notify the Cognizant Deputy or Assistant Administrator at least 48 hours prior to approval.
 - (2) Provide the final salary determination and the effective date to the DOE or NNSA Senior Procurement Executive, respectively. In addition, for DOE provide the final salary determination to the Cognizant Program Secretarial Officer, and for NNSA provide the final salary determination to the Cognizant Deputy or Assistant Administrator.
 - (3) For post award promotion actions, obtain an assessment of the top management official's performance and of his/her organization from the appropriate Headquarters program office prior to approval or submitting a request for approval to the Senior Procurement Executive.
 - (4) Use the following criteria when reviewing salary actions for the top contractor official:
 - a. Not to exceed industry benchmarks (see FAR 31.205-6(b)).¹
 - b. Not to exceed the benchmark compensation amount for the contractor Fiscal Year (see FAR 31.205-6(p)).
 - c. If due to recruitment or promotion: limit increases to the lesser of 10 percent above the candidate's current salary or 6 percent above the prior incumbent's reimbursed salary.²
 - d. If neither recruitment nor promotion; actions shall not exceed 6 percent per annum.
 - e. Except for promotions and "acting" situations; only one salary increase per individual is permitted during any twelve month period.
 - f. Be within the contractor's original salary range for the position and in accordance with the contractor's salary increase distribution program.

- g. Require contractors to submit each salary action (including notifications) on a fully completed DOE F 3220.5, "Application for Contractor Compensation Approval."
- (5) Annual approval of individual salary actions is limited to the top contractor official (e.g. Laboratory Director/Plant Manager or equivalent) subject to the following guidelines:
- a. All key personnel with the exception of the Laboratory Director/Plant Manager (or equivalent top site manager) will be transitioned to the contractor's Compensation Increase Plan (CIP). Salaries for Key Personnel shall continue to be approved until they are transitioned to the CIP.
 - b. Contracts will be modified to establish the top contractor official (e.g. Lab/Plant Director/equivalent) base salary reimbursement level as the maximum allowable salary reimbursement. Unusual circumstances may require a deviation for an individual on a case-by-case basis. Any such deviations must be approved by the applicable program Under Secretary, or designee.
 - c. DOE will continue to approve key personnel salaries upon initial contract award and when key personnel are replaced during the life of the contract.
 - d. DOE will have access to all individual salary reimbursements. This access is provided for transparency; DOE will not approve individual salary actions (except as above).

¹ Note: The salary approval limitations in II.B.(4)(a) above are not to be confused with the maximum total compensation limitation which limits the allowability of compensation for all contractor senior executives to a maximum overall cap, regardless of industry benchmarks. Also, while there is no prohibition against performing the above actions, as applicable, prior to contract award (during the pre-award process), solicitations should include language notifying prospective bidders that proposed salaries for senior executives may be subject to review and approval post contract award, and solicitations should request sufficient supporting information from offeror to support the analysis required by FAR 31.205-6(b) and 31.205-6(p).

² Note: The limits of 10 percent above the candidate's current salary or 6 percent above the prior incumbent's reimbursed salary in paragraph II.B.(4).c. are not reimbursements limits, but the contracting officer must request the approval of the Senior Procurement Executive prior to approving a salary that exceeds these thresholds. Any request for approval to the Senior Procurement Executive must include supporting documentation to demonstrate reasonableness of the salary including addressing the criteria established in the FAR, DEAR, DOE Order 350.1, and the specific criteria established in FAR 31.205-6 (b).