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Department of Energy
Acquisition Regulation

No. AL 2013-07
June 4, 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: Applying the changes of the May 3, 2013, Final Rule on Contractor Legal Management Requirements to existing contracts

References:

10 CFR 719	**Contractor Legal Management Requirements**
DEAR 931.205-19	**Insurance and indemnification**
DEAR 931.205-33	**Professional and consultant service costs**
DEAR 952.231-71	**Insurance—litigation and claims**
DEAR 970.2803-2	**Contract clause**
DEAR 970.3102-05-33	**Professional and consultant service costs**
DEAR 970.5228-1	**Insurance—Litigation and Claims**

When is this Acquisition Letter (AL) effective?

This AL is effective 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This AL remains in effect until superseded or canceled.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), including National Nuclear Security Administration (NNSA), Contracting Officers are the audience for this AL.

Who is the Point of Contact for this AL?

Contracting Officers may contact Michael Righi of the Contracts and Financial Assistance Policy Division, Office of Policy, Office of Acquisition and Project Management by phone at (202) 287-1337 or by email to Michael.Righi@hq.doe.gov.

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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 on applying the changes of the May 3, 2013, Final Rule on contractor legal management requirements to existing contracts.

What Types of Contracts Are Affected by this AL?

This AL applies to extant management and operating contracts and other extant contracts that contain DEAR 931.205-33 or otherwise reference the Department's litigation management procedures and related cost guidelines.

What is the Background of this AL?

The Department of Energy has revised the existing contractor regulations covering contractor legal management requirements at 10 CFR 719. The revised regulations were published as a Final Rule in the Federal Register on May 3, 2013, available at the following website: http://www.gpo.gov/fdsys/pkg/FR-2013-05-03/pdf/2013-10485.pdf.

Among other things, the Final Rule requires Contracting Officers to apply the changes of the Final Rule to each existing affected contract, prospectively, by including them in the contract by bilateral modification. The changes are to become effective on the date the modification is executed and will apply only to costs incurred from that date forward. Contracting Officers are to attempt to execute modifications within 60 days of the publication in the Federal Register of the Final Rule. Affected current contracts are extant management and operating contracts and other contracts that currently contain DEAR 931.205-33 or otherwise reference the Department's litigation management procedures and cost guidelines.

The following summarizes the changes of the Final Rule that will apply to affected contracts.

- The new 10 CFR 719 is a revised version of the old 10 CFR 719 and reflects changes designed to clarify and streamline existing requirements, improve efficiency of contractor legal management, and facilitate oversight over the expenditure of taxpayer dollars.
- The new DEAR 931.205-19, Insurance and indemnification, requires contracting officers to insert the clause at 952.231-71, Insurance—litigation and claims, in certain contracts, as did the old DEAR 931.205-19, but the contracts to which this requirement applies differ.
- The new DEAR 931.205-33, Professional and consultant service costs, requires litigation and other legal expenses be incurred in accordance with 10 CFR Part 719, Contractor Legal Management Requirements, as did the old DEAR 931.205-33, but the contracts to which this requirement applies differ.

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- The new DEAR 952.231-71 requires legal costs to be incurred per the FAR and DEAR cost principles, as did the old DEAR 952.231-71, but the new DEAR 952.231-71 also explicitly states the contractor must comply with 10 CFR Part 719.
- The new DEAR 970.2803-2, Contract clause, requires contracting officers to insert the clause at 970.5228-1, Insurance—Litigation and Claims, in management and operating contracts, as did the old DEAR 970.2803-2, but the new DEAR 970.2803-2 explicitly states do not insert the clause at 48 CFR 52.228-7.
- DEAR 970.3102-05-33 is not revised (this cost principle simply states DEAR 931.205-33 applies to management and operating contracts).
- The new DEAR 970.5228-1 requires legal costs to be incurred per the FAR and DEAR cost principles, as did the old DEAR 970.5228-1, but the new DEAR 970.5228-1 also explicitly states the contractor must comply with 10 CFR Part 719.

To execute bilateral modifications of existing contracts, the Contracting Officers will in effect:

- in non-management and operating contracts, remove the currently applicable versions of 10 CFR 719, DEAR 931.205-19, DEAR 931.205-33, and DEAR 952.231-71 and replace them with the Final Rule's versions;
- in management and operating contracts, remove the currently applicable versions of 10 CFR 719, DEAR 931.205-33, and DEAR 970.5228-1 and replace them with the Final Rule's versions.

(The Final Rule's revisions "… are designed to clarify and streamline existing requirements, improve efficiency of contractor legal management, and facilitate oversight over the expenditure of taxpayer dollars." The contract modifications will state the revisions will only apply to costs incurred from date the bilateral modifications are executed forward. The revisions are administrative in nature. Regarding costs contractors have not yet incurred, the revisions could have been communicated to contractors without using a Final Rule to incorporate them into current contracts. Consequently, the modifications do not require equitable adjustments.)

What Guidance is included in this AL?

1. What's new for Contracting Officers?

Contracting Officers must modify affected existing contracts to reflect the changes of the May 3, 2013, Final Rule on contractor legal management requirements. They may use the following or similar language:

For non-management and operating contracts—

The changes to the Department of Energy contractor regulations covering contractor legal management requirements at 10 CFR 719 and to the related contract terms and conditions that occurred in the Final Rule published in the Federal Register on May 3, 2013, will apply to costs incurred by the contractor

from the date of this modification forward, that is, from this date forward the Final Rule's versions of 10 CFR 719, DEAR 931.205-19, DEAR 931.205-33, and DEAR 952.231-71 apply to this contract.

For management and operating contracts—

The changes to the Department of Energy contractor regulations covering contractor legal management requirements at 10 CFR 719 and to related contract terms and conditions that occurred in the Final Rule published in the Federal Register on May 3, 2013, will apply to costs incurred by the contractor from the date of this modification forward, that is, from this date forward the Final Rule's versions of 10 CFR 719, DEAR 931.205-33, and DEAR 970.5228-1 apply to this contract.

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

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

3. Who has what responsibility for implementing this AL's guidance?

The Contracting Officer has the responsibility for implementing this AL.

4. *What changes implemented by this AL's guidance affect current contracts, future contracts, or both?*

This AL's guidance affects some current contracts. Contracting Officers must modify affected current contracts to reflect the changes of the May 3, 2013, Final Rule on contractor legal management requirements. Affected contracts are extant management and operating contracts and other extant contracts that contain DEAR 931.205-33 or otherwise reference the Department's litigation management procedures and cost guidelines. The modifications do not require equitable adjustments.

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