



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: Meal Costs in Management and Operating Contracts

References:

FAR 31.201-2	Determining Allowability
FAR 31.201-3	Determining Reasonableness
FAR 31.205-13	Employee morale, health, welfare, food service, and dormitory costs and credits
FAR 31.205-14	Entertainment costs
FAR 31.205-34	Recruitment costs
FAR 31.205-43	Trade, business, technical and professional activity costs
DEAR 970.5232-2	Payments and Advances

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This AL remains in effect until superseded or canceled.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 meal costs under management and operation (M&O) contracts are the audience for this AL.

Who Is the Point of Contact For this AL?

Contact Michael Righi of the Contracts 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.

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 purposes of this AL are to provide additional application guidance on: understanding the standards for reimbursement of contractor meal costs; applying the standards in determining the allowability of contractor meal costs; and overseeing the Department's and contractors' internal controls applicable to reimbursement of contractor meal costs.

What Types of Contracts Are Affected by this AL?

This AL applies only to M&O contracts.

What Is the Background Of this AL?

Overview

Under the Federal Acquisition Regulation (FAR), the contracting officer can most effectively determine the allowability of contractor meal costs by applying what is essentially a two part test. First, the contracting officer determines if the costs are specifically unallowable per any of the cost principles. Second, the contracting officer determines if the costs are reasonable in nature and amount.

The Standards for Reimbursement of Contractor Meal Costs

The standards for determining 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

With respect to requirement (5), this FAR subpart reflects Government-wide policy limitations (cost principles on selected costs at FAR 31.205) that may specifically preclude certain costs that otherwise meet the other criteria for reimbursement. There are two such principles that are directly relevant and three that are indirectly related to the issue of whether a contractor's meal costs are reimbursable. Meal expenses are addressed specifically at FAR 31.205-43, trade, business, technical and professional activity costs, which reads:

- “The following types of costs are allowable: ... (c) When the principal purpose of a meeting, convention, conference, symposium, or seminar is the dissemination of trade, business, technical or professional information or the stimulation of production or improved productivity -- (1) Costs of organizing, setting up, and sponsoring the meetings,

conventions, symposia, etc., including rental of meeting facilities, transportation, subsistence, and incidental costs; ...”

Additionally, meals costs are also addressed specifically at FAR 31.205-14, entertainment costs, which reads:

“Costs of amusement, diversions, social activities, and any directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities are unallowable. Costs made specifically unallowable under this cost principle are not allowable under any other cost principle.”

The three cost principles that are indirectly related to meal costs are those for travel, recruitment, and employee morale and welfare (FAR 31.205-46 (a) 31.205-34, and 31.205-13, respectively).

Reasonableness

With respect to requirement (1) above, FAR 31.201-3 provides that a cost is allowable for reimbursement under a Government cost-type contract where that cost is, in its 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 and circumstances, 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.

Incorporation of the Standards into M&O Contracts

The foregoing standards for reimbursement are incorporated by reference into DOE's M&O contracts (DEAR 970.5232-2, Payments and Advances, paragraph (j)), and provide both the contractual basis as well as the “decision tree” for analytical purposes for determining allowability of costs under the contracts.

Discretion to Establish a Cost as Unallowable Under a Specific Contract

While contracting officers may never permit costs that are unallowable under the FAR (or DEAR) to be allowable under any contract, they may for any specific contract establish in advance that certain costs, such as contractor employee meals costs, are unallowable despite their allowability under FAR. Of course such a determination must be communicated to the contractor before it incurs the costs.

What Guidance Included in this AL?

1. What's new for Contracting Officers?

The following paragraphs (titled Applying the FAR requirements, Specific examples,

Documentation, Contract Cost Audit, and Review of contractor internal policies, procedures, and internal controls) address meal costs and: inform the Contracting Officer the FAR requirements; provide application guidance for those requirements; require the Contracting Officer to ensure meals costs are considered in the contractor's Annual Audit Plan; and direct the Contracting Officer to coordinate with the Office of the Inspector General (OIG) regarding application of audit resources.

Applying the FAR requirements

To apply the FAR requirements effectively, the contracting office must ensure that prudent cost management is practiced. This may mean that--under contracts where contractor employee meals costs are expected to be significant--the contracting officer will decide, after consultation with appropriate program officials that certain types of contractor employee meal costs are not to be reimbursed, even if they would otherwise meet the FAR requirements for reimbursement. Such a determination could rest upon the local determination that the cost of reimbursing contractor employee meals exceeds the benefit. In such cases, of course, the contracting officer must communicate this determination in writing to the contractor before the contract effort starts.

On the other hand, prudent cost management may mean that--under other contracts where contractor employee meals costs are expected to be significant--the contracting officer will decide, after consultation with appropriate program officials that certain types of otherwise allowable contractor employee meal costs are to be reimbursed, based upon the local determination that the benefit of reimbursing contractor employee meals exceeds the cost. In such cases, the contracting officer should communicate this determination in writing to the contractor before the contract effort starts and establish explicit boundaries for which costs are acceptable. If contractor employee meals costs are not an issue under the contract, the contracting officer may determine that no specific communication regarding the costs is necessary. In no case, however, may the contracting officer permit costs that are unallowable under the FAR to be reimbursed.

Specific examples

For the specific examples discussed below and for any other situation, a reasonableness test (both nature and amount) must be met for any cost to be allowable. That is, to be allowable the nature of the reimbursement must be reasonable and its cost must also be reasonable. For example, prudent business people do not routinely pay the costs of their employees' meals. An employee working late does not routinely receive a free meal--the nature of the expense is not reasonable. An occasion could arise, however, in which the Government imposed a last minute stringent deadline, and the contractor, at the last minute, told a critical employee to work late and paid for her meal. The nature of this expense is reasonable. Even if the nature of the expense is reasonable, part of the expense could be unallowable because it is excessive. So in the previous example, if the contractor provided a lobster and steak meal to the employee, the amount of the expense would be unreasonable and only the cost of a standard meal would be allowable. Finally, the contractor's cost of providing meals to employees at normal recurring meetings would not be allowable since the nature of the cost is not reasonable, that is, it is not: the type of cost generally recognized as ordinary and necessary for the conduct of a contractor's business or contract performance; a generally accepted sound business practice; or congruent with the contractor's responsibilities to the Government and the public at large.

- The following contractor employee meal costs will always be unallowable entertainment expenses: those incurred at a meeting where business was incidentally discussed; those incurred at a meeting designed to entertain employees; or those incurred at a meeting that is a social event.
- In all cases the meeting itself must be for an allowable purpose defined in FAR 31.205-43 (c) for the meal cost to be allowable.
- The cost of a lunch could be considered unallowable or unreasonable where the meeting was not continued through the lunch period or where the meeting was continued through the lunch period but taking a lunch break would not irreparably damage the meeting's purpose. Additionally, in circumstances where the meal itself might itself be considered reasonable, providing an overly lavish meal would result in unallowable costs in the amount by which the cost of a reasonable meal is exceeded.
- For both the cost of meals to facilitate an extended meeting and the cost of refreshments to facilitate a working meeting, FAR 31.205-43 (c) requires the meals or refreshments to be an integral part of the function and the function's principle purpose is one of those stated in the cost principle.
- Meal or refreshment costs incurred at a meeting designed to improve working conditions, employer-employee relations, employee morale, and employee performance could be allowable under FAR 31.205-13—if all other conditions of allowability were met, such as business was discussed during the meal period, taking a meal break would irreparably damage the meeting's purpose, and the meal or refreshment costs were reasonable. These types of costs are not allowable, however, if they represent an unallowable entertainment cost, that is, a diversion or social activity.
- The cost of alcoholic beverages is always unallowable (FAR 31.205-51).
- Meals for staff working over their normally scheduled hours would almost always be an unallowable expense.
- Meals or hors d'oeuvres served at introductory or wrap-up events or receptions are generally unallowable because such events and receptions are usually social activities. If the events or receptions, however, are clearly not social activities and held to facilitate a working meeting per the criteria under the cost principle at FAR 31.205-43 (c), it is possible the costs could be allowable, but only if the meals or hors d'oeuvres are an integral part of the function whose principle purpose is one of those stated in the cost principle.
- For job interviews, meals for the interviewer and interviewee would be an allowable cost, as a per diem charge, if both were in valid travel status. If either party were not in travel status, the cost of that party's meal would be unallowable, unless a very strong justification is provided that demonstrates the meal is a necessary part of the recruitment process and not simply a social activity or diversion from the interview process.

An otherwise allowable cost would be unallowable due to unreasonableness if it occurred more frequently than necessary for contract performance. Working lunches required by critical deadlines in jeopardy may be reasonable in a few narrow circumstances, but not if they occur routinely. Since opinions may vary on how often the cost should reasonably occur, if the contracting officer suspects an issue could arise, he or she should ensure the contractor's policy covering the cost conforms to the contracting officer's judgment on reasonableness.

Documentation

As FAR 31.201-2, Determining Allowability, explains, a contractor is responsible for maintaining supporting documentation adequate to demonstrate that any costs it claims: have been incurred; are allocable to the contract; and comply with applicable cost principles.

FAR 31.201-2 explicitly states that the contracting officer may disallow all or part of a claimed cost that is inadequately supported. While there are no hard and fast rules covering what constitutes adequate documentation, the contracting officer should consider requiring, by notifying the contractor in advance of cost incurrence, that it must maintain the following documentation regarding business meals:

- an agenda that includes comments that business will continue during the meal;
- notes of the specifics of business discussed during the meal; and
- the rationale used to determine the meal was an integral part of the meeting, convention, conference, symposium, or seminar.

Contract Cost Audit

Contracting officers, as part of their review of the contractor's proposed Annual Audit Plan (see AL 2005-04 and Acquisition Guide Chapter 70.4), must ensure that the plan places appropriate emphasis on the audit of contractor meal expenses in accordance with FAR requirements and the application guidance of this Acquisition Letter.

Review of contractor internal policies, procedures, and internal controls

After assuring themselves that they understand the standards and how to apply them, Contracting officers must:

- review contractor internal policies, procedures, and internal controls on claiming contractor meal expenses as allowable costs;
- ensure those policies and procedures are compliant with the FAR and the application guidance of this acquisition letter;
- ensure the contractor has disseminated its policies and procedures to affected employees; and
- require, in coordination with the OIG, contractors to direct their internal audit staffs to ensure employees are adhering to the policies and procedures.

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?*

This AL's guidance explicitly requires the Contracting Officer to ensure the contractor's internal controls for meals costs are appropriate in light of the FAR's requirements and prudent management and to coordinate with the OIG to ensure audit resources are applied effectively.