



# 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:** Contractor Domestic Extended Personnel Assignments

**References:**

FAR 31.201-2	Determining Allowability
FAR 31.201-3	Determining Reasonableness
FAR 31.205-35	Relocation Costs
FAR 31.205-46	Travel Costs
DEAR 970.3102-05-46	Travel Costs
DOE O 350.2B	Use of Management and Operating or Other Facility Management Contractor Employees for Services to DOE in the Washington, D.C. Area
DOE M 552.1-1A	U.S. Department of Energy Travel Manual
FTR 302-3.400-429	Employee's Temporary Change of Station
Memorandum for Heads of Contracting Activity, "Contractor Domestic Personnel Extended Assignments" issued May 16, 2012	

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This AL remains in effect until superseded or canceled.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

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

DOE Contracting Officers may contact Jason Taylor of the Contracts and Financial Assistance Policy Division, Office of Policy, Office of Acquisition and Project Management by phone at (202) 287-1945 or by email to [Jason.Taylor@hq.doe.gov](mailto:Jason.Taylor@hq.doe.gov). NNSA Contracting Officers may contact Rocio Bolivar by phone at (505) 845-6057 or by email to [Rocio.Bolivar@nnsa.doe.gov](mailto:Rocio.Bolivar@nnsa.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 guidance on the Department's policy governing reimbursement of costs associated with contractor domestic extended personnel assignments. This AL supersedes the guidance provided in the Memorandum for Heads of Contracting Activity; "*Contractor Domestic Personnel Extended Assignments*" issued May 16, 2012.

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

This AL applies to all cost reimbursement contracts.

## What Is the Background Of this AL?

Generally speaking, contractor travel costs are governed by the FAR travel cost principle at 31.205-46 (or DEAR 970.3102-05-46). This principle (incorporated into contracts by either the Payments and Advances clause in M&O contracts, or the Allowable Cost and Payment clause in non-M&O contracts) provides that lodging costs may be based on per diem, actual expenses, or a combination thereof, provided the method used results in a reasonable charge. It provides further that these costs shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis the maximum per diem rates in effect at the time of travel as set forth in the Federal Travel Regulation (FTR), Joint Travel Regulation (JTR) or Standardized Regulations (SR).

Importantly, the travel cost principle does not incorporate the entirety of the FTR, JTR or SR. Absent specific contract language to the contrary, only the maximum per diem rates, the definitions of lodging, meals, and incidental expenses, and the regulatory coverage dealing with special or unusual situations are incorporated. Accordingly, when determining the reasonableness of costs associated with contractor domestic extended personnel assignments, we must rely on the general principles established by FAR 31.201-2 and 31.201-3.

According to FAR 31.201-2, a cost is allowable only when it complies with all of the following requirements: reasonableness, allocability, cost accounting standards if applicable (otherwise generally accepted accounting principles), the terms of the contract, and the limitations set forth in FAR Subpart 31.2.

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business. If the contractor is not subject to effective competitive restraints, reasonableness of specific costs must be examined with particular care. What is reasonable depends on a variety of circumstances, including whether the cost: is generally recognized as ordinary and necessary for the conduct of a contractor's business or contract performance; incurred per a generally accepted sound business practice, arm's-length bargaining, law or regulation; congruent with

the contractor's responsibilities to the Government and the public at large; and consistent with the contractor's established practices.

No presumption of reasonableness is attached to the incurrence of costs by a contractor. If the Government's initial review of the facts results in a challenge of a cost by the Government, the burden of proof is on the contractor to establish that the cost is reasonable. In order to avoid disallowance or dispute based on reasonableness, it is often a good idea to reach an advance agreement on certain costs. FAR 31.109(h) provides a list of examples of costs for which advance agreements can be particularly important. Among those listed are: off-site pay, incentive pay, location allowances, hardship pay, and cost of living differential.

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

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

##### Definition

*Contractor domestic extended personnel assignments* are defined as any assignment of contractor personnel to a domestic location different than their normal duty station for a period expected to exceed 30 consecutive calendar days. This includes (but is not limited to) Management and Operating (M&O) contractor personnel details to Washington, D.C. in accordance with DOE O 350.2B. NNSA M&O contractor personnel details to Washington, D.C., or other detailees to NNSA, are governed by NNSA SD 350.2.

##### Policy

The Department has adopted the following policy regarding contractor domestic extended personnel assignments:

- Contractors should be reimbursed the lesser of temporary relocation costs (Temporary Change of Station allowances as described in the Federal Travel Regulation at §302-3.400—§302.3.429) or a reduced per diem (Extended Travel Duty) described below. Contracting Officers are encouraged to request input from their contractor and the affected program office prior to making a decision on the appropriate reimbursement method.
- When a reduced per diem method (Extended Travel Duty) is utilized, the allowances are as follows: For the first 60 days and last 30 days of the assignment, DOE/NNSA will reimburse costs associated with lodging at the lesser of actual cost or 100% of the Federal per diem rate at the assignment location. The intervening days will be reimbursed at the lesser of actual cost or 55% of Federal per diem. For the first 30 days and last 30 days of the assignment, DOE/NNSA will reimburse costs associated with meals and incidental expenses (M&IE) at the lesser of actual cost or 100% of the Federal per diem rate at the assignment location. Otherwise, DOE/NNSA will reimburse these costs at the lesser of actual cost or 55% of Federal per diem. DOE/NNSA will not reimburse costs associated with salary premiums, per diem, or lodging/other subsidies for contractor employees on domestic extended personnel assignments after 3 years (except for the reimbursements described above during the last 30 days of the assignment). DOE/NNSA will

not reimburse any costs associated with per diem (except for en-route travel) unless the contractor employee maintains a residence at the permanent duty station.

- DOE/NNSA will not reimburse costs associated with salary premiums that exceed 10%.
- Contracting Officers are prohibited from entering into advance agreements that are inconsistent with this AL.

The policy is inapplicable in the following three circumstances:

- Assignments pursuant to the Intergovernmental Personnel Act
- Assignments in support of Continuity of Operations (COOP) and contingency operations
- A waiver has been granted in writing by the cognizant HCA and Assistant Secretary (or for NNSA, the HCA in individual cases and the Senior Procurement Executive with Principal Deputy Administrator concurrence for blanket waivers)

In addition to ensuring compliance with the above policy, Contracting Officer's should consider the following questions when reviewing contractor policies or proposals for domestic extended personnel assignments for reasonableness:

- *Would it be more economical to relocate the employee?* Contractors should be reimbursed the lesser of relocation costs or reduced per diem. Accordingly, programs should conduct a cost comparison prior to commencing the assignment in order to ascertain which allowance to pay. In order to make an accurate choice, it will be necessary to have an idea of the length of the proposed assignment.
- *Has the contractor considered whether it would be more economical to secure longer term accommodations, rather than to stay in a hotel on a daily rate?* It is almost always possible to secure long-term lodging at a cost well below per-diem. Contractors will be reimbursed at the lesser of actual cost or 55% of per diem (if using the Extended Travel Duty option).
- *Is any field salary premium justified and reasonable?* As with any other cost, the field salary premium must be reasonable in both nature and amount. A salary premium should not be an automatic allowance provided to employees on domestic extended assignments. It should be provided only on an as needed basis with proper justification. If a salary premium is intended to offset a higher cost of living at the assignment location, Contracting Officers should consider whether that additional cost is already being offset by payment of per diem. Contracting Officers should keep in mind the prudent person test outlined in FAR 31.201-3. Salary premiums shall not exceed 10%, and must be discontinued after 3 years.
- *Is the overall reimbursement justified and reasonable?* Keep in mind that the purpose of long term per diem allowance under the Extended Travel Duty option is to reimburse contractor employees for the additional expenses associated with maintaining a separate residence away from home. Contracting Officers should remember the prudent person test outlined in FAR 31.201-3.

Questions and Answers regarding interpretation of the new policy

- The new policy states “DOE/NNSA will not reimburse costs associated with salary premiums, per diem, or lodging/other subsidies for contractor employees on domestic extended personnel assignments after 3 years.”
  - *Please clarify: Does this apply to all contractor personnel, including those funded by non-DOE/NNSA entities under a Work for Others project? Yes.*
- *Is there a waiver process for exceptional circumstances?* In exceptional cases, this policy (or portions thereof) may be waived with the written approval of the cognizant HCA and Assistant Secretary. Within NNSA, this policy or portions thereof may be waived with the written approval of the HCA for individual actions, and by the Senior Procurement Executive with Principal Deputy Administrator concurrence for blanket waivers.
- *Some contractor employees travel intermittently to the same location in support of project type tasks but are not in any meaningful sense considered "assigned" to that location even though some periods of travel may exceed 30 days. Does the AL apply in this circumstance?* If a contractor employee travels intermittently to the same location with some periods in excess of 30 days but it is not practical or cost effective to obtain long term lodging, the program office may consider pursuing a waiver from the restrictions in this Acquisition Letter.
- *What should be done about contractor employees who are already on a domestic extended personnel assignment under terms inconsistent with the new policy?* The new policy applies immediately to all new contractor domestic extended personnel assignments. Existing assignments shall be transitioned to the new policy after providing 90 days notice. In the case of assignments with less than 90 days term remaining before renewal, the existing reimbursement scheme will carry forward into the renewal period until the 90 day notice period has elapsed.
- *How does the three year rule limiting the reimbursement of per diem apply to those contractor employees who have a series of temporary assignments to the same location, all for short periods but that together cover three years?* If an assignment has breaks within a three year period, the calculation of the total length of the assignment will be as follows: If the break between assignments is less than 12 months, the Department will consider the assignment continuous for purposes of the three year clock. For instance, if an employee completes a 2 year assignment at location A and returns to his permanent duty station for 12 months, a subsequent new 2 year assignment back to location A will restart the 3 year clock. The assignments will be considered two separate 2 year assignments. On the other hand, if in the previous example the employee’s return to his permanent duty station was 6 months, the Department would consider the second assignment to be a continuation of the first and it would run afoul of the three year rule.
- *What if our contract contains an advance agreement governing treatment of these costs that is inconsistent with the new policy?* The advance agreement should be modified to be consistent with the new policy. Keep in mind the FAR requirements for a valid advance

agreement which are described at 31.109(b). If your agreement does not meet these requirements (for instance if it lacks a “statement of its applicability and duration”) it may not even be binding.

- *Is HCA approval required for each individual assignment?* The policy does not require HCA approval of individual extended assignments (unless a waiver is requested). HCA approval is also required before finalizing any advance agreements (such as Personnel Appendix changes) or approving any contractor domestic extended personnel assignment policies.
- *Is this policy applicable only to prime contractors, or does it flow down to subcontractors? The policy should be considered a cost standard that flows down to all subcontractors.*

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 affects both current and future contracts.