



ACQUISITION LETTER

This Acquisition Letter is issued under the authority of the Procurement Executives of DOE and NNSA.

Subject: 2000 Executive Compensation

References:

DEAR 970.3102-2	Compensation for personal services
DEAR 970.5204-13	Allowable costs and fixed-fee (Management and operating contracts)
DEAR 970.5204-14	Allowable costs and fixed-fee (support contracts)

When is this Acquisition Letter (AL) Effective?

This AL is effective 10 days from the date of issuance. This guidance supersedes any previous statutory cap on executive compensation. Existing contracts need to be reviewed to determine whether contract terms and conditions are consistent with the guidance in this AL, or whether contract modifications are necessary.

When Does this AL Expire?

This AL remains in effect until superseded or canceled.

Whom do you Contact for More Information?

Contact the Office of Procurement and Assistance Policy, for questions pertaining to the statutory limits, Terry Sheppard, (terry.sheppard@hq.doe.gov) or (202)586-8193.

Contact the Office of Contract and Resource Management, for questions pertaining to salary approvals, Rose Johnson, (rosemary.johnson@pr.doe.gov) or (202)586-5323.

What is the Purpose of this AL?

The purpose of this AL is four-fold:

- It appraises you of a change to the “benchmark compensation amount” to \$353,010 from \$342,986. This information was previously provided in Flash #2000-14, May 9, 2000 and was published in the *Federal Register* Vol 65, No. 93, page 30640, May 12, 2000.
- It rescinds AL 99-02, March 11, 1999, which provided guidance relative to Section 804 of the FY 1999 Defense Authorization Act (Pub. L. 105-261) and established a limitation on the reimbursement of certain senior executive compensation incurred after January 1, 1999.
- It raises HCA approval authority for top contractor management official’s annual salary (including allowable variable pay) to \$250,000 from \$225,000 and removes the reference to the Contractor Executive Board in paragraph B.
- It restates existing guidance regarding allowable/unallowable cost and salary approval.

What is the Background Information You Need to Know?

During FYs 1997, 1998, and 1999 Congress enacted Government-wide caps on allowable contractor compensation costs for senior executives; Section 809 of the FY 1997 Defense Authorization Act (Pub. L. 104-201); Section 808 of the FY 1998 Defense Authorization Act (P.L. 105-85); and Section 804 of the FY 1999 Defense Authorization Act (Pub. L. 105-261). These caps were discussed in ALs 97-05, 98-07, and 99-02, respectively.

Section 808 of the FY 1998 Defense Authorization Act contained a definition of the term “senior executive,” subject to the compensation cap as follows:

The term ‘senior executive’ means: (1) the contractor’s Chief Executive Officer or any individual acting in a similar capacity; (2) the contractor’s four most highly compensated employees in management positions other than the chief executive officer; and (3) if the contractor has intermediate home offices or segments that report directly to the contractor’s corporate headquarters, the five most highly compensated employees in management positions at each such intermediate home office or segment.

However, section 804 of the FY 1999 Defense Authorization Act, modifies the FY 1998 definition to read as follows:

The term 'senior executives,' with respect to a contractor, means the five most highly compensated employees in management positions at each home office and each segment of the contractor.

The main distinction between the FY 1998 coverage and the FY 1999 coverage is that the FY 1998 definition limited the cap to "senior executives at intermediate home offices or segments that report directly to the contractor's corporate headquarters."

By contrast, the FY 1999 language broadened the definition of a senior executive by deleting the direct reporting limitation and expanding the definition to "the five most highly compensated employees in management positions at each home office and each segment of the contractor."

Currently, there are three different definitions of the class of covered executives and four different salary caps that apply to years 1997, 1998, 1999, and 2000. For the respective periods (dates are inclusive) they are:

1. October 1, 1996-September 30, 1997 Salary Cap-\$250,000
(AL 97-05 provided implementation instructions.)
2. January 2, 1998-January 1, 1999 Salary Cap-\$340,650
(AL 98-07 provided implementation instructions.)
3. January 2, 1999-January 1, 2000 Salary Cap-\$342,986
(AL 99-02 provided implementation instructions.)
4. January 2, 2000-Until revised by OFPP Salary Cap-\$353,010

What is the Guidance Contained in this AL?

A. Allowable/Unallowable Costs:

Compensation for costs incurred after January 1, 2000, means: the total amount of wages, salary, bonuses and deferred compensation (see FAR 31.205-6(k)) and employer contributions to defined contribution pension plans (see FAR 31.205-6(j)(5) and (j)(8)) for the fiscal year, whether paid, earned, or otherwise accruing, as recorded in the contractor's cost accounting records for the fiscal year. It does not include fringe benefits, such as health benefits, and employer contributions to defined benefit pension plans. If reasonable in amount, these elements of compensation are allowable irrespective of the cap.

The benchmark compensation salary cap amount of \$353,010 is to be used for calendar year 2000 and subsequent contractor fiscal years, unless and until revised by OFPP. This limitation is the sole statutory limitation on allowable senior executive compensation costs incurred after January 1, 2000, under new or previously existing contracts, and it applies whether or not the affected contracts were previously subject to a statutory limitation on such costs.

The term "senior executives," with respect to a contractor, means the five most highly compensated employees in management positions at each home office and each segment of the contractor.

B. Salary Approval

1. Heads of Contracting Activities are delegated authority to approve the salaries for the top contractor management official subject to the limitations contained in B.5 below. Salary requests which are not consistent with the parameters established in this AL, but are otherwise determined appropriate by the Heads of Contracting Activities (HCA), must be approved by the Department's Senior Procurement Executive or, for the National Nuclear Security Administration (NNSA) contracts, the NNSA Senior Procurement Executive, in consultation with the cognizant Program Secretarial Officer. Approval for exception to the parameters is not required for top contractor management official salaries that are proposed at less than \$100,000. All requests for approval must be processed through the Office of Procurement and Assistance Management, MA-5.

2. An assessment of an individual's performance and that of their organization shall be obtained from Headquarters program offices prior to approving the salary.
3. Notification shall be provided to the Cognizant Secretarial Officer (CSO) 48 hours prior to approving salary.
4. Notification of the final salary determination for both the top contractor management official and the official's deputy, and the effective date of the determination, shall be provided to the CSO and the Department's Senior Procurement Executive.
5. HCA's shall adhere to the following parameters in authorizing reimbursement of the salary for the top contractor management official:
 - A salary increase shall not exceed industry benchmarks.
 - The salary to be reimbursed by DOE shall not exceed \$250,000 per annum. This limitation applies to annual salary and any allowable variable compensation.
 - Salary actions due to recruitment or promotion are limited to the lesser of a maximum of 10 percent above the candidate's current salary, or a maximum of 6 percent above the prior incumbent's reimbursed salary.
 - Salary increases which are neither recruitment nor promotion actions, shall not exceed 6 percent per annum.
 - Except for promotions and "acting" situations, only one salary increase per individual is permitted during any twelve month period.
 - A salary increase shall be within the contractor's original salary range for the position and in accordance with the contractor's salary increase distribution program.

NOTE: The foregoing parameters apply to contractor executive salary approval only. The salary approval requirements are not to be confused with the maximum total compensation limitation which limits the allowability of compensation for contractor senior executives. Also, the maximum salary limitation and the maximum percentage increase limitation will be issued at the beginning of each fiscal year based on analysis conducted by a team of DOE Headquarters and field representatives.