



# **Headquarters Policy Flash**

**FLASH 99-17**

**DATE:** October 5, 1999  
**TO:** Distribution  
**FROM:** Office of Procurement and Assistance Policy, MA-51  
*Office of Procurement and Assistance Management*

**SUBJECT:** 1. **FY 2000 Energy and Water Development Appropriations Act**  
2. **Instructions to Implement Section 309**  
3. **Appropriations Language Regarding Travel Costs**

**SUMMARY:** 1. **FY 2000 Energy and Water Development Appropriations Act**

On September 30, 1999, the President signed the FY 2000 Energy and Water Development Appropriation Act. Attached is a summary of the major provisions which have an impact on procurement activities. We will issue an Acquisition Letter as we do every year to provide detailed guidance. However, in the interim, there is some immediate action that you should take with respect to travel cost reimbursement for management and operating contractors' employees' travel.

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### 2. Instructions to Implement Section 309

Section 309 of the General Provisions of Title III of the Act establishes limitations on the reimbursements to your management and operating contractors for travel related costs. The restrictions are effective October 1, 1999 and, therefore, we ask that you notify your contractors immediately of the limitations. It is especially urgent that contractors who are currently operating under "institutional policy" in lieu of the "FTR rates and amounts" be advised of the new restrictions.

We are providing the following sample language for your use in notifying your management and operating contractors.

*Per Public Law 106-60, the Energy and Water Development Appropriations Act for fiscal year 2000 (the Act), the Department may reimburse a management and operating contractor for travel costs of its employees ". . . only to the extent that the contractor applies to its employees the same rates and amounts as those that apply to federal employees under subchapter I of chapter 57 of title 5, United States Code . . ."*

*The Conference Report accompanying the Act states that the Department is to ensure that ". . . reimbursements for contractor travel shall not exceed those costs which would be allowed for travel by employees of the Federal government." The Conference Report also states that the Department ". . . should ensure that contractors are not allowed to charge the government for business class or first class travel expenses, hotels, which exceed the government per diem allowance, and other expenses and benefits . . ."*

*You are advised that any travel costs, incurred on or after October 1, 1999, that exceed the limitations stated in the Act and its Conference Report are unallowable under your contract. The Department will not reimburse such travel costs.*

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### 3. Appropriations Language Regarding Travel Costs

The following statutory and report language is provided for your information.

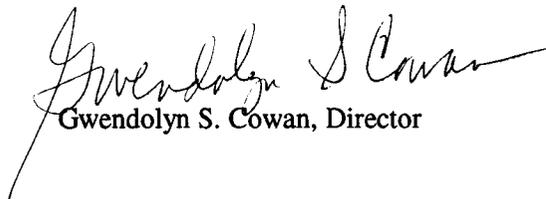
#### Section 309

- (a) Of the funds appropriated by this title to the Department of Energy, not more than \$150,000,000 shall be available for reimbursement of management and operating contractor travel expenses.
- (b) Funds appropriated by this title to the Department of Energy may be used to reimburse a Department of Energy management and operating contractor for travel costs of its employees under the contract only to the extent that the contractor applies to its employees the same rates and amounts as those that apply to Federal employees under subchapter I of chapter 57 of title 5, United States Code, or rates and amounts established by the Secretary of Energy. The Secretary of Energy may provide exceptions to the reimbursement requirements of this section as the Secretary considers appropriate.

#### Conference Report

The conference agreement includes a statutory provision limiting reimbursement of Department of Energy management and operating contractors for travel expenses to not more than \$150,000,000 and requiring contractor travel to be consistent with the rules and regulations for Federal employees. This reduction is not to be prorated, but should be applied to those organizations which appear to have the most egregious travel practices. This is not meant to restrict trips between laboratories to coordinate on program issues. The conferees are particularly concerned with the number of trips by laboratory employees to Washington, D.C., and the expense and excessive number of laboratory employees who travel to Russia.

The Department is also directed to ensure that reimbursements for contractor travel shall not exceed those costs which would be allowed for travel by employees of the Federal government. The conferees are aware that there is a cost difference because contractors cannot receive government rates for certain travel expenses. However, the regulations should ensure that contractors are not allowed to charge the government for business class or first class travel expenses, hotels which exceed the government per diem allowance, and other expenses and benefits such as the personal use of frequent flier miles which are not allowed if the traveler is a Federal employee. Guidelines that provide for deviations from Federal travel regulations may be approved by the Secretary.

  
Gwendolyn S. Cowan, Director

Attachment

**Energy and Water Development Appropriations Act, 2000 (Public Law 106-60)****Procurement-related Conference Report (106-336) language:**

Augmenting Federal Staff: (Page 30 of attached Conference Report). Directs a reduction in the number of M&O contractors who are assigned to the Washington metropolitan area. Funding for M&O contractors has been reduced by \$15 million .

Conferees endorse DOE's proposed management plan to address this problem and to limit the current assignments to not more than 270 positions in FY-2000 – positions must perform functions that are highly technical and directly related to laboratory missions.

Conferees also recommends that contractor offices in D.C. (currently 13 for 9 laboratories) should be consolidated into one or two workplaces unless DOE finds that all of the offices can be eliminated by locating them in DOE space.

Report adopts the reporting requirement proposed by the House regarding the use of all support service contractors and M&O contractor employees assigned to D.C. (page 97 of House Report 106-253). The required report is to be augmented to include the status of the DOE's proposed management reforms. Report is due 1/31/00.

Contractor Travel: (Page 29 of attached Conference Report). Conference agreement includes statutory limits on contractor travel expenses (see Sec. 309 below). The Conference Report states that the specified reduction is not to be prorated, but should be applied to those organizations which appear to have the most egregious travel practices. Reduction is not meant to restrict trips between labs to coordinate on program issues. The conferees are particularly concerned with the number of trips by lab employees to D.C., and the expense and excessive number of lab employees who travel to Russia.

The Conferees acknowledge that there is a cost difference because contractors cannot receive government rates for certain travel expenses. However, the regulations should ensure that contractors are not allowed to charge the government for business class or first class travel expenses, hotels which exceed the government per diem allowance, and other expenses and benefits such as the personal use of frequent flier miles which are not allowed if the traveler is a Federal employee.

Overhead Costs: The House report (106-253) directs a review of costs included in overhead charges by M&Os and a report on the reasonableness of the charges. No due date for report cited (see page 98 of House Report). The Conference report cites agreement with the House language (page 30 of attached Conference Report).

Trade Associations: Committee acknowledges/commends Department's efforts in this area and recommends continued efforts to award such agreements competitively (see page 100 of House Report). Not addressed in Conference Report.

Joint Explanatory Statement of the Committee of Conference: (Page 19 of attached Conference Report) Conference report includes a joint statement to the House and the Senate in explanation of the effects of the action agreed upon by the managers and recommended in the accompanying conference report. The language and allocations set forth in House Report 106-253 and Senate Report 106-58 should be complied with unless specifically addressed to the contrary in the conference report or contradictory language exists between the House and Senate reports. In cases in which the House or Senate have directed the submission of a report, such report is to be submitted to both House and Senate Committees

on Appropriations.

### **TITLE III, DEPARTMENT OF ENERGY**

Sections 301, 302, 305, 307 (see note, re: FY-2000 limitation), 501, and 502 are carried-over from the '98/'99 Acts. Sections 309, 310, 311, and 313 are new provisions that may impact DOE procurement. Summaries of these provisions are as follows:

#### Section 301 (Use of Competitive Procedures)

Provides that M&O contracts must be awarded using competitive procedures unless approved by the Secretary. Requires notice to Congress 60 days in advance.

#### Section 302 (Deviations from FAR)

Prohibits the award, amendment, or modification of any DOE contract in a manner that deviates from the FAR. Requires notice to Congress 60 days in advance.

#### Section 305 (RFPs for Unfunded Programs)

Prohibits the use of funds to prepare or initiate RFPs for programs which have not yet been funded by Congress.

#### Section 307 (Multi-Year Contract Funding)

Permits DOE to enter into multi-year contracts without obligating the estimated costs associated with any necessary cancellation or termination of the contract. Exempts DOE from statutory requirement (41 U.S.C. section 254c(a)) which otherwise requires such obligations. Affords DOE with the same flexibility provided to DOD.

FY-2000 provision limits authority to contracts for the "...acquisition of property or services under the head, 'Energy Supply'..." *.(page 12 of attached Conference Report)*

#### Section 308 (Laboratory Directed Research and Development)

Caps funding for LDRD at 4%. Funds provided to the laboratories for programs such as environmental cleanup and restoration may not be taxed for LDRD purposes.

#### Section 309 (Contractor Travel)

Limits reimbursement of M&O contractor travel expenses to not more than \$150 million and requires that reimbursement of contractor travel expenses shall not exceed those costs which would be allowed for travel by employees of the Federal government. Guidelines that provide for deviations from Federal travel regulations may be approved by the Secretary.

#### Section 310 (Submission of Laboratory Funding Plans)

Provides that none of the funds in the Act or any future appropriations Act may be expended under an M&O contract of any of DOE's weapons laboratories except in accordance with a Laboratory Funding Plan that has been approved by the Secretary. House provision would have applied only to LANL, LLNL, and SNL (see page 154 of House Report). Conference agreement expanded to include all multi-purpose national labs – Argonne, Brookhaven, INEEL, LBNL, ORNL, and PNNL.

#### Section 311 (Secretarial Approval of Lab Funding)

Requires the Secretary to annually review and approve the incentive structure for contractor fees, the amounts of award fees to be made available for the subsequent year, the salaries of first and second tier laboratory management, and overhead costs for all prime contractors responsible for management of DOE sites and facilities (House provision applied requirement only to LANL, LLNL, and SNL (see page 155 of House Report)).

Provision Not Adopted by Conferees: The House proposed a provision (Sec. 313) limiting the waiving of overhead or added factor charges for work performed for other Federal agencies which was not adopted.

## **TITLE VI – GENERAL PROVISIONS**

### Section 601 (Lobbying Restrictions)

Prohibits the use of funds appropriated in the Act, either directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913.

### Section 602 (Purchase of American-Made Equipment and Products--Sense of Congress/Prohibition of Contracts with Persons Falsely Labeling Products as Made In America)

Prohibits the award of contracts/subcontracts to persons who falsely label products as made in America. Persons determined to have intentionally affixed such a false label, or any inscription with the same meaning, will be considered for debarment. Also provides the sense of Congress that all equipment and products purchased with funds made available from the Act should be American-made. Applies to both contracts and financial assistance instruments.