Planning Guidance for Contractor Work Force Restructuring

Office of Worker and Community Transition

U.S. Department Of Energy

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PLANNING GUIDANCE FOR CONTRACTOR WORK FORCE RESTRUCTURING

I. INTRODUCTION

The Department of Energy's Office of Worker and Community Transition (the Office) has prepared this planning guidance to assist Department of Energy (DOE or Department) field organizations to plan for, and mitigate the impacts of, changes in the Department's contractor work force.

This guidance supercedes the earlier interim guidance issued by the Office on February 1, 1996, and published in the ***Federal Register*** on March 5, 1996. This document is a product of the Department's experience over the past two years--an extensive process of employee and public stakeholder involvement in shaping our worker and community transition policies.

This guidance provides common objectives for work force restructuring while emphasizing the importance of a tailored approach at each site to meet these objectives. This revision also addresses: (1) formal comments received in response to the publication of earlier guidance in the ***Federal Register***; (2) steps to streamline and make more efficient the process for development, review and approval of work force restructuring actions; and (3) changes in Departmental contracting approaches and development of long-range strategic plans.

Except as otherwise noted, this guidance is not intended to be prescriptive. Cognizant field organizations have primary responsibility for assuring planning and overseeing implementation of work force restructuring. The Department's field organizations are in the best position to consult with affected stakeholders on these plans, to understand the unique needs of work force restructuring at field facilities, and to develop work force restructuring strategies best suited to each individual facility. The Office will develop a Handbook for Contractor Work Force Restructuring that provides information on experiences at DOE sites for consideration by field organizations.

II. LEGISLATIVE PROVISIONS

Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 (the Act) requires the Secretary of Energy to develop a plan for restructuring the work force for a defense nuclear facility when there is a determination that a change in the work force is necessary. The plan is to be developed in consultation with local, state, and national stakeholders, and submitted to the Congress 90 days after notice of a planned work force restructuring has been given to the affected employees and communities.

Section 3161 of the Act provides specific objectives to guide the preparation of the plan to minimize worker and community impacts. Relevant sections of the Act are included as Appendix A. DOE facilities that have been determined to be defense nuclear facilities for the purposes of section 3161 are listed in Appendix B. For reasons of fairness, the Secretary directed that the objectives set forth in section 3161 should be applied to the extent practicable whenever work force restructuring takes place in the Department.

III. GENERAL GUIDANCE

The Office encourages field organizations to utilize the combination of work force restructuring strategies that will most effectively accomplish a site's restructuring objectives. In developing these strategies, field organizations are expected to consider best practices in the public and private sectors. The cognizant field organization should administer work force changes consistent with the DOE Order 350.1 covering Reductions in Contractor Employment or any subsequent applicable DOE Order. A work force restructuring plan developed by the field organization should be consistent with program objectives, budget constraints, contractual provisions, collective-bargaining agreements, and other legal obligations. The plan should be developed in consultation with the stakeholders at the affected facility and other appropriate stakeholders to ensure, among other things, the most effective expenditure of public funds.

IV. WORK FORCE PLANNING

The primary objective of work force planning and restructuring is to retain employees with the skills, knowledge and abilities necessary to effectively and safely meet assigned and future missions within budget constraints. Restructuring strategies must be closely integrated with planning based on identified work force requirements. Effective work force planning should consider both short-term requirements for immediate tasks, as well as long-term requirements for skills based on missions identified in strategic plans for the site. Improvements in organizational and operational efficiency should also be considered, including changes in internal organizational structure and contracting mechanisms.

V. CONTRACTOR ROLES AND RESPONSIBILITIES

The Department will of necessity seek the assistance of its contractors in developing work force restructuring plans. Nevertheless, the plans are Department of Energy products. In addition, it is generally the Department's policy to make information available to the public that has bearing on the plans and is available to the operating contractors, unless such information is protected by law or regulation. Contractors will have responsibility for implementing the provisions of the work force restructuring plan subject to oversight from the appropriate DOE field organization.

VI. DEVELOPING WORK FORCE RESTRUCTURING PLANS

A. *When Plans Are Needed*

In order to provide appropriate long-term planning of site operations, and to allow potentially affected workers to know how their situations may be accommodated, work force restructuring plans should be developed that are not limited to a single episode of restructuring but will apply for any restructuring that may occur at a particular site. This planning differs from past practice where a new plan was developed with each restructuring action over a certain threshold. Plans may identify options that may be utilized in a particular restructuring action, subject to the availability of funds.

The cognizant field organization for a non-defense site should consider whether a work force restructuring plan is appropriate based on the contracting arrangements at the site, the prospect for significant work force change, the potential impact on the community, and the extent to which provision of separation benefits beyond contract requirements would be consistent with best business practices and fair treatment of workers.

B. *Amendments to Established Plans*

When modifications of established site work force restructuring plans are necessary due to changing circumstances, stakeholder input or implementation experience, proposed changes in the established plan shall be submitted to the Office for expeditious Headquarters review and approval.

VII. ELEMENTS OF WORK FORCE RESTRUCTURING PLANS

A. *Long-Term Strategic Plan and Work Force Implications*

Ongoing plans should identify a site's long-term strategic plan, including anticipated closure and the anticipated work force implications of that plan.

B. *Stakeholder Input to Plans*

Consultation with local, state, and national stakeholders is an essential element of the work force restructuring process. Special attention should be given to consultation with the existing work force, their representatives, and local communities. Input should be solicited and considered at appropriate points throughout the development of plans for implementing work force restructuring. In order to facilitate participation by stakeholders, the Office has made this Final Planning Guidance available through the ***Federal Register*** and through electronic means.

C. *Work Force Planning*

A description of the objectives and processes used to plan for short- and long-term work force requirements should be included in the plan. Plans should incorporate flexible work force planning and retraining to minimize layoffs in the work force.

D. *Define Application of the Plan*

Each site has a unique mix of contractors and subcontractors performing work for the Department. Work force restructuring plans should identify the conditions under which categories of employees may be eligible for particular benefits.

E. *Departmental Policy on Benefits*

It is the Department's policy that preference in hiring and displaced worker medical benefits, are to be offered to all eligible separating employees. Appendix C provides guidance that has been developed for implementing preference in hiring. The guidelines for displaced workers medical benefits are set out in DOE Order 350.1 and Department of Energy Acquisition Letter No. 93-4, as modified by memorandum on August 12, and December 2, 1993. These documents are included as Appendix D.

Additional programs that may be provided to affected workers and any applicable eligibility requirements should be fully described in the plan. Plans should clearly state that

enhanced benefits are subject to availability of funds from the Worker and Community Transition Appropriation. Plans should set out the considerations that will be used to determine when requests to seek funds to implement enhanced benefits programs will be considered, consistent with Congressional direction. Prior to implementing or announcing any program which anticipates providing enhanced benefits, field organizations shall submit to the Office an estimate of the number of participants and costs associated with a proposed benefit offering.

In implementing the objectives of section 3161 of the Act, the Department recognizes a special responsibility to minimize the impact of work force restructuring on employees who participated in efforts to maintain the Nation's nuclear deterrent during the Cold War. September 27, 1991, the day President Bush announced the first unilateral reduction of the Nation's nuclear weapons stockpile, has generally been recognized by this Department as the end of the Cold War. In developing a work force restructuring plan, the following are among the potential benefits that may be considered for affected workers.

1. *Programs to Minimize Layoffs*

After work force planning has identified the classifications of workers at risk, consideration should be given to strategies that minimize involuntary separations while also retaining appropriate job skills. Strategies should be selected based upon prior work force planning and restructuring experience at the site and best practices in the public and private sectors, and may include early retirement programs, voluntary separation incentives, and retraining for new missions, including cleanup.

2. *Involuntary Separation*

Each affected individual should be provided as much individual notice as practicable of his or her termination. In some cases, a minimum amount of specific notice is required by contract or collective-bargaining agreement. Involuntarily separated employees shall be fully advised of any benefits or services for which they are eligible. Appropriate notification to workers, labor representatives, and local, county and state governments shall be provided in accordance with DOE Order 350.1, or subsequent Order, and the Worker Adjustment and Retraining Notification Act (WARN), if applicable.

3. *Programs to Assist Separating Workers*

Requests for funding educational, relocation, and outplacement assistance should be considered to minimize the social and economic impact of work force changes, as well as a one-time construction worker benefit.

F. *Local Impact Assistance to Communities*

The work force restructuring plan should be developed in coordination with, and in support of, the regional development objectives of communities significantly impacted by the Department's downsizing. The local Community Reuse Organization should be contacted in the development of the plan to address anticipated economic and social impacts resulting from the Department's actions.

VIII. DEPARTMENTAL REVIEW AND APPROVAL

A. *Approval of Plans*

By law, the Secretary submits work force restructuring plans subject to the provisions of section 3161 to Congress, and thus, is the official responsible for final approval. In order to reduce the number of involuntary layoffs, and pending Secretarial transmittal of the plan to Congress, enhanced benefits may be provided after receipt of written approval by the Office. The Office will seek concurrence from the affected program office or offices, the Office of General Counsel, and the Office of Congressional Affairs prior to providing such approval. It is the policy of the Department to obtain from employees who separate under voluntary separation programs, including early retirement incentives, a release of claims related to their employment and separation. A sample release is available on the Office's web page at http://www.wct.doe.gov. The cognizant field organization should consult with the Office prior to approving enhanced benefits at non-defense nuclear facilities. Draft plans should be submitted to the Office for Headquarters concurrence prior to their release to stakeholders.

B. *Notification and Approval of Plan Implementation*

Advance notification of intent to implement work force restructuring actions should be provided as early as possible, to maximize notification to the work force and the community, with an objective of 90 days advance notice to Congress. This reflects the need to be able to respond to changing business requirements and budget uncertainties. Headquarters review of work force restructuring plan implementation will take into consideration the time sensitivity of actions to meet business requirements.

IX. PERFORMANCE EVALUATION

The Office of Worker and Community Transition, in consultation with various stakeholders, has developed a set of performance objectives to determine the effectiveness of work force planning and restructuring activities. Those objectives--which are available upon request to the Office--are used to evaluate the effectiveness of those activities.

APPENDIX A

Section 3161 and 3163 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484, October 23, 1992)

Subtitle E--Defense Nuclear Workers

SEC. 3161. DEPARTMENT OF ENERGY DEFENSE NUCLEAR FACILITIES WORK FORCE RESTRUCTURING PLAN

(a) **IN GENERAL.**--Upon determination that a change in the work force at a defense nuclear facility is necessary, the Secretary of Energy (hereinafter in this subtitle referred to as the "Secretary") shall develop a plan for restructuring the work force for the defense nuclear facility that takes into account--

(1) the reconfiguration of the defense nuclear facility; and

(2) the plan for the nuclear weapons stockpile that is the most recently prepared plan at the time of the development of the plan referred to in this subsection.

(b) **CONSULTATION.**--(1) In developing a plan referred to in subsection (a) and any updates of the plan under subsection (e), the Secretary shall consult with the Secretary of Labor, appropriate representatives of local and national collective-bargaining units of individuals employed at Department of Energy defense nuclear facilities, appropriate representatives of departments and agencies of State and local governments, appropriate representatives of State and local institutions of higher education, and appropriate representatives of community groups in communities affected by the restructuring plan.

(2) The Secretary shall determine appropriate representatives of the units, governments, institutions, and groups referred to in paragraph (1).

(c) **OBJECTIVES.**--In preparing the plan required under subsection (a), the Secretary shall be guided by the following objectives:

(1) Changes in the work force at a Department of Energy defense nuclear facility--

(A) should be accomplished so as to minimize social and economic impacts;

(B) should be made only after the provision of notice of such changes not later than 120 days before the commencement of such changes to such employees and the communities in which such facilities are located; and

(C) should be accomplished, when possible, through the use of retraining, early retirement, attrition, and other options that minimize layoffs.

(2) Employees whose employment in positions at such facilities is terminated shall, to the extent practicable, receive preference in any hiring of the Department of

Energy (consistent with applicable employment seniority plans or practices of the Department of Energy and with section 3152 of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101-189; 103 Stat. 1682)).

(3) Employees shall, to the extent practicable, be retrained for work in environmental restoration and waste management activities at such facilities or other facilities of the Department of Energy.

(4) The Department of Energy should provide relocation assistance to employees who are transferred to other Department of Energy facilities as a result of the plan.

(5) The Department of Energy should assist terminated employees in obtaining appropriate retraining, education, and reemployment assistance (including employment placement assistance).

(6) The Department of Energy should provide local impact assistance to communities that are affected by the restructuring plan and coordinate the provision of such assistance with--

(A) programs carried out by the Department of Labor pursuant to the Job Training Partnership Act (29 U.S.C. 1501 et seq.);

(B) programs carried out pursuant to the Defense Economic Adjustment, Diversification, Conversion, and Stabilization Act of 1990 (Part D of Public Law 101-510; 10 U.S.C. 2391 note); and

(C) programs carried out by the Department of Commerce pursuant to title IX of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3241 et seq.).

(d) **IMPLEMENTATION.**--The Secretary shall, subject to the availability of appropriations for such purpose, work on an ongoing basis with representatives of the Department of Labor, work force bargaining units, and States and local communities in carrying out a plan required under subsection (a).

(e) **PLAN UPDATES.**--Not later than one year after issuing a plan referred to in subsection (a) and on an annual basis thereafter, the Secretary shall issue an update of the plan. Each updated plan under this subsection shall--

(1) be guided by the objectives referred to in subsection (c), taking into account any changes in the function or mission of the Department of Energy defense nuclear facilities and any other changes in circumstances that the Secretary determines to be relevant;

(2) contain an evaluation by the Secretary of the implementation of the plan during the year preceding the report; and

(3) contain such other information and provide for such other matters as the Secretary determines to be relevant.

(f) **SUBMITTAL TO CONGRESS.**--(1) The Secretary shall submit to Congress a plan referred to in subsection (a) with respect to a defense nuclear facility within 90 days after the date

on which a notice of changes described in subsection (c)(1)(B) is provided to employees of the facility, or 90 days after the date of the enactment of this Act, whichever is later.

(2) The Secretary shall submit to Congress any updates of the plan under subsection (e) immediately upon completion of any such update.

SEC. 3163. DEFINITIONS

For purposes of this subtitle:

(1) The term "Department of Energy defense nuclear facility" means--

(A) a production facility or utilization facility (as those terms are defined in section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014)) that is under the control or jurisdiction of the Secretary and that is operated for national security purposes (including the tritium loading facility at Savannah River, South Carolina, the 236 H facility at Savannah River, South Carolina; and the Mound Laboratory, Ohio), but the term does not include any facility that does not conduct atomic energy defense activities and does not include any facility or activity covered by Executive Order Number 12344, dated February 1, 1982, pertaining to the naval nuclear propulsion program;

(B) a nuclear waste storage or disposal facility that is under the control or jurisdiction of the Secretary;

(C) a testing and assembly facility that is under the control or jurisdiction of the Secretary and that is operated for national security purposes (including the Nevada Test Site, Nevada, the Pinellas Plant, Florida; and the Pantex facility, Texas);

(D) an atomic weapons research facility that is under the control or jurisdiction of the Secretary (including the Lawrence Livermore, Los Alamos, and Sandia National Laboratories); or

(E) any facility described in paragraphs (1) through (4) that--

(i) is no longer in operation;

(ii) was under the control or jurisdiction of the Department of Defense, the Atomic Energy Commission, or the Energy Research and Development Administration; and

(iii) was operated for national security purposes.

(2) The term "Department of Energy employee" means any employee of the Department of Energy defense nuclear facility, including any employee of a contractor or subcontractor of the Department of Energy employed at such a facility.

APPENDIX B

Listing of Defense Nuclear Facilities

The list below reflects facilities receiving funding for Atomic Energy Defense activities of the Department of Energy, with the exception of activities under Naval Reactor Propulsion. It is recognized that these facilities have varying degrees of defense activities, ranging from a total defense dedication to a small portion of their overall activity. This may cause certain difficulties in implementing the intent of the section 3161 legislation. Regardless, this listing will be used by the Office for possible application of funding received for defense worker assistance and community transition purposes.

Kansas City Plant
Pinellas Plant
Mound Facility
Fernald Environmental Management Project Site
Pantex Plant
Rocky Flats Environmental Technology Site, including the Oxnard Facility
Savannah River Site
Los Alamos National Laboratory
Sandia National Laboratory
Lawrence Livermore National Laboratory
Oak Ridge National Laboratory
Nevada Test Site
Y-12 Plant
East Tennessee Technology Park
Hanford Site
Idaho National Environmental Engineering Laboratory
Waste Isolation Pilot Project
Portsmouth Gaseous Diffusion Plant
Paducah Gaseous Diffusion Plant

APPENDIX C

Preference in Hiring

Section 3161 provides that, to the extent practicable, terminated employees at a defense nuclear facility should receive preference in filling vacancies in the work force of the Department of Energy and its contractors and subcontractors. The Department has determined that employees must be identified as having helped maintain the Nation's nuclear deterrent in order to qualify for this preference. The preference should be honored by all prime contractors, and subcontractors whose contracts with the Department equal or exceed $500,000 in value.

The Department has established the following criteria for determining eligibility for the hiring preference. The individual must be a former employee who (1) was involuntarily terminated (except if terminated for cause); (2) meets the eligibility standards described below; and (3) is qualified for the job at the time the work is to begin. Where qualifications are approximately equal, eligible individuals will be given preference in hiring. However, the preference will be administered consistent with applicable law, regulation, or executive order, and collective-bargaining agreements. This preference is not immediately applicable through an outsourcing action or follow-on contract in which the current employees are first offered their same or similar jobs with the replacement contractor in order to avoid a layoff.

An individual's hiring preference continues until termination by the action (or inaction) of that individual. Initially, and on an annual basis thereafter, eligible individuals must certify their desire to retain their hiring preference. Actions that would terminate an individual's hiring preference include: voluntary termination or termination for cause from a position that was obtained through the exercise of the preference, or failure to comply with the annual certification requirement.

Each field organization should develop procedures to ensure that the hiring preference is being honored by all prime contractors and designated subcontractors. Field organization procedures should also describe how the Job Opportunity Bulletin Board System is to be utilized by affected contractors and eligible individuals.

Eligibility Criteria

A. *Regular Employees:*

1. must have been working at a defense nuclear facility on September 27, 1991;

2. must have worked full-time (or regular part time) at a facility from that date through the date of the restructuring notification; and

3. must have been involuntarily separated other than for cause.

B. ***Intermittent Workers, Including Construction Workers:***

1. must have worked at a defense nuclear facility on or before September 27, 1991;

2. must have worked at a facility within 180 days preceding the work force restructuring notification;

3. must have worked at a facility a total time, including time worked prior to September 27, 1991, equivalent to an employee having worked full-time from September 27, 1991, to the date of the restructuring notification, or have actually worked the industry standard of full-time from September 27, 1991, through the date of the restructuring notification; and

4. must have been affected by the announced restructuring within a reasonable period of time (one year is suggested). For an intermittent worker, this includes the interruption of a project before its anticipated completion, or the completion of the assignment or project without prospect for a follow-on assignment at the site where the employee had a reasonable expectation of a follow-on assignment.

APPENDIX D

Department of Energy Order 350.1
Contractor Human Resource Management Programs
September 30, 1996
Chapter 1 -Labor Relations
Chapter 2 - Labor Standards
Chapter 3 - Reduction in Contractor Employment

U.S. Department of Energy	**ORDER 350.1**
Washington, D.C.	**Approved: 9-30-96**
	Sunset Review: 9-30-96
	Expires: 9-30-00

SUBJECT: CONTRACTOR HUMAN RESOURCE MANAGEMENT PROGRAMS

1. **OBJECTIVES.**

   a. To establish Department of Energy (DOE) responsibilities, requirements, and cost allowability criteria for the management and oversight of contractor Human Resource Management (HR) programs.

   b. To ensure that DOE contractors manage their HR programs to support the DOE mission, promote work force excellence, champion work force diversity, achieve effective cost management performance, and comply with applicable laws and regulations.

   c. To implement consistent requirements that allow contractors flexibility in determining how to meet the requirements.

   d. To ensure that all elements of cash and non-cash compensation are considered in the design and implementation of an appropriate total compensation philosophy, but are not used as a means to deflect needed cost reductions in either or both.

2. **CANCELLATIONS**. In addition to the Orders listed in the chapters of this Order, the Orders listed below are canceled. Cancellation of an Order does not, by itself, modify or otherwise affect any contractual obligation to comply with such an Order. Canceled

Orders incorporated by reference in a contract shall remain in effect until the contract is modified to delete the reference to the requirements in the canceled Orders.

a. DOE 3220.1A, MANAGEMENT OF CONTRACTOR PERSONNEL POLICIES AND PROGRAMS, of 5-14-92.

b. DOE 3220.4A, CONTRACTOR PERSONNEL AND INDUSTRIAL RELATIONS REPORTS, of 1-7-93.

c. DOE 3220.6A, FEDERAL LABOR STANDARDS, of 5-14-92.

d. DOE 3309.1A, REDUCTIONS IN CONTRACTOR EMPLOYMENT, of 11-30-92.

e. DOE 3830.1, POLICIES AND PROCEDURES FOR PENSION PLANS UNDER OPERATING AND ONSITE SERVICE CONTRACTS, of 8-23-82.

f. DOE 3890.1A, CONTRACTOR INSURANCE AND OTHER HEALTH BENEFIT PROGRAMS, of 6-12-92.

g. DOE N 3131.1, ACCESS TO SKILLS, KNOWLEDGE AND ABILITIES OF RETIRED SCIENTISTS AND ENGINEERS FOR THE NUCLEAR WEAPONS PROGRAM, of 4-28-95.

3. **APPLICABILITY.**

a. DOE Elements. Except for the exclusions in paragraph 3c, this Order applies to all DOE Elements.

b. Except for the exclusions in paragraph 3c or as specified in the Applicability section of this Order's individual chapters, Attachment 1, the Contractor Requirements Document (CRD) located at the back of each of this Order's individual chapters, sets forth requirements that are applicable to the universe of prime cost reimbursement contracts for the management and operation of DOE-owned or DOE-leased facilities and other contracts and sub-contracts as identified in the specific chapters of this Order. Applicability to other designated long-lived onsite contracts is optional at the discretion of Departmental and Field Elements. Contractor compliance with the CRD will be required to the extent set forth in a contract. Contractors shall be directed to continue to comply with the

requirements of orders canceled by this Order until their contracts are modified to delete the reference to the requirements of the canceled orders.

c. Exclusions.

(1) Specific exclusions, if applicable, are identified in the Applicability section of each of this Order's individual chapters.

(2) Activities that are regulated through a license by the Nuclear Regulatory Commission (NRC) or a State under an Agreement with the NRC, including activities certified by the NRC under section 1701 of the Atomic Energy Act; [same as section 830.2(a)].

(3) Activities conducted under the authority of the Director, Naval Nuclear Propulsion Program, as described in Public Law 98-525; [same as section 830.2(b)].

4. **REQUIREMENTS**. Requirements are set forth in Chapters I through IX of this Order.

5. **RESPONSIBILITIES**. Assignments of responsibility are set forth in Chapters I through IX of this Order.

6. **REFERENCES**. Applicable references are listed in Chapters I through IX of this Order.

7. **CONTACT**. See Chapters I through IX for the appropriate contacts.

BY ORDER OF THE SECRETARY OF ENERGY:

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ARCHER L. DURHAM
Assistant Secretary for
Human Resources and Administration

CHAPTER I
LABOR RELATIONS

1. **OBJECTIVES**.

   a. To ensure that Department of Energy management and operating contractors pursue collective bargaining practices that promote efficiency and economy in contract operations, judicious expenditure of public funds, equitable resolution of disputes, and effective collective bargaining relationships.

   b. To achieve full consultation with management and operating contractors prior to contract negotiations and during the term of a contract on matters that may have a significant impact on work rules, make-or-buy decisions, or past customs and practices.

2. **APPLICABILITY**. Contractors. This chapter applies to prime contractors that perform work under prime contracts at DOE-owned installations to the extent set forth in the prime contract. Contractor requirements are set forth in Attachment 1 to this chapter.

3. **REQUIREMENTS**.

   a. DOE retains absolute authority on all questions of security, security rules, and their administration. However, to the fullest extent feasible, DOE shall consult with representatives of management and labor in formulating security rules and regulations that affect the collective bargaining process.

   b. DOE shall not take a public position concerning the merits of a labor dispute between a contractor and its employees or organizations representing those employees.

4. **RESPONSIBILITIES.**

   a. Director, Office of Worker and Community Transition.

      (1) Establishes DOE labor relations policy in consultation with field organizations.

      (2) Represents DOE Headquarters on all matters involving contractor labor relations issues. This includes:

      (a) informing DOE senior management of significant labor relations developments,

(b) acting as DOE liaison to other government agencies and to international unions and their representatives,

(c) serving as a clearing house for labor relations information,

(d) coordinating union representation at meetings and conferences initiated by DOE Headquarters elements; and

(e) approving all DOE policy affecting contractor labor relations.

(3) Works with DOE program offices that originate or change qualification standards, testing requirements, or other programs that may affect conditions of employment for contractor employees to ensure that they are developed and/or implemented consistent with collective bargaining requirements.

b. Heads of Contracting Activities.

(1) Review collective bargaining issues with contractors and reach agreement on economic parameters prior to commencement of negotiations.

(2) Consult regularly with contractors during the term of collective bargaining agreements to stay abreast of matters of interest and concern to DOE.

(3) Serve as DOE liaison to regional governmental agencies and offices and to regional union officials.

(4) Notify the Office of Worker and Community Transition of National Labor Relations Board charges and any significant labor relations issues.

(5) Provide timely information and advice to DOE Headquarters and others concerning local contractor labor issues and arbitration decisions.

5. **REFERENCES**.

a. Federal Acquisition Regulation (FAR), Subpart 22.1, BASIC LABOR POLICIES, which provides guidance to contracting officers on labor relations matters.

b. Department of Energy Acquisition Regulation (DEAR), Subpart 970.22, APPLICATION OF LABOR POLICIES, which provides DOE guidance to contracting officers on labor relations matters.

c. DEAR 970.3102-2(e), which addresses allowability of compensation costs.

6. **CONTACT.** Office of Worker and Community Transition, at (202) 586-7550.

CONTRACTOR REQUIREMENTS DOCUMENT

LABOR RELATIONS

The following requirements apply to prime contractors that perform work under cost reimbursement contracts at DOE-owned installations to the extent set forth in the prime contract.

1. Develop and implement labor relations policies that will promote orderly collective bargaining relationships, equitable resolution of disputes, efficiency and economy in operations, and the judicious expenditure of public funds.

2. Consult with the contracting officer prior to and during the course of negotiations with labor unions, and during the term of resultant contracts, on economic issues and other matters that have a potentially significant impact on work rules, make-or-buy decisions, or other matters that may cause a significant deviation from past customs or practices.

3. Provide the contracting officer with a settlement summary within 30 to 60 days after formal ratification of the agreement, using the "Report of Settlement" form.

4. Immediately advise the DOE Field Element of the following:

   a. Possible strike situations or other job actions affecting the continuity of operations; in the event of work stoppage, the contractor is responsible for completing Bureau of Labor Statistics (BLS) Form 817 and forwarding two copies to the DOE Field Element.

   b. Formal action by the National Labor Relations Board or the National Mediation Board (copies of the Board correspondence shall be provided to the Field Element).

   c. Recourse to procedures under the Labor-Management Relations Act of 1947, as amended, or any other federal or state law.

   d. Any grievance scheduled for arbitration under a collective bargaining agreement that has the potential for significant economic or other impact.

   e. Other significant issues that may involve review by other federal or state agencies.

CHAPTER II
LABOR STANDARDS

1. **OBJECTIVES.**

   a. To ensure that applicable labor standards are included in all Department of Energy contracts and subcontracts.

   b. To cooperate with the Department of Labor, as appropriate, to:

      (1) obtain information,

      (2) provide complete and timely reports, and

      (3) exercise oversight responsibility to ensure contractor compliance with applicable laws.

2. **APPLICABILITY**. This Chapter is applicable to all DOE Elements responsible for the management of contracts for prime contractors of the Department's government owned facilities.

3. **REQUIREMENTS**. Proposed acquisition and designated contractor work packages shall be reviewed to determine the applicability of the Davis-Bacon Act and/or the Service Contract Act; work shall be accomplished in accordance with such determinations.

4. **RESPONSIBILITIES**.

   a. Director, Office of Worker and Community Transition.

      (1) Coordinates Departmental comments on proposed revisions to Department of Labor regulations and provides interpretations of final revisions to Headquarters and field elements.

      (2) Prepares and submits the Davis-Bacon Semi-Annual Enforcement Report to the Department of Labor by April 30 and October 30.

(3) By April 10 of each year, submits to the Administrator, Wage and Hour Division, Department of Labor, a consolidated annual forecast of construction programs, which is required by Department of Labor All Agency Memorandum No. 144.

(4) Coordinates responses to Congress and the Department of Labor on labor standards complaints on acquisitions administered by Headquarters.

b. Heads of Contracting Activities.

(1) Establish Labor Standards Committees to advise contracting officers on the applicability of the various labor standards statutes to contracts and proposed work packages.

(2) Review the SF-98 and SF-98a, Notice of Intention to Make a Service Contract and Response Notice, to ensure that the contemplated work is appropriately covered by the Service Contract Act and that forms are prepared properly. Forwards such forms to the Department of Labor.

(3) Advise Director of Worker and Community Transition of complaints and significant labor standards violations generated by contractor employees and others.

(4) Ensure that all contracts contain the appropriate labor standards provisions.

(5) Ensure that bidders and contractors are provided with applicable labor standards information and that, where necessary, conferences and contract orientation meetings are held for solicitations or contracts.

(6) Assist the Department of Labor in preparing for a hearing on and/or investigating any alleged violations or disputes on alleged violations.

(7) For Service Contract Act covered contracts in excess of $10,000.00, furnish Standard Form 279, Federal Procurement Data System Individual Contract Action Report, or its equivalent, to the Federal Procurement Data System (see 29 CFR 4.8).

(8) Request Davis-Bacon Act project wage determinations from the Department of Labor on the SF-308, Request for Determination and Response to Request for

instances in which general area decisions are not available or are not appropriate to the DOE site or job. Accordingly, submit wage data to the Department of Labor.

(9) Ensure payroll and job-site audits are conducted as may be necessary to determine compliance with the Davis-Bacon Act..

(10) Investigate complaints under the Davis-Bacon Act to determine compliance and proceed as follows:

(a) If no violation is discovered, advise the complainant of the reasons for the conclusion.

(b) If a violation is discovered:

1. determine the amount of back wages, fringe benefits, and overtime pay due each employee, and request the contractor to make restitution;

2. determine the amount of liquidated damages due, if any, and request the contractor to make restitution;

3. withhold sufficient funds to compensate employees and to cover any liquidated damages that may be due when the contractor does not agree with the findings and refuses to make restitution;

4. furnish an enforcement report to the Administrator, Wage and Hour Division, Department of Labor within 60 days after completion of an investigation where the Davis-Bacon Act underpayments by a contractor totals $1,000.00 or more; there is reason to believe the violations are willful; the contractor does not agree with the findings and refuses to make restitution; or the Department of Labor requested the investigation;

5. ensure that funds withheld to compensate employees for back wages are forwarded to the Comptroller General for disbursement if restitution has not been made.

(11) Prepare and submit the Davis-Bacon Semi-Annual Enforcement Report to the Director, Office of Worker and Community Transition, by April 21 and October 21 of each year.

5. **REFERENCES**.

a. Federal Acquisition Regulations (FAR), Subpart 22.4, LABOR STANDARDS FOR CONTRACTS INVOLVING CONSTRUCTION, which explains the applicability of the Davis-Bacon Act.

b. Federal Acquisition Regulations (FAR), Subpart 22.10, SERVICE CONTRACT ACT OF 1965, AS AMENDED, which explains the applicability of the Service Contract Act.

c. Department of Energy Acquisition Regulation 970.2273, ADMINISTRATIVE CONTROLS AND CRITERIA FOR APPLICATION OF THE DAVIS-BACON ACT IN OPERATIONAL OR MAINTENANCE ACTIVITIES.

6. **CONTACT**. Office of Worker and Community Transition, at (202) 586-7550.

CONTRACTOR REQUIREMENTS DOCUMENT
LABOR STANDARDS

The following requirements apply to contractors who perform work subject to the Davis-Bacon Act and the Service Contract Act.

1. Request labor standards coverage determinations from the contracting officer by submitting proposed work authorizations for contracts in excess of $2,000 for construction, alteration, or repair, including painting and decorating, of public buildings and public works that involve the employment of laborers and mechanics. (See FAR 22.401 for definition of terms.)

2. Accomplish work tasks in accordance with the labor standards determination.

3. Ensure that subcontractors comply with the Davis-Bacon Act and conduct payroll and job-site audits as requested or authorized by the Head of Contracting Activity.

4. Maintain accurate and complete Davis-Bacon Act payrolls for 3 years from completion of contract when performing as the construction contractor.

5. Post in a prominent job-site location the following Department of Labor Publications.

   a. WH-1321, Notice to Employees Working on Federal or Federally Financed Construction Projects.

   b. WH-1313, Notice to Employees Working on Government Contracts.

6. Prepare Standard Form 98, "Notice of Intention to Make a Service Contract and Response to Notice" for all subcontracts subject to the Service Contract Act and forward to the contracting officer.

7. Provide information requested by the Head of Contracting Activity for its responses to inquiries received from Congress and Headquarters.

8. Provide information requested by the Head of Contracting Activity for its reporting requirements.

CHAPTER III
REDUCTIONS IN CONTRACTOR EMPLOYMENT

1. **OBJECTIVES.**

   a. To perform work force planning that ensures continued availability of critical knowledge, skills, and abilities required for the Department's mission; and supports a schedule of work force restructuring actions that minimizes the impacts on programmatic activities.

   b. To provide reasonable notice to employees, their representatives, public officials, and other stakeholders of necessary reductions in contractor employment, and to consult with them in planning for work force restructuring.

   c. To the extent practicable, to minimize reductions at DOE defense nuclear facilities and other facilities through retraining efforts. If retraining is not feasible, consider early retirement, attrition, and other options that minimize layoffs.

   d. To provide assistance to communities in reducing the impact of employment reductions.

2. **APPLICABILITY**. This chapter applies to prime contractors and their integrated subcontractors that perform work at DOE-owned installations to the extent set forth in the prime contract.

3. **REQUIREMENTS**.

   a. In compliance with Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 and Secretarial policy, a work force restructuring plan at defense nuclear facilities and other DOE facilities shall be prepared whenever the DOE determines that a change in the work force is necessary. Plans may be developed for multiple years, but the requirement for a plan is triggered when the planned change affects 100 or more employees at a site within a 12-month period, or when the Head of the Field Element determines that a change in the work force will significantly affect the community. In instances where fewer than 100 employees are affected, the objectives of section 3161 shall be applied as feasible.

b. Work force restructuring plans shall be prepared in accordance with "Interim Planning Guidance for Contractor Work Force Restructuring," published in the Federal Register Vol. 61, No. 44, dated March 5, 1996, as amended from time to time (Attachment 2).

c. For defense nuclear facilities, work force restructuring plans and implementation reports shall be submitted to the Secretary, who will approve/disapprove them for delivery to Congress. For other DOE facilities, delivery of a work force restructuring plan to Congress is at the discretion of the Secretary.

d. Annual implementation reports shall be submitted by Field Elements to the Office of Worker and Community Transition that include the following information:

(1) Data on the retained worker force and its ability to meet mission requirements.

(2) Data on workers whose positions were eliminated and who were reassigned to other work at the site and a description of training provided to achieve such placements, including training costs.

(3) Data comparing the number of workers separated voluntarily and involuntarily and costs associated with each category of benefits provided to them, including estimates of such costs that were included in the work force restructuring plan.

(4) The contractor's statement as to whether adverse EEO impact resulted from involuntary separations. If affirmative, its extent, business necessity, and a description of the efforts taken to prevent it.

(5) An evaluation of plan implementation.

(6) Detailed guidance on submitting this information will be provided by the Office of Worker Community Transition.

e. The Department must have ready access to retired scientists and engineers who may be needed on a part-time basis to support the Department's nuclear weapons program. The Department will maintain a list of individually identified retirees, including an affirmation of their agreement to be members of the retiree corps and necessary identification information to ensure ready access. The purposes for such access include archiving technical information, data and recollections not available from the active work force in areas related to weapons disassembly and nuclear weapons testing; assisting stockpile stewardship activities as required; and training

replacement scientists and engineers. Access to members of the corps will not be restricted by other policies of DOE or within the control of DOE unless explicitly agreed to by the Secretary of Energy, and members of the retiree corps will maintain their security clearances for as long as they are in the retiree corps program. Further, inclusion in the corps will not amend, abrogate, or affect any retirement annuity with regard to any DOE-imposed restrictions on such annuity.

4. **RESPONSIBILITIES.**

a. The Secretary.

(1) Approves/disapproves work force restructuring plans that are submitted to Congress.

(2) Approves/disapproves notifications of reductions in force of more than 100 employees at a single site.

(3) Submits work force restructuring plans and updates (implementation reports) to Congress.

b. Director, Office of Worker and Community Transition.

(1) Provides direction and guidance in the development and implementation of work force restructuring plans and the implementation of economic development plans when a community is significantly affected by changes in the work force.

(2) Recommends to the Secretary for approval Work Force Restructuring Plans that are submitted to Congress.

(3) Approves/disapproves work force restructuring actions which do not require Secretarial approval, including programs to minimize lay offs. Coordinates review with the affected program office and with General Counsel, Field Management, and Human Resources and Administration.

(4) Coordinates notifications to Congress with Heads of Field Elements and with the Assistant Secretary for Congressional and Intergovernmental Affairs.

(5) Performs other tasks that are assigned to the Office of Worker and Community Transition (WT-1) in Attachment 2.

c. Heads of Field Elements.

(1) Oversee the management of work force changes consistent with direction from the Office of Worker and Community Transition, Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 and Department of Energy Interim Planning Guidance for Contractor Work Force Restructuring, Federal Register Vol. 61, No. 44, pp. 8593 - 8602 (March 5, 1996), as may be amended from time to time.

(2) Prepare site-specific work force restructuring plans (and update them annually by means of implementation reports) in accordance with guidance contained in Department of Energy Interim Planning Guidance for Contractor Work Force Restructuring, Federal Register Vol. 61, No. 44, pp. 8593 - 8602 (March 5, 1996), as may be amended from time to time.

(3) Obtain approval of separation incentives beyond those expressly authorized by contract from WT-1 early in the planning process and submit a final work force restructuring plan to WT-1 as early as practicable.

(4) Establish a baseline employment data base for use in preparing work force analyses and work force restructuring plans; provide quarterly reports on the data base to the Office of Worker and Community Transition.

(5) Provide the following notifications upon WT-1 approval.

(a) General Notification to Employees prior to any public announcement and, where possible, 120 days prior to the involuntary separation of any employee.

(b) Notification to the Public. Coordinate with the Office of Worker and Community Transition any general announcement describing work force changes at the site and the estimated number of affected positions.

(c) Notification to Individual Employees. Ensure that contractors provide 60-day notification if the Work Force Adjustment and Retraining Notification (WARN) Act applies. If it does not apply, contractors shall provide individual employees as much notice of involuntary separation as is practicable, but not less than 2 weeks or 2 weeks pay in lieu of notice.

(6) For work force reductions requiring only contracting officer or his designee approval, ensure the following are notified prior to the involuntary separation other than for cause of 10 or more employees.

(a) Affected national and local unions.

(b) State and local governments.

(c) Congressional delegation.

(7) Develop mechanisms to ensure that hiring preferences are being honored by all prime contractors and designated subcontractors. Requirements shall address employee responsibilities as well as use of the DOE automated Job Opportunity Bulletin Board System (JOBBS).

(8) Maintain a list of individually identified retired scientists and engineers who will comprise a retiree corps to assure ready access to those whose skills may be needed on a part time basis to support the Department's Nuclear Weapons Program.

5. **REFERENCES**.

a. Worker Adjustment and Retraining Notification Act, Public Law 100-379 (August 4, 1988).

b. Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484).

c. Department of Energy Interim Planning Guidance for Contractor Work Force Restructuring, Federal Register Vol.61, No.44, pp. 8593 - 8602 (March 5, 1996).

6. **CONTACT**. Office of Worker and Community Transition, at (202) 586-7550.

CONTRACTOR REQUIREMENTS DOCUMENT

REDUCTIONS IN CONTRACTOR EMPLOYMENT

1. Contractors will regularly analyze work force requirements consistent with mission and will develop appropriate work force transition strategies coinciding with restructuring objectives consistent with DOE Interim Planning Guidance for Contractor Work Force Restructuring, Federal Register, Vol. 61, No. 44, pp. 8593-8602 (March 5, 1996) as may be amended from time to time.

2. Where a change in the nature or structure of a contractor's work force may affect 100 or more employees at a site within a 12-month period, the contractor shall provide such information as directed by the contracting officer or his designee to enable compliance with section 3161 of the National Defense Authorization Act for Fiscal Year 1993; DOE Interim Planning Guidance for Contractor Work Force Restructuring Federal Register vol. 61, no. 44, pp 8593-8602 (March 5, 1996) , as may be amended from time to time; and Chapter III of DOE Order 350.1.

3. Provide notifications to employees, the public, and stakeholders in accordance with a schedule approved by the contracting officer or his designee.

4. Extend preferences, to the extent practicable, in filling vacancies in their work force to employees terminated from a defense nuclear facility. Guidance for this program is contained in section V of Department of Energy Interim Planning Guidance for Contractor Work Force Restructuring, Federal Register Vol. 61, No. 44, pp. 8593 - 8602 (March 5, 1996), as may be amended from time to time.

5. Notify the contracting officer or his designee of any work force reduction that involves the involuntary separation of 10 or more employees at least 10 work days prior to such separations. The notification shall include affected job classifications, numbers of employees affected, and actions taken to assist the employees find other employment or otherwise lessen the impact of the involuntary separations.

APPENDIX D

Department of Energy **No. 93-4**
Acquisition Regulation **Date: April 7, 1993**

ACQUISITION LETTER

I. ACQUISITION LETTER

This Acquisition Letter (AL) is issued by the Director, Office of Procurement, Assistance and Program Management, pursuant to a delegation from the Secretary and under the authority of the Department of Energy Acquisition Regulation (DEAR) Subpart **901.301-70.**

CONTENTS

Citation	Title
DEAR 970.3102-2	Compensation for personal services
DEAR 970.3102-2(I)	Severance Pay Plans

I. **Purpose.** The purpose of this Acquisition Letter is to: (1) clarify the Department of Energy (DOE) position on the Displaced Workers Benefits Program; (2) establish guidelines with respect to Head of Contracting Activity responsibility for implementation of medical benefits programs for displaced workers as approved by the Secretary of Energy, July 29, 1992; and (3) assure that contractors managing and operating DOE defense nuclear facilities implement this program for displaced workers.

II. **Background**. The Secretary of Energy, in response to an anticipated downsizing in defense related activities, established a task force to develop a program that allows displaced workers continued access to medical insurance. The task force submitted a recommendation to the Secretary for a program that provides for a continuation of medical benefits for displaced workers under the provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). On July 29, 1992, the Secretary approved the task force recommendation for the Displaced Workers Benefit Program. The Report to the Secretary dated August 1992, outlining the provisions of the program was submitted by the task force, and a memorandum with a copy of the Report was distributed to DOE Field Offices.

III. **Guidance.**

A. It is the policy of the DOE to assure that contractors managing and operating the DOE defense facilities implement Medical Benefits Programs for Displaced Workers as described in the August 1992 Report. This ensures that employees involuntarily separated due to a downsizing action are not denied access to medical care benefits.
In order to qualify for benefits under the approved Medical Benefits Program for Displaced Workers, a displaced worker must have been:

(1) on the employment roll of a DOE management and operating (M&O) contractor to perform work (including service work) for a DOE facility on September 27, 1991;

(2) involuntarily separated after September 27, 1991, from the employment of a DOE M&O contractor performing work (including service work) for a DOE facility as a result of a downsizing action;

(3) eligible for medical insurance coverage under an M&O contractor's plan at the time of separation from employment; and,

(4) not eligible for coverage under another employer's group health plan or under Medicare since the time of separation.

B. The Office of Contractor Human Resource Management shall provide guidance to contracting officers and assist DOE officials responsible for management of activities of the M&O contractor concerning DOE policies, requirements, and guidelines for the Medical Benefits Programs for Displaced Workers.

C. The Head of Contracting Activity will:

(1) assure that M&O contractors follow the policy and requirements of the Medical Benefits Program for Displaced Workers approved by the Secretary of Energy on July 29, 1992, and detailed in the August 1992 Report;

(2) negotiate advance understandings on allowable costs for the Medical Benefits Programs for Displaced Workers; and,

(3) approve reasonable costs of the M&O contractor for implementation of the Medical Benefits Programs for Displaced Workers.

IV. **Effective Date.** This AL is effective on the date of its release.

V. **Expiration Date.** This AL will remain in effect until its content is incorporated, as appropriate, in regulatory or directive coverage, unless otherwise superseded or canceled.