

CHAPTER 3

CONTRACTOR HUMAN RESOURCES MANAGEMENT

WHAT ARE THE BASIC PRINCIPLES AND OBJECTIVES OF CONTRACTOR HUMAN RESOURCES MANAGEMENT?

To ensure that DOE contractors manage their Human Resource programs to:

1. Support the DOE mission,
2. Promote workforce excellence,
3. Champion work force diversity,
4. Achieve effective cost management performance, and
5. Comply with applicable laws and regulations.

WHY IS CONTRACTOR HUMAN RESOURCES MANAGEMENT IMPORTANT?

Contractors that manage the Department's facilities maintain significant workforces necessary for the operation or integration of Department of Energy (DOE) sites. The Human Resources issues which arise are complex and extremely sensitive. These Human Resources issues can be potentially

significant in cost impact to the Department. It is imperative that the Department manages

these issues with maximum intelligence and consistency.

WHAT IS A GENERAL DESCRIPTION OF THE PROCESSES UNDER CONTRACTOR HUMAN RESOURCES MANAGEMENT?

This chapter covers all subjects covered by DOE O 350.1, "Contractor Human Resource Management Programs." Those subjects include:

- Advance understandings on cost (e.g., compensation, welfare benefits, retirement programs, risk management and insurance);
- Labor standards;
- Work force restructuring; and
- Labor relations.

A. Advance Understandings on Cost

What is the purpose of this section on advance understandings on cost?

This section provides information related to the roles and responsibilities of both

departmental elements and individuals involved in and responsible for:

- management and operation of government owned facilities;
- Determination of allowability and reasonableness of contractor employee compensation and related human resource costs; and
- Measurement and evaluation of the effectiveness of contractor human resource management in recruiting, deploying and retaining a reasonably priced workforce to meet DOE mission objectives.

Under an “advance understanding” what costs are allowable?

As stated in the preamble to the Model Advance Understanding On Personnel Costs:

“ *...only those items of personnel and related costs stated herein or specifically referenced in this advance understanding are allowable costs by advance understanding under this contract.*”

Why are advance understandings necessary?

The Department reaches advance understandings on contractor human resource costs (personnel appendices) in its PBMCs to:

- Acquisition of contractor human resources under Performance-Based Management Contracts (PBMCs) for the
- Determine allocability, allowability and reasonableness of (60-80% of the total contract) costs prior to incurrence, thereby avoiding subsequent disallowances and disputes;
- Provide appropriate and reasonable compensation levels to recruit and retain contractor employees to meet DOE mission objectives; and
- Assure prudent expenditures of public funds.

When are advance understandings needed?

Generally, an advance understanding on contractor human resource costs is needed when:

- Policies are established specifically for contract work;
- The contractor's work is predominantly or exclusively made up of negotiated Government contract work;
- Contract work is so different from the organization's private sector contract work that existing established policies cannot reasonably be extended to and consistently applied on contract work;
- Established policies proposed for contract work are not sufficiently definitive to permit a clear advance

mutual understanding of allowable costs and to provide a basis for audit;

- The contractor's personnel policies, programs and practices must be revised or disallowed to comply with DOE policies; or
- The contractor does not have written policies/procedures.

What is the process for negotiating an advance understanding?

At the beginning of the acquisition cycle a Request for Proposal may include specific requirements for contractor human resource management programs to be applied by the winning contractor. These requirements are also dependent upon the workforce and acquisition strategies selected by the Department. The Contractor Requirement Documents appended to each chapter of DOE O 350.1 should contain the basic contractor human resource management program requirements and can be used in the pre-award solicitation process as the pre-negotiation (baseline) requirements for contractor human resource programs.

The pre-negotiation package is the precursor to the advance understanding on contractor human resource costs. Human Resource costs that are allowable need to be described. Process and/or transactional requirements that do not directly affect the allowability of Human Resource costs need to be avoided.

Standards and methods for how compensation increase funds are controlled

as well as comparison (benchmarks) to be used by the contractor need to be included. The contractor uses them in establishing, adjusting, and evaluating Human Resource costs during the contract term. State the procedure to be used to reflect mutually agreed to changes in the advance understanding. Historically, the revision procedure is stated (articulated) in one of the first three paragraphs of the introduction section of the advance understanding. These additions/deletions increase cost or change Human Resource practices (e.g., the use of sequential pagination of reimbursement authorizations).

There is **no** preset format, however, Field/Operations offices generally follow an informal model advance understanding which was established by a team of Headquarters and Field Contractor Human Resources staff in 1995. Headquarters staff plan to analyze this model and decide whether there is a need to update, formalize and publish it on a web page. Most advance agreements to date have followed this informal model which contains an introduction, definitions, compensation/pay programs, welfare benefit, retirement programs, paid time off, Employee Assistance Program (EAP) sections, and any other section necessary to deal with specific major items of allowable cost. If you have any questions regarding advance agreements, contact the Contractor Human Resources Management Staff in the Office of Contract and Resource Management (MA-53).

What are the two basic methods which DOE uses to achieve and record advance understandings with its contractors?

1. Negotiation of an advance understanding (personnel appendix) to the contract which sets forth the policies, programs and practices which have been accepted by the Department as items of allowable cost or as the basis for determining the allowability of human resource costs; or
2. Review of and agreement with established policies, programs and schedules (and any changes thereto during the contract term) applicable to the contractor's private operations which are acceptable for contract work and which are consistently and uniformly followed throughout the contractor's organization.

What does DOE look at when it evaluates the reasonableness of contractor human resource costs?

- The contractor's competitive labor market;
- The significance of Government contracting on the labor market;
- The impact of the contractor's private operations (to the extent that a contractor does have private, i.e., non-DOE operations). However, if an organization exists solely to perform DOE work under a cost type contract (for example: some not-for-profit contractors), little financial incentive for, or experience in,

exercising prudent business judgement in contractor human resource areas may exist. In such instances, DOE guidance to contractors on business management performance expectations and measures to evaluate reasonableness of such costs, and the importance of the valid application of the metrics in the other bullets in this section, become even more important;

- DOE acceptance of findings of other federal agencies; and
- The extent to which contractor human resource costs are based upon valid survey data and generally conform to policies and practices of the industry with which the contractor is identified in its private operations.

The contract administration team must work in close coordination because of the:

- Magnitude of human resource costs as a percentage of overall contract cost;
- Sensitivity of retiree pension and medical benefits and associated long term liabilities;
- Technical, legal and regulatory requirements under which contractor human resource programs must operate; and
- Socio-political environment in which the Department operates.

B. Risk Management and Insurance

What is Risk Management?

The Department has risks or potential liabilities or exposures in every business or activity. Risk management is the process of analyzing and identifying potential risks or liabilities associated with a business or activity processes or procedures. The Department needs to determine the best method to eliminate, reduce, and/or finance those risks or potential liabilities. Risks that cannot be eliminated or significantly reduced can result in potential financial liabilities that must be accepted or transferred to another entity.

What is Insurance?

Federal Acquisition Regulation (FAR) 28.3 and Department of Energy Acquisition Regulation (DEAR) 928.3 discuss Government policies and procedures regarding insurance. Insurance is the most common, readily available, and identifiable method to transfer a risk or potential financial liability to another entity, but is not necessarily the most efficient or cost effective method available.

Insurance is an appealing remedy and works because insurance companies can provide, for a relatively reasonable fee (premium), and a significantly larger, in most cases, financial liability coverage amount. Insurance companies can provide this normally cost effective service because of the theory of “large numbers” and associated risk analysis (projected losses for the risk

exposure.) The premiums, from a very “large number” of people or businesses with similar risk exposures, are invested. They are used to pay for actual covered losses as they occur.

The insurance company accepts the risk and financial liability and makes any required financial restitution. Consequently this indemnifies the insured against any financial loss resulting from the covered risk. The premium is a pro-rated allocation to the “large number” of the insured of all potential financial losses projected to occur, even if these losses do not occur, plus all of the insurance company’s administrative direct and indirect expenses, and profit. In theory, the larger the number of those insured, the smaller the premium. The insurance company may or may not offset premium amounts with money earned on invested premium dollars until losses occur.

What is the Department’s alternative to commercial insurance under its PBMC contracts?

Because our PBMC site contractors are few in number and, have rather unique and in some cases extreme and classified risks or potential liabilities, they are not offered the same cost savings and risk sharing opportunities provided normal commercial operations. The FAR recognizes a contractor’s potential exposure and responsibility for potential liabilities. The FAR allows them to charge, under certain circumstances, insurance and insurance type expenses to a contract. The Department has, however, as a cost savings measure, as well as in an effort to protect our classified sites

and projects, established a Department-wide sponsored insurance program.

DOE O 350.1, Chapter VII, defines the complete insurance review and approval process and identifies those who are responsible. Those responsible include the Director, Office of Contract and Resource Management (MA-53); the Heads of the Contracting Activities; Cognizant Contracting Officers; and Contractors. In addition, the Department's Retrospective and Third Party Administrative Insurance programs provide site contractors cost savings alternatives because they cover actual losses. Those programs do not cover projected catastrophic losses that probably will not occur. The Department also has an outstanding Environment, Safety & Health program required of all of our site contractors which help make the program possible.

Under extraordinary emergencies as granted by Public Law (Pub. L.) 85-804, as amended by Pub. L. 93-155 (50 U.S.C. 1431-1435), as amended, DOE is allowed to indemnify contractors from certain risk and costs. FAR Part 50 prescribes policies and procedures for entering into, amending, or modifying contracts in order to facilitate various indemnifications.

Using the FAR's general contract authority and as further discussed at DEAR 950.71, DOE can enter into indemnity agreements with its contractors. Indemnities give contractors some limited risk and liability protection. The Department's assumption of liability will be expressly limited to the availability of appropriated funds placed on

the contract. DOE's policy also limits these agreements to liabilities for nuclear incidents that may not be otherwise covered by a statutory indemnity and for uninsured non-nuclear risks.

Subject to certain limitations, the DOE under FAR 52.250-1 indemnifies contractors with respect to unusually hazardous or nuclear risks against:

- Claims by third persons for death; personal injury; or loss of, damage to, or loss of use of property;
- Loss of, damage to, or loss of use of Contractor property, excluding loss of profit; and
- Loss of, damage to, or loss of use of Government property, excluding loss of profit.

What does DOE O 350.1 say about the Department's Retrospective Insurance Program?

DOE O 350.1 strongly encourages the use of the Department Retrospective Insurance Program or the Third Party Administrative Services Contract as cost effective alternatives for standard commercial insurance. Commercial insurance can be used, however, when it is analyzed and found to be more cost effective than the Department Retrospective Insurance Program or the Third Party Administrative Services Contract. DOE Acquisition Guide, Chapter 70 "Contractor Insurance" provides

additional help for the insurance review and approval process.

Insurance companies have become very skilled at generating new, specific types of coverages based on portions of general liability coverage, when the opportunity presents itself. This is the result of an old court judgment against them related to pollution coverage under general liability policies. As a result of this judgment, Pollution Insurance is now a separate coverage.

What types of insurance should not be approved?

Since site contractors can rely on the Department to compensate for certain types of insurance, they may not always perform the most critical analysis of the types of coverage appropriate for their need. This can lead to their purchase of special insurance coverages that may not be necessary nor in the Department's best interest. These coverages, to the extent that they protect and benefit the contractor but provide limited or no protection or benefit for the Department, should not be approved. Directors' and Officers' liability insurance and other forms of professional liability insurance are examples of some of the types of coverage that should not be approved.

What types of insurance are required?

The Department's insurance program requires our site contractors to include Contracting Officers (COs) in their

insurance review and selection process as part of our oversight role. The amounts and types of insurance coverages should be limited to only those areas that are necessary to accomplish the mission and are mandated by state law, such as workers compensation.

The Department's insurance program is preferred for site contractors over standard commercial insurance because it is structured to pay only for those losses that actually do occur. This means that the Department does not pay a commercial rate which would contain insurance companies' other projected losses that might not occur. The Department's Insurance program also avoids the profit built into the premiums of commercial insurance companies. In other words, the Department through the contractors accepts the risk and financial exposure for our sites. Consequently, insurance companies do not have to assume risk for any potential catastrophic, projected, or actual loss. This results in significant cost savings to our contractors and to the Department.

In the case of leased motor vehicles, DOE is responsible for loss or damages. There are exceptions for normal wear-and-tear and negligence by the Contractor, its agents, or employees. FAR 52.228-8 states this also includes damage to property, injury, or death of third persons covered under the Federal Tort Claims Act (28 U.S.C. 2671-2680).

When is the best time to ensure that our PBMC contractors maintain correct insurance coverage?

The best time to ensure that our contractors have and maintain the correct type of insurance coverage is during the contract pre-proposal or pre-award stage of the procurement process.

What does DOE O 350.1 say about commercial insurance?

DOE O 350.1, “Contractor Human Resource Management Programs” provides the majority of the policy, procedures, responsibilities, and references. That policy should be followed by both Operations/Field Offices and contractors for the establishment of a viable insurance program. Chapter V, “Benefits,” addresses the requirements for the “Workers Compensation” program and Chapter VII, “DOE Contractor Risk Management and Liability Programs,” discusses the General Liability insurance requirements.

Who provides consultation and advice on the insurance aspects of DOE Order 350.1?

The Office of Contract and Resource Management (MA-53) provides help with the interpretation and implementation of DOE O 350.1 requirements on an as-requested basis.

Once the insurance program is in place, who has the responsibility for administering it?

Once the appropriate insurance programs are in place, the majority of the management and administration of the insurance program rest with the contractor and the insurance company. Operation/Field Offices have oversight responsibilities to ensure that the contractors are monitoring the insurance company’s progress in resolving open claims. Operation/Field offices should consider the establishment of Business Management Oversight Program or Balanced Scorecard evaluations of the contractor’s effort in this area.

C. Labor Standards

What are the labor standards statutes?

Federal acquisitions for goods, services and construction are subject to one or more of the following Federal labor standards statutes:

- Fair Labor Standards Act,
- Contract Work Hours and Safety Standards Act,
- Davis-Bacon Act, and
- Copeland Anti-Kickback Act,
- Walsh-Healey Public Contracts Act,
- Service Contract Act.

- Contract Work Hours and Safety Standards Act

These Acts each provide certain requirements, guarantees, and protections to workers on government funded contracts.

Where can I get additional information on labor standards under the Department's contracts?

The DOE Acquisition Guide, Chapter 22, discusses the application of labor standards for contracts involving construction. The Office of Worker and Community Transition (WT-1) provides staff expertise for labor standards application.

What is the Davis-Bacon Act?

The Davis-Bacon Act, along with the Copeland Anti-Kickback Act and the Contract Work Hours and Safety Standards Act, establish employment standards for laborers and mechanics on public construction under federal contracts for amounts in excess of \$2,000. Such contracts must specify the minimum wages to be paid to the various classes of mechanics and laborers employed by contractors on these projects. The advertised specifications for every contract in excess of \$2,000 to which the United States is a party for:

- Construction,
- Alteration and/or repair, including painting and decorating, of public buildings or public works,
- Involving the employment of laborers and/or mechanics, shall contain a

provision stating the minimum wages and fringe benefits to be paid various crafts.

The prescribed minimum rates are based upon the wages and fringe benefits determined by the Department of Labor to be prevailing for similar classes of laborers and mechanics on similar projects in the area where the work is to be performed. Contractors and subcontractors (at all tiers) subject to the Davis-Bacon Act are required to pay all mechanics and laborers not less often than once a week without any subsequent deduction or rebate ("kickbacks"). The Davis-Bacon Act is discussed at FAR 22.403-1 and DEAR 970.2273.

What types of contracts do not require the Davis-Bacon Act clause?

The Davis-Bacon Act does not apply to the following types of contracts:

- Contracts for supplies, including installations or maintenance work which is only incidental to the furnishing of such supplies. However, the Davis-Bacon Act does apply to installation which involves a substantial amount of construction at the site and to the manufacturing or furnishing of supplies on the building site by the construction contractor or subcontractor (such as window frames);
- Contracts for servicing or maintenance work, including installation or movement of machinery or other equipment in a building completed or

substantially completed, and incidental plant rearrangement, though the Davis-Bacon Act does apply to servicing or maintenance work performed as a part of the construction or repair of a public building or work;

- Contracts solely for dismantling and demolition, where no further construction on the site is contemplated, or contracts for exploratory drilling. Such contracts will be subject to the Service Contract Act;
- Contracts requiring construction work which is so closely related to research, experiment, and development that it cannot be performed separately, or which is itself the subject of research, experiment, or development; and/or
- Contracts for the construction or repair of vessels, aircraft, or other kinds of personal property.

This list is not exhaustive and you should consult other references below for aid in determining if a particular contract should be covered by the Davis-Bacon Act.

Where can I get more detailed information on the type of work covered or not covered by the Davis-Bacon Act?

Examples of work not covered by the Davis-Bacon Act are provided at DEAR 970.2273, “Administrative Controls and Criteria for Application of the Davis-Bacon Act in Operational or Maintenance Activities.”

What is the Copeland Anti-Kickback Act?

The coverage of this Act is broader than the Davis-Bacon Act in that it covers all employees on public works, rather than only laborers and mechanics, and it covers all construction work financed in whole or in part by federal funds, rather than construction contracts in excess of \$2,000 to which the United States is a party.

The principal effect of the Copeland Anti-Kickback Act is to put teeth into the Davis-Bacon Act requirement that laborers and mechanics on public works shall receive prevailing wages without subsequent deduction or rebate on any account. It provides for fine or imprisonment for any person who induces an employee on federally-financed construction projects to give up any part of the compensation to which he is entitled under his contract of employment.

What is the Walsh-Healey Public Contracts Act?

The Walsh-Healey Public Contracts Act, discussed in detail at FAR 22.6 and DEAR 970.2206, sets basic labor standards for covered employees working on Government contracts exceeding \$10,000 in amount and calling for the manufacture or furnishing of materials, supplies, articles, or equipment. These standards include:

- Payment of prevailing minimum wages established by the Secretary

of Labor for straight time hours (no wage determinations have been issued under Walsh-Healey Public Contracts Act since about 1970);

- Payment of time and one-half the basic rate for hours in excess of 40 in a week;
- Maintenance of sanitary and nonhazardous working conditions;
- Keeping complete payroll records and quarterly records of injury frequency rates;
- Prohibition against employment of child labor -- any person under 16 years of age; and
- Prohibition against the employment of convict labor.

What employees are covered by the Walsh-Healey Public Contracts Act?

Statutory and administrative exemptions (found at FAR 22.604-1) apply to open market purchases, purchase of perishables and certain agricultural products, transportation by common carrier, public utilities, contracts for services, and rental contracts. The Walsh-Healey Public Contracts Act applies generally to all employees who actually work on the materials supplied under the contract.

This includes employees engaged in the:

- Manufacture,

- Fabrication,
- Assembling,
- Handling,
- Supervision, or
- Shipment,

as well as those who perform any work preparatory or necessary to performance of a contract. Executive, administrative, professional, office, and custodial employees are exempt.

What is the Service Contract Act?

The Service Contract Act, discussed in detail at FAR 22.10 and DEAR 970.2210, applies to contracts in excess of \$2,500 let by the Government primarily for services in the United States through the use of service employees. Contractors and subcontractors performing work under such contracts must pay employees employed on the contract no less than:

- The minimum hourly rate specified under the Fair Labor Standards Act; or
- The minimum hourly rate and fringe benefits specified in a wage determination issued by the Department of Labor which is specified in the contract.

The obligation of a contractor or subcontractor to furnish any specified fringe benefits may be discharged by:

- Furnishing the specified benefits,
- Any equivalent combinations of benefits, or
- By making equivalent or differential payments in cash.

Contractors and subcontractors must ensure that no part of the services covered by the Service Contract Act will be performed in buildings or surroundings or under working conditions which are:

- Unsanitary,
- Hazardous, or
- Dangerous to the health and safety of the service employees engaged in the contract work.

What types of contracts are not covered by the Service Contract Act?

As set forth at FAR 22.1003-3, “Statutory exemptions,” the Service Contract Act does not apply to the following types of contracts:

- Contracts for the construction, alteration, and/or repair, including painting and decorating of public buildings or public works (which are subject to the Davis Bacon Act). However, a contract may be awarded with separate specifications subject to both Davis Bacon Act and Service Contract Act;

- Any work required to be done in accordance with the Walsh-Healey Public Contract Act;
- Any contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line, or oil or gas pipeline where published tariff rates are in effect;
- Any contract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934;
- Any contract for public utility services, including electric light and power, water, steam, and gas;
- Any employment contract providing for direct services to a Federal agency by an individual or individuals which will make him/them an employee of the agency; and
- Any contract with the U.S. Postal Service to operate a postal contract station.

Who can grant exemptions from the Service Contract Act?

Administrative limitations, variances, tolerances, and exemptions may be authorized by the Secretary of Labor.

When can such exemptions from the Service Contract Act be granted?

In special circumstances they may be granted when:

- The Secretary determines that such a limitation, variation, tolerance, or exemption is necessary and proper in the public interest or to avoid the serious impairment of Government business; and
- The limitation, variation, tolerance, or exemption is in accord with the remedial purpose of the Service Contract Act to protect prevailing labor standards.

Such exemptions have been granted, with certain restrictions, to contracts principally for the maintenance, calibration and/or repair of:

- Automated data processing equipment and office information/word processing systems;
- Scientific equipment and medical apparatus or equipment where the application of microelectronic circuitry or other technology of at least similar sophistication is an essential element;
- Office/business machines where such services are performed by the manufacturer or supplier of the equipment.

Does the Service Contract Act apply to DOE's management contracts?

Although not specifically listed in the Act as an exemption, contracts awarded by DOE to operate and manage its facilities are not covered by the Service Contract Act (See DEAR 970.2210.) This exception was developed in the mid-1960s when hearings were held prior to the enactment of the Act and established in correspondence between the Department of Labor's Wage and Hour Administrator and the Director of the Division of Labor Relations of the Atomic Energy Commission in December 1965 and February 1966. However, the Administrator did state that it was appropriate to apply the Service Contract Act to subcontracts whose principal purpose is the providing of services for such facilities through the use of service employees.

It is important to note that although DOE contracts formally designated as management and operating contracts are excepted from application of the Service Contract Act at the prime contract level, the Act does apply to prime contracts for the management and integration of DOE sites and other types of PBMCs. A previous section listed the seven exemptions to the Service Contract Act.

What is the Contract Work Hours and Safety Standards Act?

The Contract Work Hours and Safety Standards Act, discussed in detail at FAR 22.3, superseded the Work Hours Act which

required the payment of overtime at a rate of time and one-half for hours worked by laborers or mechanics on the Government contract in excess of eight hours in one calendar day and 40 hours in one workweek. However, the Defense Authorization Act of 1986 amended this law by eliminating the eight hour per day limit for overtime. Thus, Contract Work Hours and Safety Standards Act now conforms with the overtime requirements of the Fair Labor Standards Act requiring overtime compensation for hours worked in excess of 40 hours in a workweek.

The Contract Work Hours and Safety Standards Act provides for a liquidated damages penalty of \$10.00 a day for each worker employed in violation of this requirement. Further, it provides that no laborer or mechanic shall be employed in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to his health and safety.

What are the responsibilities of the Field/Operations Offices regarding the aforementioned labor standards?

Each Operations/Field Office should have procedures to provide for advanced review of planned procurement actions by personnel familiar with the above listed labor standards statutes, usually a Labor Standards Committee. The committee should assure that all contracts subject to labor standards contain the appropriate provisions and clauses. The FAR, DEAR, Department of Labor regulations, and

Comptroller General decisions provide guidance for determining applicability of these Acts to proposed DOE funded acquisitions.

Where can I receive advice on the implementation of labor standards?

Personnel at the Office of Worker and Community Transition (WT-1) at DOE headquarters are available to discuss questions on labor standards.

D. Work Force Restructuring

The Department has an interest in assuring the application of best business practices to promote efficiency. The Department also desires to ensure fair treatment of workers when restructuring of the contractor work force is required. This includes reductions in employment, changes in skill mix of employees, and changes in contracting mechanisms that impact terms and conditions of employment.

What governs how work force restructuring is to be handled?

Section 3161, "Department of Energy Defense Nuclear Facilities Work Force Restructuring Plan," of the Fiscal Year 1993 National Defense Authorization Act provides specific requirements and objectives to be followed when work force changes occur at defense nuclear facilities. Secretarial policy and DOE O 350.1 extends

these objectives to all DOE contractor work force restructuring.

What are the goals of the rules governing how work force restructuring may be undertaken ?

The goals of the rules pertaining to work force restructuring are to:

- Mitigate the impacts on workers from contractor work force restructuring;
- Assist community planning at defense sites, while humanely and cost-effectively managing the transition to a work force that will meet ongoing mission requirements, through application of best business practices;
- Facilitate work force planning by Department contractors;
- Restructure the Department’s contractor work force when necessary to improve operational efficiency or meet funding requirements;
- Provide fair treatment to workers who must be displaced throughout the Department; and
- Assist community transition.

How is work force restructuring conducted?

Work force restructuring is based on plans developed consistent with the objectives and

requirements of Section 3161. When a change in contractors is involved, it includes determinations on how the existing work force will be treated in terms of hiring, bargaining recognition, and compensation. When separations are required, the process determines which job classifications will be reduced, how workers will be selected including voluntary or involuntary processes, and what separation benefits they will receive. Practical experience in this sensitive area demonstrates the critical importance of ongoing communication and consultation between the:

- Contractor,
- Labor,
- Field organizations,
- Affected programs,
- Counsel, and
- Office of Worker and Community Transition (WT-1).

Where can I get more detailed information on the workforce restructuring process?

Specific guidance on the process is provided in Planning Guidance for Contractor Work Force Restructuring, December 1998, and DOE O 350.1, Chapter III, “Reductions in Contractor Employment.”

Acquisition Letter 93-4, “Displaced Workers Benefits Program” contains information to:

- Clarify the DOE position on the Displaced Workers Benefits Program;
- Establish guidelines with respect to Head of Contracting Activity (HCA) responsibility for implementation of medical benefits programs for displaced workers as approved by the Secretary of Energy, July 29, 1992; and
- Ensure that contractors managing and operating DOE defense nuclear facilities implement this program for displaced workers.

E. Labor Relations

This section informs the contract administration team members about the DOE’s policy on labor-management relations and the roles and responsibilities of DOE and its contractors.

The extent of Government ownership of plant and materials, and the overriding concerns of national defense and security, impose special conditions on labor relations at DOE facilities.

To what extent does DOE intercede in the negotiations between a contractor and a union?

FAR 22.101-1 states:

“agencies shall remain impartial concerning any dispute between labor and contractor management and not undertake the conciliation, mediation, or arbitration of a labor dispute.”

Although DOE is not a party to the contractual relationship between contractor and union, it does maintain oversight. This ensures that 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.

1. 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.

2. DOE retains absolute authority on all questions of security, security rules, and their administration.

3. DOE will consult with the contractor prior to contract negotiations and during the term of a collective bargaining agreement on matters that may have a significant impact on work rules or past customs and practices.

The Office of Worker and Community Transition (WT-1) maintains staff expertise that can assist in determining what actions, if any, DOE may wish to consider.

WHAT ARE MY MAJOR ROLES AND RESPONSIBILITIES IN THE AREA OF CONTRACTOR HUMAN RESOURCES MANAGEMENT?

On the following pages are the major roles and responsibilities of members of the contract administration team. Key sections of documents have been summarized for ease of reference. Please bear in mind that the referenced documents themselves are controlling and should be consulted for a complete discussion of the various roles, responsibilities and requirements. Additionally, other documents, not listed here, may contain other roles and responsibilities.

Note: Various responsibilities on the following pages are marked with an asterisk (*). This signifies that the responsibility is not specifically assigned to this individual by a clause, regulation, or procedure. It is suggested because:

(1) The responsibility is necessary to perform Government contract administration responsibilities; and is either commonly performed by this individual or reflects "good business practice."

(2) The responsibility is stated in the reference as a DOE/Government responsibility; and is either commonly performed by this individual or reflects "good business practice."

Local guidance may determine who specifically is obligated to perform the responsibility.

Regarding Advance Understandings on Cost

CHIEF FINANCIAL OFFICER

*Consult with the contracting officer to determine costs to be determined unallowable under the contract terms and conditions.

PROGRAM OFFICE

Issue program and budget execution guidance prior to the start of each fiscal year outlining program objectives and priorities.

[DOE Budget Formulation Handbook; DOE Field Budget Call]

Cognizant Assistant Secretary provides input into the approval of compensation amounts for the top contractor executives.

[DOE O 350.1, Chapter 4]

Receives notification from HCA 48 hours prior to HCA approving compensation amounts.

[Acquisition Letter 99-02]

COUNSEL

Advise and assist in negotiations at time of contract termination; pension plan termination, spin-off or merger.

[DOE O 350.1, Chapter 6]

PROCUREMENT EXECUTIVE

Establish Department performance objectives and measures for contractor employee compensation and benefit programs; in consultation with cognizant program officer approves the initial compensation and any changes in compensation for the PBMC's top executive official; Approve contractor benefit plans and proposed changes that are an exception to DOE policy; Provide consultation on benefit programs to Departmental elements and provides guidance to HCAs on the conduct and use of the methods for evaluating contractor benefit programs.

[DOE O 350.1, Chapter 5]

HEAD OF CONTRACTING ACTIVITY

Approve contract provisions for contractor compensation, benefits, and changes to them.

Approve, prior to DOE reimbursement of contractor:

- Compensation Increase Plans;
- Individual compensation amounts for contractor employees (direct reports to the top contractor executive and the top contractor executive) identified by the Head of the Contracting Activity within specified parameters;
- Executive incentive plans;
- Variable pay programs;
- Annual Overtime Control Plan, if required by contract;
- Contractor benefit plans and proposed changes, methodology for compensation and benefit programs evaluation, contractor corrective action plans; and
- New workers' compensation policies.

[DOE O 350.1, Chapters IV and V; FAR 31.205-6(p); DEAR 970.2271; Acquisition Letter 99-02; Approval Procedures for Compensation Increase Plan Funds Annual guidance issued by MA-53]

Ensure the requirements of DOE O 350.1 chapters IV, V and VI. are met.
[DOE O 350.1]

Approves contract provisions and changes to contractor compensation and benefit programs including pensions and retiree medical and life insurance plans, following Departmental policy and the requirements in DOE 350.1, Chapter IV (*with advise of field Industrial Relations/Contractor Human Resource Management staff).
[DOE O 350.1, Chapter IV]

INDUSTRIAL RELATIONS SPECIALIST

* Provide technical advice and assistance in all matters relating to Contractor Human Resources Management.

CONTRACTING OFFICER

Establish and negotiate contract provisions affecting contractor pension programs;
Negotiate settlements with the contractor when a pension plan is modified or fully/partially terminated; and
Advise HQ Office of Contract and Resource Management (MA-53) of any significant changes in funding status or level of assets in contractor pension plans.
[DOE O 350.1, Chapter VI]

Approve contract provisions and changes to contractor compensation and benefit programs including pensions and retiree medical and life insurance plans following Departmental policy and the requirements in DOE 350.1 Chapters V, and VI, and when delegated by the HCA.
[DOE O 350.1, Chapters V and VI]

* Work closely with field Industrial Relations/Contractor Human Resource Management on planned PBMCs to be negotiated. Industrial Relations/Contract Human Resources Management staff need to actively support contract selection and negotiating panels for PBMCs. Industrial Relations/Contract Human Resources Management staff need to make verbal presentations to

proposed bidders on the industrial/labor relations functions and the concept of reaching advance understandings on contractor human resource costs.

[DOE O 350.1]

* Work closely with the Industrial Relations/Contract Human Resources Management staff to negotiate the advance understanding on HR costs, shortly after award or before award on extensions. Immediately preceding negotiations, the CO, supported by Industrial Relations/Contract Human Resources Management staff evaluates the contractor's human resource policies, programs and practices to determine whether:

- the policies are formalized and in writing;
- there are limitations and controls as to coverage;
- there are terminal points on costs;
- the conditions and authority for approval to exceed the terminal points are specified;
- there are items which exceed statutory, regulatory or other DOE policy allowances or limitations;
- there is a vision/mission/strategy-based rationale for the human resource policies;
- there are any novel/unique policies which may be unallowable cost items or require a deviation from the DEAR.

* Coordination with other field organizations and The Office of Contract and Resource Management (MA-53) is necessary to encourage consistency among DOE contractor human resource cost items in similar situations. This is particularly important when a single contractor has multiple DOE contracts, proposes novel or unique policies or deviates from DOE cost principles.

Determine allowability of costs under the contract, (*In consultation with appropriate audit/Chief Financial Officer personnel).

[DEAR 970.5204-13; DEAR 970.5204-14]

* Establish or modify the personnel appendix (participates with Industrial Relations/Contractor Human Resources Management personnel).

Approve/disapprove (*In consultation with Human Resources personnel) employees' total compensation when in excess of monetary threshold in the contract.

[DEAR 970.5204-13; DEAR 970.5204-14]

May require the submission, for approval, of a formal annual overtime control plan whenever contractor overtime usage as a percentage of payroll has exceeded, or is likely to exceed, 4%, or if the contracting officer otherwise deems overtime expenditures excessive.

[DEAR 970.5204-80]

* In addition to any other remedies available to the Government, may suspend contract payments or, where applicable, reduce award fee; terminate for default; and suspend or debar the contractor for failure to comply with the requirements of 10 Code of Federal Regulations (CFR) part 707 or failure to perform in a manner consistent with its approved Workplace Substance Abuse program.

[DEAR 970.5204-58]

CONTRACTOR

Develop and administer compensation programs that attract and retain competent and productive employees that facilitate achievement of objectives and business strategies in support of DOE missions in a cost effective manner.

[DOE O 350.1, Chapter IV]

Submit to the CO for approval a description of the compensation program supported by relevant data comparing it to other industry or relevant benchmark programs and including the components listed at DOE O 350.1, Chapter IV attachment one, Contractor Requirement Document, Compensation.

[DOE O 350.1, Chapter IV]

Submit to the CO proposed major compensation program design changes, variable pay and incentive compensation programs prior to implementation.

[DOE O 350.1, Chapter IV; Acquisition Guide, Chapter 70]

Submit to the CO annual compensation increase plans and reports, annual contractor Salary-Wage Increase Expenditure Report (DOE F 3220.8), individual compensation actions as required in the contract, other compensation reports, semi-annual Report on Overtime Use and an overtime control plan as required in the contract.

[DOE O 350.1, Chapter IV]

Develop and implement welfare benefit programs that meet the tests of allowability and reasonableness.

[DOE O 350.1, Chapter V; FAR 31.205-6; DEAR 970.3102]

Submit to the CO for approval an evaluation of benefit programs using either a value study or U.S. Chamber of Commerce cost study method; new benefit plans and changes to plan design or funding methodology with appropriate justification according to the guidance in DOE O 350.1, Chapter V, attachment 1, Contractor Requirement Document-V).

[DOE O 350.1, Chapter V]

Submit to the CO workers' compensation policies and proposals for self insurance;
Review and verify the accuracy of interim premium adjustment reports;
Pay the adjusted premium to the carrier;
Ensure workers' compensation policies contain certain DOE required provisions;
Approve settlement of claims up to the threshold established by DOE; and
Submit those over the threshold to DOE for approval.

[DOE O 350.1, Chapter V]

Submit to the CO for approval dependent care facility proposals.
Apply specific non-discretionary elements to any DOE approved contractor dependent care facility listed at Contractor Requirement Document-V.

[DOE O 350.1, Chapter V]

Submit annually the Report of Contractor Expenditures for Employee Supplemental Compensation, (now under the Work Force Information System).

[DOE O 350.1, Chapter V]

Ensure that all DOE O 350.1, Chapter VI, Attachment 1, Contractor Requirement Document, requirements are applied in the establishment, administration and/or termination of DOE funded pension plans covering employees of PBMCs and for other DOE funded pension plans as stipulated in the contract.

[DOE O 350.1, Chapter VI]

Submit to DOE for approval any and each early-out program, benefit window, disability program, plan-loan feature, employee contribution refund, asset reversion or incidental benefit.

[DOE O 350.1, Chapter VI]

Charge to the contract only those costs determined to be allowable under DEAR 970.5204-13 or DEAR 970.5203-14 and the personnel appendix of the contract as applicable.

[DEAR 970.5204-13; DEAR 970.5204-14]

Advise DOE of any proposed changes in any matters covered by policies, practices or plans referenced in the personnel appendix which relate to this item of cost.

[DEAR 970.5204-13; DEAR 970.5204-14]

Modify the personnel appendix from time to time in writing by mutual agreement of the contractor and DOE without execution of an amendment to this contract.

[DEAR 970.5204-13; DEAR 970.5204-14]

Obtain the CO's approval of an employee's total compensation when at or exceeding the monetary threshold specified in the contract.

[DEAR 970.5204-13; DEAR 970.5204-14]

Maintain adequate internal controls to ensure that employee overtime is authorized only if cost effective and necessary to ensure performance of work under this contract. Notify the CO when in any given year it is likely that overtime usage as a percentage of payroll may exceed 4%.

Submit for approval, when required by the CO, a formal annual overtime control plan whenever contractor overtime usage as a percentage of payroll has exceeded, or is likely to exceed, 4%, or when the CO otherwise deems overtime expenditures excessive.

[DEAR 970.5204-80]

Agree, by submission of its offer, to provide to the CO, within 30 days after notification of selection for award, or award of a contract, whichever occurs first, its written workplace substance abuse program consistent with 10 CFR Part 707.

[DEAR 970.5204-57]

Develop, implement, and maintain a workplace substance abuse program, consistent with 10 CFR Part 707, Workplace Substance Abuse Programs at DOE Sites.

[DEAR 970.5204-58]

Notify the CO reasonably in advance of, but not later than 30 days prior to, the award of any subcontract the contractor believes subject to 10 CFR Part 707.

Require all subcontracts subject to 10 CFR Part 707 to agree to develop and implement a workplace substance abuse program that complies with 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, as a condition for award of the subcontract.

Review and approve each subcontractor's program, and periodically monitor each subcontractor's implementation of the program for effectiveness and compliance.

Includes, and requires the inclusion of DEAR 970.5204-58, "Workplace Substance Abuse Programs at DOE Sites," in all subcontracts, at any tier, that are subject to the provisions of 10 CFR Part 707.

[DEAR 970.5204-58]

Regarding Insurance and Risk Management

HEAD OF CONTRACTING ACTIVITY

Ensure compliance with the policies, procedures, and requirements set forth in Chapter VII.
[DOE O 350.1, Chapter VII]

Ensure that proposed commercial insurance policies clearly define and include the liability coverage required/desired; the cost for proposed coverage is fair and reasonable; and, commercial, self-insurance, and DOE Third Party Administrative Services Contract options are considered.

[DOE O 350.1, Chapter VII]

DIRECTOR, OFFICE OF CONTRACT AND RESOURCE MANAGEMENT, (MA-53)

Develop and assist in the implementation of policies, procedures, and standards for the contractor insurance programs.

[DOE O 350.1, Chapter VII]

When requested, provide advice and assistance to Heads of Departmental and Field Elements on all contractor insurance matters.

[DOE O 350.1, Chapter VII]

Maintain liaison and consults with other federal agencies and insurance industry organizations concerning insurance matters.

[DOE O 350.1, Chapter VII]

Maintain contractor insurance data sufficient to serve as a program baseline and provide overall measurement and justification for implementation of program initiatives and direction.

[DOE O 350.1, Chapter VII]

INDUSTRIAL RELATIONS SPECIALIST

* Provide technical advice and assistance in all matters relating to Contractor Human Resources Management.

CONTRACTING OFFICER

Review and approve contractor insurance plans.

[Acquisition Guide, Chapter 70; FAR 42.302(a)(2); FAR 52.228-7]

Determine the allowability of the contractor's insurance expenses, generally with audits.

[FAR 31.201-2(d); FAR 31.205-19]

Establish and negotiate contract provisions affecting contractor insurance programs.

[DOE O 350.1, Chapter VII]

Approve contractor insurance policies and plans and renewals proposed for operations at DOE facilities when delegated by the HCA.

[DOE O 350.1, Chapter VII]

Ensure that solicitations and contracts contain required insurance language and clauses.

[DOE O 350.1, Chapter VII]

Provide copies of contractor insurance policies, contracts, and annual cost and loss data to the Office of Contract and Resource Management (MA-53).

[DOE O 350.1, Chapter VII]

When appropriate, provide prior written approval for the Contractor to indemnify the subcontractor against any risk defined in the contract as unusually hazardous or nuclear. Indemnify the Contractor against liability to subcontractors incurred under subcontract provisions previously approved by the CO.

[FAR 52.250-1]

Receive notification from the contractor of any claim or action against, or any loss by, the Contractor or any subcontractors that may reasonably be expected to involve indemnification associated with any risk defined in the contract as unusually hazardous or nuclear and notify appropriate individuals according to local guidance.

[FAR 52.250-1]

Approve, as appropriate, the contractor's maintenance of a self-insurance program.

[DEAR 970.5204-31]

Approve, as appropriate, any bonds and insurance that are maintained by the contractor in connection with performance of the contract and for which the contractor may and does seek reimbursement subject to the provisions of DEAR 970.5204-31.

[Acquisition Guide, Chapter 70; DEAR 970.5204-31]

CONTRACTOR

Carry certain types of insurance coverage discussed in FAR Part 28 and DOE O 350.1.

[FAR 28.301(a); DOE O 350.1, Chapter VII]

Provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the CO may require.

[FAR 52.228-7]

Maintain, with CO approval, a self-insurance program, provided it is qualified pursuant to statutory authority; all insurance shall be in a form and amount as the CO may require.

[FAR 52.228-7]

Notify immediately the CO and provide copies of pertinent papers, if any suit or action is filed or claim made against the Contractor.

The Government reserves the right to settle/defend claims against the contractor.

[FAR 52.228-7]

Account for insurance cost in accordance with Cost Accounting Standards (CAS) 9904.416, required, if covered by CAS.

[FAR 31.205-19]

May request indemnification from COs to cover unusually hazardous or nuclear risks.

Provide certain information in support of requests for indemnification.

[FAR 50.403-1]

Is liable and shall indemnify the Government against, all actions, claims, damage to property, or injury or death of persons, resulting from Contractor, agent, or employee fault, negligence, or wrongful act, associated with leased motor vehicles.

[FAR 52.228-8]

Provide and maintain insurance in minimum amounts of \$200,000 per person and \$500,000 per occurrence for death or bodily injury with \$20,000 per occurrence for property damage or loss.
[FAR 52.228-8]

Certify in writing to the CO that the required insurance has been obtained before commencing work on the contract.
[FAR 52.228-8]

Not obtain or charge to the Government any insurance for any liabilities for which the Government is responsible.
[FAR 52.228-8]

May, in any subcontract under this contract, indemnify the subcontractor against any risk defined in the contract as unusually hazardous or nuclear, with the CO's prior written approval.
[FAR 52.250-1]

Notify the CO promptly of any claim or action against, or any loss by, the Contractor or any subcontractors that may reasonably be expected to involve indemnification associated with any risk defined in the contract as unusually hazardous or nuclear.
[FAR 52.250-1]

Comply with the Government's directions and execute any authorizations required in connection with settlement or defense of claims or actions associated with any risk defined in the contract as unusually hazardous or nuclear.
[FAR 52.250-1]

Procure and maintain such bonds and insurance as required by law or approved in writing by the CO, except as provided in paragraph (c)(2).
[DEAR 970.5204-31]

May maintain, with the approval of the CO, a self-insurance program; provided that, with respect to workers' compensation, the contractor is qualified pursuant to statutory authority.
[DEAR 970.5204-31]

Submit for the CO's approval any other bonds and insurance that are maintained by the contractor in connection with the performance of the contract and for which the contractor may and does seek reimbursement.
[DEAR 970.5204-31]

Regarding Labor Standards

HEAD OF CONTRACTING ACTIVITY

Establish the Labor Standards Committee (comprised of Federal employees) to advise the CO on the applicability of the various labor standards statutes to contracts and proposed work packages.
[DOE O 350.1, Chapter II]

Obtain the appropriate wage determination under the Service Contract Act and/or the Davis-Bacon Act and ensure all contracts contain the appropriate labor standards provisions.
[DOE O 350.1, Chapter II; FAR 22.4; FAR 22.10]

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.
[DOE O 350.1, Chapter II]

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

Investigate complaints under the Davis-Bacon Act to determine compliance.

[DOE O 350.1, Chapter II; FAR 22.4]

Not responsible for Enforcement of the Service Contract Act as that is the responsibility of the Department of Labor.

[FAR 22.10]

DIRECTOR, OFFICE OF WORKER AND COMMUNITY TRANSITION (WT-1)

Coordinate Departmental comments on proposed revisions to Department of Labor regulations and provides interpretations of final revisions to Headquarters and Field Elements.

[DOE O 350.1, Chapter II]

Coordinate responses to Congress and the Department of Labor on labor standards compliance on acquisitions administered by Headquarters.

[DOE O 350.1, Chapter II]

INDUSTRIAL RELATIONS SPECIALIST

Provide technical advice and assistance in all matters relating to Contractor Human Resources Management.

CONTRACTING OFFICER

Withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid overtime wages and liquidated damages as provided in the clause.

[FAR 52.222-4]

Require that any class of laborers or mechanics, not listed in the wage determination and which is to be employed under the contract, shall be classified in conformance with the wage determination. If the Contractor and the laborers and mechanics to be employed in the classification, or their representatives, and the CO agree on the classification and wage rate, a report of the action taken shall be sent by the CO to the U.S. Department of Labor for approval, modification, or disapproval.

[FAR 52.222-6]

Refer questions, views and a recommendation to the Department of Labor for determination, in case of disagreement among the parties on a classification and wage rate.

[FAR 52.222-6]

Withhold or cause to be withheld from any moneys payable on account of work performed by the Contractor or subcontractor such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid prevailing wages as provided in the clause.

[FAR 52.222-7]

Incorporate a determination of the prevailing wage rates and applicable contract clauses into the contract by modification, upon determination that the Davis-Bacon Act is applicable to any item of work to be performed in non construction contracts involving some construction work.

[FAR 52.222-17]

Review any Standard Form 1444 received from the contractor and submit the completed form, the agency recommendation and all pertinent information to the Department of Labor,

when the contractor classifies any class of service employee not listed in the wage determination for the Service Contract Act and submits Standard Form 1444 to the CO to request authorization for the additional classification rate.

[FAR 52.222-41]

Withhold or cause to be withheld from the contractor such sums as an appropriate official of the Department of Labor requests or such sums as the CO decides may be necessary to pay underpaid (compared to the Service Contract Act wage determination) employees employed by the contractor or subcontractor. If the contractor fails to pay any employees the wages or fringe benefits due under the Act, the CO may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of the Service Contract Act clause may be grounds for termination.

[FAR 52.222-41]

Cancel, terminate, or suspend in whole or in part the contract and may declare the contractor ineligible for further Government contracts, if the Office of Federal Contract Compliance Programs determines that the contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor.

[FAR 52.222-26]

May direct the contractor, as a means of enforcing the terms and conditions of the “Equal Opportunity” clause, to take appropriate action with respect to any subcontract or purchase order.

[FAR 52.222-26]

Take appropriate actions under the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Vietnam Era Veteran’s Readjustment Act of 1972 when the contractor is not in compliance with the “Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era” clause.

[FAR 52.222-35]

Take appropriate actions under the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Rehabilitation Act of 1973 when the contractor is not in compliance with the “Affirmative Action for Workers with Disabilities” clause.

[FAR 52.222-36]

Request the contractor to procure, by subcontract, the construction of new facilities or the alteration or repair of Government-owned facilities at the plant.

Review for approval any subcontract entered into under the “Government Facility Subcontract Approval” clause.

[DEAR 970.5204-38]

CONTRACTOR

Agree not to employ in the performance of the contract any person undergoing a sentence of imprisonment imposed by any court of:

- A State,
- District of Columbia,
- Commonwealth of Puerto Rico,
- Virgin Islands,
- Guam,
- American Samoa,
- Commonwealth of the Northern Mariana Islands, or
- Trust Territory of the Pacific Islands, with certain exceptions stated in the clause.

[FAR 52.222-3]

Pay overtime compensation at a rate not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

[FAR 52.222-4]

Maintain payrolls and basic payroll records during the course of contract work; and Preserve them for a period of 3 years from the completion of the contract for all laborers and mechanics working on the contract.

[FAR 52.222-4]

Insert in any subcontracts exceeding \$100,000 the provisions set forth in FAR 52.222-4 and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts.

Responsible for compliance by any subcontractor or lower tier subcontractor.

[FAR 52.222-4]

Pay laborers and mechanics not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees.

[FAR 52.222-6]

Comply with the requirements of 29 CFR Part 3 Copeland Act Requirements.

[FAR 52.222-10]

Insert in any subcontracts in excess of \$2,000 for construction within the United States the clauses entitled:

- Davis-Bacon Act,
- Contract Work Hours and Safety Standards Act--Overtime Compensation,
- Apprentices and Trainees,
- Payrolls and Basic Records,
- Compliance with Copeland Act Requirements,
- Withholding of Funds,
- Subcontracts (Labor Standards),
- Contract Termination--Debarment, Disputes Concerning Labor Standards,
- Compliance with Davis-Bacon and Related Act Regulations, and
- Certification of Eligibility,

and such other clauses as the CO may require, and also a clause requiring subcontractors to include these clauses in any lower tier subcontracts.

Responsible for the compliance of all subcontractors.

[FAR 52.222-11]

Deliver to the CO, within 14 days after award of a contract or subcontract, a completed or updated Statement and Acknowledgment Form (SF 1413) for each subcontract, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (a) of the clause have been included in the subcontract.

[FAR 52.222-11]

Breaching the contract clauses entitled:

- Davis-Bacon Act,
- Contract Work Hours and Safety Standards Act--Overtime Compensation,
- Apprentices and Trainees,
- Payrolls and Basic Records,
- Compliance with Copeland Act Requirements,
- Subcontracts (Labor Standards),
- Compliance With Davis-Bacon and Related Act Regulations, or
- Certification of Eligibility

may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor.

[FAR 52.222-12]

Submit all straight time wage rates, and overtime rates based thereon, for laborers and mechanics engaged in work under the contract for approval (in writing) by the HCA activity or a representative expressly designated for this purpose, if the straight time wages exceed the rates for corresponding classifications contained in the applicable Davis-Bacon Act minimum wage determination included in the contract.

[FAR 52.222-16]

Comply with the clauses set forth in FAR 52.222-17 in performance of work under the contract in the event that construction, alteration, or repair of public buildings or public works is to be performed.

Perform no construction, alteration, or repair of public buildings or public works under the contract without incorporation of the wage determination unless the CO authorizes the start of work because of unusual or emergency situations.

[FAR 52.222-17]

Pay all employees under the contract not less than the minimum wage prescribed by regulations issued by the Secretary of Labor, if this contract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed \$10,000, and is subject to the Walsh-Healey Public Contracts Act. Learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act.

[FAR 52.222-20]

Pay each service employee under contracts or subcontracts covered by the Service Contract Act not less than the minimum monetary wages and furnish fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to the contract.

[FAR 52.222-41]

Classify any class of service employee not listed therein, if a Service Contract Act wage determination is attached to this contract.

Submit Standard Form 1444 to the CO to request authorization for the additional classification rate.

[FAR 52.222-41]

Maintain for 3 years records on employees representing its compliance with the Service Contract Act.

[FAR 52.222-41]

Shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

Take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin.

[FAR 52.222-26]

Include the terms and conditions of the “Equal Opportunity” clause in every subcontract or purchase order that is not exempted in accordance with the clause.

Take such action with respect to any subcontract or purchase order as the CO may direct as a means of enforcing the terms and conditions.

[FAR 52.222-26]

Not discriminate, regarding any position for which the employee or applicant for employment is qualified, against the individual, because the individual is a disabled veteran or a veteran of the Vietnam era.

Take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans’ status in all employment practices and abide by other requirements of the “Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era” clause.

[FAR 52.222-35]

Not discriminate against any employee or applicant because of physical or mental disability.

Take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices.

[FAR 52.222-36]

Agree to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

[FAR 52.222-36]

Report at least annually, as required by the Secretary of Labor, unless a State or local government agency, the information stipulated in the “Employment Reports on Disabled Veterans and Veterans of the Vietnam Era” clause.

Include in every subcontract or purchase order over \$10,000 the terms of the clause.

[FAR 52.222-37]

Procure, by subcontract, the construction of new facilities or the alteration or repair of Government-owned facilities at the plant upon request of the CO and acceptance thereof by the contractor. Any subcontract entered into under the “Government Facility Subcontract Approval”

clause shall be subject to the written approval of the CO and shall contain the provisions relative to labor and wages required by law to be included in contracts for the construction, alteration, and/or repair of a public building or public work.

[DEAR 970.5204-38]

Regarding Work Force Restructuring

OPERATIONS/FIELD OFFICE MANAGER

Oversee the management of work force changes consistent with direction from the Office of Worker and Community Transition (WT-1).

[Planning Guidance for Contractor Work Force Restructuring, December 1998; DOE O 350.1, Chapter 3]

Prepare site-specific work force restructuring plans in accordance with guidance.

[Planning Guidance for Contractor Work Force Restructuring, December 1998; Section 3161 and 3163 of the Fiscal Year 1993 National Defense Authorization Act; DOE O 350.1, Chapter 3]

Obtain approval for funding of separation benefits beyond those expressly authorized by contract or collective bargaining agreement.

[Planning Guidance for Contractor Work Force Restructuring, December 1998; Section 304 of the FY 1999 Energy and Water Development Appropriations Act; DOE O 350.1, Chapter 3]

Establish a baseline employment data base for use in preparing work force analyses.

[Planning Guidance for Contractor Work Force Restructuring, December 1998; DOE O 350.1, Chapter 3]

Provide notification to workers and stakeholders upon Office of Worker and Community Transition (WT-1) approval.

[Planning Guidance for Contractor Work Force Restructuring, December 1998; DOE O 350.1, Chapter 3]

Develop mechanisms to ensure that hiring preferences are being honored by all prime contractors and designated subcontractors.

[Planning Guidance for Contractor Work Force Restructuring, December 1998; Section 3161 and 3163 of the Fiscal Year 1993 National Defense Authorization Act; DOE O 350.1, Chapter 3]

Maintain a list of individually identified scientists and engineers who will comprise a retiree corps.

[DOE O 350.1, Chapter 3]

Assure that contractors fulfill work force planning, notification, and hiring preference and related requirements included in work force restructuring plans.

[Planning Guidance for Contractor Work Force Restructuring, December 1998; DOE O 350.1, Chapter 3]

HEAD OF CONTRACTING ACTIVITY

* Consult with the Office of Worker and Community Transition (WT-1) in developing provisions related to hiring of the existing work force, compensation provisions, collective bargaining concerns, and other issues impacting the work force, in order to minimize challenges to proceeding with the new contract, and because of the extreme sensitivity of work force transition issues, in developing solicitations for new contracts, including outsourcing or privatization. The Department is currently developing specific policy guidance related to work force transition issues when there is a change in contracting mechanisms.

Negotiate advance understandings for the Medical Benefit Program for Displaced Workers and approve reasonable contractor costs of the program.

[Acquisition Letter 93-4]

DIRECTOR, OFFICE OF WORKER AND COMMUNITY TRANSITION (WT-1)

Provide direction and guidance in development and implementation of work force restructuring plans and economic development plans.

[Planning Guidance for Contractor Work Force Restructuring, December 1998; DOE O 350.1, Chapter 3]

Recommend to the Secretary approval of work force restructuring plans for submission to Congress.

[Planning Guidance for Contractor Work Force Restructuring, December 1998; DOE O 350.1, Chapter 3]

Approve/disapprove work force restructuring actions as delegated including programs to minimize layoffs and coordinate Departmental review with affected Program Office, Counsel, Office of Contract & Resource Management (MA-53).

[Planning Guidance for Contractor Work Force Restructuring, December 1998; Section 304 of the FY 1999 Energy and Water Development Appropriations Act; DOE O 350.1, Chapter 3]

Coordinate notification to Congress of work force and economic development actions.

[Planning Guidance for Contractor Work Force Restructuring, December 1998; DOE O 350.1, Chapter 3]

INDUSTRIAL RELATIONS SPECIALIST

* Provide technical advice and assistance in all matters relating to Contractor Human Resources Management.

CONTRACTOR

Provide a preference in hiring to an eligible displaced employee to the extent practicable for work performed under this contract.

[DEAR 952.226-74; DOE O 350.1, Chapter 3]

Include, in subcontracts at any tier (except for subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed \$500,000, the requirements of the "Displaced Employee Hiring Preference" clause.

[DEAR 952.226-74]

Adhere to the terms and conditions included in work force restructuring plans developed pursuant to Section 3161 of the National Defense Authorization Act for Fiscal Year 1993.

[DEAR 970.5204-77; DOE O 350.1, Chapter 3]

Regarding Labor Relations

HEAD OF CONTRACTING ACTIVITY

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

[DOE O 350.1, Chapter 1]

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

[DOE O 350.1, Chapter 1]

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

[DOE O 350.1, Chapter 1]**

Notify the Office of Worker and Community Transition (WT-1) of National Labor Relations Board charges and any significant labor relations issues.**

[DOE O 350.1, Chapter 1]

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

[DOE O 350.1, Chapter 1]

* Review of labor expenses as part of responsibility for assuring judicious expenditure of public funds.

[DOE O 350.1, Chapter 1]

** (Note: The Head of Contracting Activity has historically delegated these responsibilities to the Field Contractor Human Resources Office.)

DIRECTOR OF WORKER AND COMMUNITY TRANSITION (WT-1)

Establish DOE labor relations policy in consultation with field organizations.

[DOE O 350.1, Chapter 1]

Represent DOE Headquarters on all matters involving contractor labor relations issues. This includes:

- informing DOE senior management of significant labor relations developments,
- acting as DOE liaison to other government agencies and to international unions and their representatives,
- serving as a clearing house for labor relations information,
- coordinating union representation at meetings and conferences initiated by DOE Headquarters elements; and
- approving all DOE policy affecting contractor labor relations.

[DOE O 350.1, Chapter 1]

Work 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.

[DOE O 350.1, Chapter 1]

INDUSTRIAL RELATIONS SPECIALIST

* Provide technical advice and assistance in all matters relating to Contractor Human Resources Management.

CONTRACTOR

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.

[DOE O 350.1, Chapter 1; DEAR 970.2201]

Consult with the CO 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 or other matters that may cause a significant deviation from past customs or practices.

[DOE O 350.1, Chapter 1]

Provide the CO with a settlement summary after formal ratification of the agreement, using the "Report of Settlement" form.

[DOE O 350.1, Chapter 1]

Immediately advise the DOE field element of the following:

- Possible strike situations or other job actions affecting the continuity of operation.
- Formal action by the National Labor Relations Board or the National Mediation Board.
- Other significant issues that may involve review by other federal or state agencies.

[DOE Order 350.1, Chapter 1]

Immediately give notice, including all relevant information, to the CO of knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the contract.

[FAR 52.222-1]

Use its best efforts to ensure collective bargaining agreements contain provisions designed to assure continuity of services when negotiating collective bargaining agreements.

All such agreements entered into should provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout, or other interruption of normal operations.

Management and labor should agree to cooperate fully with the Federal Mediation and Conciliation Service.

Include the substance of this clause in any subcontracts for protective services or other services performed on the DOE-owned site which will affect the continuity of operation of the facility.

[DEAR 970.5204-63]

CONTRACTING OFFICER'S REPRESENTATIVE

* DOE review labor expenses as part of responsibility for assuring judicious expenditure of public funds.

[DEAR 970.2201]

WHERE CAN I GO FOR MORE DETAILED INFORMATION ON HUMAN RESOURCES?

On Advance Understandings on Cost and Related Areas

1. DEAR 970.2271, “Workers Compensation Insurance”
2. DEAR 970.2275, “Overtime Management”
3. DEAR 970.3101-6, “Advance Understanding on Particular Cost Items,” (a)(9), “Employee Compensation,” paragraphs (b) and (c)
4. DEAR 970.3102, “Application of Cost Principles”
5. DEAR 970.5204-13, “Allowable Costs and Fixed Fee (Management and Operation Contracts)”
6. DEAR 970.5204-14, “Allowable Costs and Fixed Fee (Support Contracts)”
7. DEAR 970.5204–57, “Agreement Regarding Workplace Substance Abuse Programs at DOE Sites”
8. DEAR 970.5204-58, “Workplace Substance Abuse Programs at DOE Sites”
9. DEAR 970.5204-80, “Overtime Management (June 1997)”
10. DOE Order 350.1, Chapters IV, V and VI
11. DOE Acquisition Guide, Chapter 70, “Contractor Compensation - Variable Pay”
12. Acquisition Letter 99-02, “1999 Executive Compensation”
13. Approval Procedures for Compensation Increase Plan Funds Annual Guidance” issued by MA-53
14. DOE Budget Formulation Handbook”
15. DOE Field Budget Call”
16. FAR 31.205-6, “Compensation for Personal Services”

On Insurance and Risk Management

17. DEAR 928.3, “Insurance”
18. DEAR 950.71, “General Contract Authority Indemnity”

19. DEAR 970.5204-13, "Allowable Costs and Fixed-Fee (Management and Operating contracts)"
20. DEAR 970.5204-31, "Insurance) Litigation and Claims"
21. DOE Acquisition Guide, Chapter 70, "Contractor Insurance"
22. FAR 28.3, "Insurance"
23. FAR 31.201-2(d)
24. FAR 31.205-19, "Insurance and Indemnification"
25. FAR 42.302, "Contract Administration Functions"
26. FAR 50.000, "Extraordinary Contractual Action (Indemnification)"
27. FAR 50.403, "Special Procedures for Unusually Hazardous or Nuclear Risks"
28. FAR 52.228-7, "Insurance -- Liability to Third Persons"
29. FAR 52.228-8, "Liability and Insurance--Leased Motor Vehicles"
30. FAR 52.245-8, "Liability for the Facilities"
31. FAR 52.246-25, "Limitation of Liability--Services"
32. FAR 52.250-1, "Indemnification Under Public Law 85-804"
33. DOE Order 350.1, Chapter VII, "Risk Management and Liability Programs"

On Labor Standards

- DEAR 970.2210, "Service Contract Act"
34. DEAR 970.2273, "Administrative Controls and Criteria for Application of the Davis-Bacon Act in Operational or Maintenance Activities"
35. DEAR 970.5204-38, "Special Clause for Procurement of Construction"
36. DOE O 350.1, Chapter II, "Labor Standards"
37. DOE Acquisition Guide, Chapter 22, "Application of Labor Laws to Government Acquisitions"
38. FAR 22.3, "Contract Work Hours and Safety Standards Act"
40. FAR, 22.4, "Labor Standards Involving Contracts for Construction"
41. FAR, 22.6, "Walsh-Healey Public Contracts Act"
42. FAR, 22.10, "Service Contract Act of 1965"
43. FAR 52.222-3, "Convict Labor"
44. FAR 52.222-4, "Contract Work Hours and Safety Standards Act--Overtime Compensation"
45. FAR 52.222-6, "Davis-Bacon Act"
46. FAR 52.222-7, "Withholding of Funds"

47. FAR 52.222-10, "Compliance with Copeland Act Requirements."
48. FAR 52.222-11, "Subcontracts (Labor Standards)"
49. FAR 52.222-12, "Contract Termination–Debarment."
50. FAR 52.222-16, "Approval of Wage Rates"
51. FAR 52.222-17, "Labor Standards for Construction Work–Facilities Contracts"
52. FAR 52.222-19, "Walsh-Healey Public Contracts Act Representation"
53. FAR 52.222-20, "Walsh-Healey Public Contracts Act"
54. FAR 52.222-26, "Equal Opportunity"
55. FAR 52.222-35, "Affirmative Action for Disabled and Vietnam Era Veterans"
56. FAR 52.222-36, "Affirmative Action for Workers with Disabilities"
57. FAR 52.222-37, "Employment Reports on Disabled Veterans and Veterans of the Vietnam Era"
58. FAR 52.222-41, "Service Contract Act of 1965"
59. FAR 52.222-42, "Statement of Equivalent Rates for Federal Hires"

On Work Force Restructuring

Items 60 through 64 below may be found at the web site

(<http://www.wct.doe.gov/owct/docs.htm>," under the section entitled "Authorities and Guidance":

60. "Planning Guidance for Contractor Work Force Restructuring, December 1998"
61. Section 3161 and 3163 of the Fiscal Year 1993 National Defense Authorization Act
62. DOE Order 350.1, "Contractor Human Resource Management Programs," Chapter 3, "Reduction in Contractor Employment"
63. Acquisition Letter 93-4, "Displaced Workers Benefits Program"
64. "Policy and Planning Guidance for Community Transition Activities"
65. DEAR 952.226-74, "Displaced Employee Hiring Preference"
66. DEAR 970.5204-77, "Workforce Restructuring Under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993"

On Labor Relations

67. DEAR 970.2201, "Basic Labor Policies"
68. DEAR 970.5204-30, "Notice of Labor Disputes"

69. DEAR 970.5204-63, "Collective Bargaining Agreements-Management Operating Contracts"
70. FAR 22.1, "Basic Labor Policies"
71. FAR 52.222-1, "Notice to the Government of Labor Disputes" (Implemented by DEAR 970.5204-30)
72. DOE O 350.1, Chapter 1, "Labor Relations"

Date	Subject of Revision
June 2, 2006	Eliminated references to the Make-or-Buy Plan which was deleted from the DEAR

**DO YOU HAVE ANY COMMENTS OR SUGGESTIONS FOR
IMPROVING THIS CHAPTER OR THE BOOK? IF SO, PLEASE
CONTACT US AT:**

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