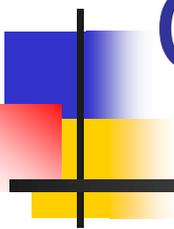


DOE PROCUREMENT ATTORNEYS CONFERENCE – Contractor Workforce Issues

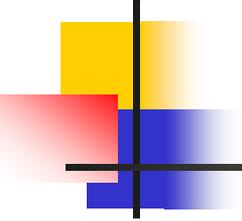


Jean Seibert Stucky
Assistant General Counsel
February 22, 2011



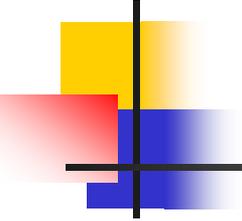
GC-63

1. Labor issues (unions)
2. Employment issues (equal employment; workforce restructuring)
3. Pensions and other benefits
4. Labor standards (e.g., Davis-Bacon Act)



Why is this important?

60-95% of DOE Contract costs are contractor human resource costs –



Roles and Responsibilities

- DOE *is not*
 - The Employer of the contractor work force, or
 - The sponsor or the fiduciary of their benefit plans
- DOE *is*
 - The contracting agency, with responsibility to manage its contracts prudently, consistently with applicable law
- DOE contractor pension plans *are not*
 - Governmental plans, and
- DOE *does not*
 - Insure the benefits provided



1. Labor Issues

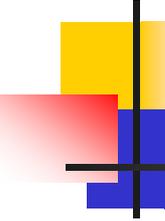
- Collective bargaining – GC63 inherited LM's charter to coordinate labor issues across the complex
- Strikes (especially among guard forces)



2. Employment Issues and Contractor Workforce Restructuring

SECTION 3161 of the National Defense Authorization Act for FY 1993

- Requires DOE/NNSA to consult with affected stakeholders (e.g., unions) and to develop plans to mitigate the impact of workforce restructuring on the employees and on communities in which the sites lie.



Executive Order 11246-

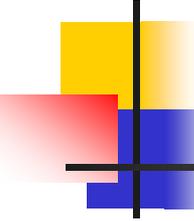
Since 1965, has required Government Agencies to exercise oversight over contractor operations in order to assure that contractors do not use government funds in a manner that unfairly impacts minorities or other protected groups



Laws Regarding Diversity

Prohibit discrimination based upon

- Race
- Gender
- Disability
- Age
- Other considerations



Employment Issues and Contractor Workforce Restructuring –

- If DOE contractors are prevented – by legal or other means – from restructuring their work forces to meet current mission requirements, or
- If that workforce restructuring entails large legal costs,

There will be huge problems for DOE in meeting its mission objectives.



Involuntary Separation Programs (ISPs): Selection of Employees

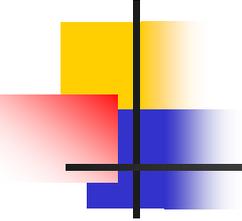
- Document Business Case
- No “Backfilling;” No Re-Hiring in Positions for 1 year
 - applies to *both* involuntarily and voluntarily separated employees

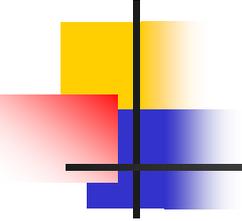


ISPs: Selection Criteria

- Objective criteria (e.g., seniority or length of service) are significantly safer than subjective criteria
- Accurate employee classifications
- Use of employee evaluations and ratings should be consistent



- 
-
- **If you see a possible age impact, consider whether there could be pension and benefit complications**



3. Benefits

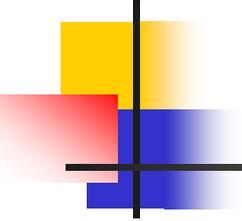
- Approximately equal numbers of active employees and retirees/beneficiaries in contractor benefit plans
 - Approx. 100,000 active employees, and another 100,000 retirees and beneficiaries
 - Approx. 50 defined benefit pension plans for which the Department is responsible for reimbursing all costs



Contractor DB Pension Plans*

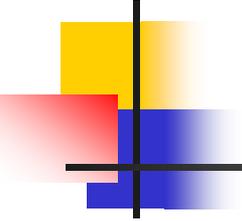
- Projected Benefit Obligation **\$37B**
- Assets **\$23B**

*as of 9/30/10



DOE O 350.1

- Total compensation objective, i.e., consider all elements of cash and non-cash compensation
- Allows contractors flexibility in determining how to meet the requirements
- Require contractor self-assessment of benefit packages offered to employees to confirm reasonableness

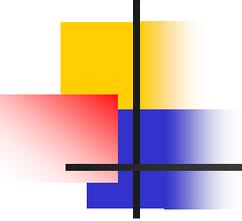


DOE O 350.1

Specific DOE pre-approvals for

- All benefit plans at contract inception
- Changes to existing pension plans
- Changes to medical benefit plans that increase long term liability
- New pension and benefit plans

Annual and periodic measures of benefit cost and value to determine reasonableness



“If you’re in, you’re in . . .”

- Incremental implementation of 2 tier market-based benefits has been incorporated in all major acquisitions since 1998



Current Policy (8/05)

- Discourage/disallow plan subsidies for lump sum payouts to individuals unless required by law
- Limit/disallow pension plan enhancements



Pension Management Plan

- Discussions with Department concerning reasonableness of assumptions, funding policy (including requests to fund above the minimum), investment strategies
 - Intended to address Departmental concerns with volatility and predictability of pension costs



H Clauses

- No 3rd party beneficiaries
- Workforce Transition: Hiring preferences
- Employee Compensation: Pay and Benefits
- Labor Relations: Collective bargaining (CO review and approval of economic bargaining parameters), strikes
- Post-Contract Responsibilities for pension and Other Benefits
- **Contract Transition Plans – benefits, bargaining***



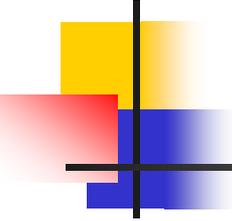
Overview – 4. Labor Standards

- **Davis-Bacon Act** applies to –
 - DOE contracts for construction
 - Much of Recovery Act



DBA Requirements –

- Ensure that all laborers and mechanics on covered projects are paid DBA wages and benefits on a ***weekly basis***
- Maintain ***certified payrolls*** and basic records during the course of the work
- Preserve them for a period of ***three years*** after the completion of the project



DOE Responsibilities

- Ensure that bids, solicitations, contracts, and grants include –
 - applicable wage determinations and
 - DOL standard DBA contract clauses
- Require flowdown of requirements to any contracts, subcontracts, or subgrants for performance of work
- Retain authority to investigate, monitor and enforce DBA requirements
 - Review payrolls
 - Conduct compliance audits