

## **DOE-H-2001 Employee Compensation: Pay and Benefits**

Prescription: The Contracting Officer shall insert the following clause in management and operating (M&O) and other than M&O, cost reimbursement solicitations and contracts where work had been previously performed under a DOE M&O contract and the successor Contractor is (a) required to employ all or part of the former Contractor's workforce and sponsors the employee pension and benefit plans; or (b) retains sponsorship of benefit plans that survive performance of the contract work scope. Contracts in this latter category include, but are not limited to, environmental remediation, infrastructure services and other site-specific project completion contracts.

### **Employee Compensation: Pay and Benefits (MAY 2025)**

#### **(a) Total Compensation System**

The Contractor shall develop, implement and maintain formal policies, practices and procedures to be used in the administration of its compensation system consistent with FAR 31.205-6 and DEAR 970.3102-506 “Compensation for Personal Services.” Additionally, DOE-approved standards (e.g., set forth in an advance understanding or appendix), if any, shall be applied to the Total Compensation System. The Contractor’s Total Compensation System shall be fully documented, consistently applied, and acceptable to the Contracting Officer.

Compensation costs will be audited annually as part of the annual indirect cost rate proposal audit (synonymous with an incurred cost proposal audit). The audit will be used to establish final allowable costs for the reportable fiscal year. The Contractor is required to submit an adequate annual final indirect cost rate proposal in accordance with DEAR 970.5216-7, as found in [Policy Flash 2022-23](#). The annual incurred cost rate proposal will be initially reviewed for adequacy and then audited. Included in the scope of the audit are direct and indirect compensation costs (e.g., salaries, health benefits, pensions, etc.). Failure to adequately support the incurred costs may result in the claimed costs being disallowed in part or in its entirety.

#### **(b) Compensation and Benefits Report**

The Contractor shall provide the Contracting Officer an Annual Compensation and Benefits Report no later than March 15th of each year.

#### **(c) Pension and Other Postretirement Benefit Programs**

- (1) Incumbent Employees shall remain in their existing pension plans (or comparable successor plans if continuation of the existing plans is not practicable) pursuant to pension plan eligibility requirements and applicable law.

- (2) The Contractor shall submit for prior approval benefit changes that result in increases to the Department's long-term pension and other actuarial liabilities that are reported in the Department's financial statement. Examples of benefits changes that increase the Department's long-term liabilities include defined benefit pension plan changes and postretirement benefits other than pensions.
- (3) Cost reimbursement for post-retirement benefits other than pensions (PRBs) is contingent on DOE approved service eligibility requirements for PRB that shall be based on a minimum period of continuous employment service not less than 5 years under a DOE cost reimbursement contract immediately prior to retirement. To be allowable, PRB costs must comply with FAR 31.205-6(o)(2)(i), and be assigned to the period in which benefits are actually provided or are paid to an insurer, provider, or other recipient for current year benefits or premiums. Unless required by Federal or State law, advance funding of PRBs is not allowable.
- (4) Each Contractor sponsoring a defined benefit pension plan and/or postretirement benefit plan will participate in the plan management process which includes written responses to a questionnaire regarding plan management, providing forecasted estimates of future reimbursements in connection with the plan(s) and participating in a conference call to discuss the Contractor submission (see (e)(4) below for Pension Management Plan requirements).
- (5) Each Contractor will respond to quarterly data calls issued through iBenefits, or its successor system.

(d) Establishment and Maintenance of Pension Plans for which DOE Reimburses Costs

Notwithstanding the requirement in (e)(1), employees working for the Contractor shall only accrue credit for service under this Contract after the date of Contract award.

(e) Basic Requirements

The Contractor shall adhere to the requirements set forth below in the establishment and administration of Defined Benefit pension plans that are reimbursed by DOE pursuant to cost reimbursement contracts for management and operation of DOE facilities and pursuant to other cost reimbursement facilities contracts.

- (1) The Contractor shall become a sponsor of the existing pension and other benefit plans (or comparable successor plans), including other PRB plans, as applicable, with responsibility for management and administration of the plans. The Contractor shall be responsible for maintaining the qualified status

of those plans consistent with the requirements of ERISA and the Internal Revenue Code (IRC). The Contractor shall carry over the length of service credit and leave balances accrued as of the date of the Contractor's assumption of Contract performance.

- (2) For existing Commingled Plans, the Contractor shall maintain and provide annual Separate Accounting of DOE liabilities and assets as for a Separate Plan.
- (3) For existing Commingled Plans, the Contractor shall be liable for any shortfall in the plan assets caused by funding or events unrelated to DOE contracts.
- (4) The Pension Management Plan (PMP) shall include a discussion of the Contractor's plans for management and administration of all pension plans consistent with the terms of the Contract. The PMP shall be submitted in the iBenefits system, or its successor system no later than February 15<sup>th</sup> of each applicable year. A full description of the necessary reporting will be provided in the annual management plan data request. If requested by the Contracting Officer, the Contractor representatives shall participate in a conference call to discuss the Contractor's PMP submission and any other current plan issues or concerns.

(f) Reimbursement of Contractors for Contributions to Defined Benefit (DB) Pension Plans

Contractors that sponsor single employer multiple employer, or multiemployer defined benefit pension plans will be reimbursed for the annual required minimum contributions after fully applying any prefunding and carryover balances.

Reimbursement above the annual minimum required contribution will require prior approval of the Contracting Officer. The Contractor requesting above the minimum shall submit/update a business case for funding above the minimum if preliminary approval is needed prior to the Pension Management Plan process. The business case shall include a projection of the annual minimum required contribution and the proposed contribution above the minimum. The submission of the business case will provide the opportunity for the Department to provide preliminary approval, within 30 days after contractor submission, pending receipt of final estimates, generally after January 1<sup>st</sup> of the calendar year. Final approval of funding will be communicated by the Head of Contracting Activity (HCA) when discount rates are finalized and it is known whether there are any budget issues with the proposed contribution amount.

(g) Changes to Pension and PRB Plans

No presumption of allowability will exist when the Contractor makes changes to existing pension plans or PRB plans that impact the Department's long-term liability, and the Contractor has not provided the Contracting Officer the opportunity to review the allowability of the changes prior to implementation. The Contractor shall submit for prior approval changes that result in increases to the Department's long-term pension and PRB liabilities that are reported in the Department's financial statement. Examples of changes that increase the Department's long-term liabilities include defined benefit pension plan changes and PRB plan changes. At least sixty (60) days prior to the adoption of changes to a pension plan, the Contractor shall submit the information required below to the Contracting Officer. The Contracting Officer must approve plan changes that increase costs to the Department's long-term liabilities as part of a determination as to whether the costs are deemed allowable pursuant to FAR 31.205-6, as supplemented by DEAR 970.3102-506.

- (1) For proposed changes to pension plans, the Contractor shall provide the following to the Contracting Officer:
  - (A) a copy of the current plan document (as conformed to show all prior plan amendments), with the proposed new amendment indicated in redline/strikeout,
  - (B) an analysis of the impact of any proposed changes on actuarial accrued liabilities and costs,
  - (C) except in circumstances where the Contracting Officer indicates that it is unnecessary, a legal explanation of the proposed changes from the counsel used by the plan for purposes of compliance with all legal requirements applicable to private sector defined benefit pension plans,
  - (D) the Summary Plan Description, and
  - (E) any such additional information as requested by the Contracting Officer.

(h) Terminating Operations

When operations at a designated DOE facility are terminated and no further work is to occur under the prime contract, the following apply:

- (1) No further benefits for service shall accrue.
- (2) The Contractor shall provide a determination statement in its settlement proposal, defining and identifying all liabilities and assets attributable to the DOE contract.
- (3) The Contractor shall base its pension liabilities attributable to DOE contract work on the market value of annuities or lump sum payments or dispose of

such liabilities through a competitive purchase of annuities or lump sum payouts.

- (4) Assets shall be determined using the “accrual-basis market value” on the date of termination of operations.

(i) Terminating Plans

- (1) DOE Contractors shall not terminate any pension plan (Commingled or site specific) without requesting Departmental approval at least 60 days prior to the scheduled date of plan termination.
- (2) DOE liability to a Commingled pension plan shall not exceed that portion which corresponds to DOE contract service. The DOE shall have no other liability to the plan, to the plan sponsor, or to the plan participants.
- (3) After all liabilities of the plan are satisfied, the Contractor shall return to DOE an amount equaling the net asset reversion after any taxes from the plan termination and any earnings which accrue on that amount because of a delay in the payment to DOE. Such amount and such earnings shall be subject to DOE audit. To effect the purposes of this paragraph, DOE and the Contractor may stipulate to a schedule of payments.
- (4) DOE and the Contractor(s) shall establish an effective date for spinoff or plan termination. On the same day as the Contractor notifies the IRS of the spinoff or plan termination, all plan assets assigned to a spun-off or terminating plan shall be placed in a low-risk liability matching portfolio until the successor trustee, or an insurance company, is able to assume stewardship of those assets.

(j) Definitions

- (1) Commingled Plans. Cover employees from the Contractor's private operations and its DOE contract work.
- (2) Separate Accounting. Account records established and maintained within a commingled plan for assets and liabilities attributable to DOE contract service. NOTE: The assets represented are not for the exclusive benefit of any one group of plan participants.
- (3) Separate Plan. As defined by IRC Sec. 414(l), assets designated for the exclusive benefit of employees under DOE contract exist under a separate plan document (having its own Department of Labor plan number) that is distinct from corporate plan documents and identify the Contractor as the plan sponsor.

- (4) Spun-off Plan. A new plan which satisfies IRC Reg. 1.414(l)-1 requirements for a single plan and which is created by separating assets and liabilities from a larger original plan. The funding level of each individual participant's benefits shall be no less than before the event, when calculated on a plan termination basis.

(end of clause)