

U.S. Department of Energy
Washington, D.C.

NOTICE

DOE N 351.1

Approved: 4-27-06

Expires: 4-27-07

SUBJECT: CONTRACTOR EMPLOYEE PENSION AND MEDICAL BENEFITS POLICY

1. **OBJECTIVES.**

- a. To ensure that reimbursement of costs incurred by Department of Energy (DOE) Contractors (as defined in this Notice) for Contractor pension and medical benefits under Contracts (as defined in this Notice) are reasonable in accordance with applicable laws, regulations and contract requirements, and reflect prudent business practices.
- b. To moderate the volatility and improve the predictability of the Department's annual cost-reimbursement obligations for Contractor benefit costs.
- c. To mitigate the growth in costs reimbursed by the Department associated with Contractor benefit liabilities.
- d. To provide direction for the treatment and disposition of Contractor post-closure benefit obligations that result from successful Contract completion at DOE closure sites.

2. **CANCELLATION.** None.

3. **APPLICABILITY.**

- a. **DOE Elements.** Except for the exclusions in Section 3.c, this Notice applies to all DOE Elements, including the National Nuclear Security Administration (NNSA) (Attachment 1) having cognizance over Contracts and Contractors. Departmental compliance with this Notice is subject to applicable laws and other Departmental obligations.
- b. **DOE Contractors.** The Contractor Requirements Document (CRD) (Attachment 2) sets forth requirements of this Notice that will apply to Contracts that incorporate the CRD. Contractor compliance with the CRD is subject to applicable laws and other enforceable obligations (e.g., reimbursement of costs pursuant to DOE-approved collective bargaining agreements and benefit plans).
- c. **Exclusions.** This Notice does not apply to the Power Marketing Administrations and activities conducted pursuant to the authority of the Director, Naval Nuclear Propulsion Program, under 50 U.S.C. 2406 requirements.

4. BACKGROUND.

Since Fiscal Year 2000, the assets to liabilities ratios in defined benefit (DB) pension plans sponsored by DOE Contractors at many DOE sites have experienced significant volatility as a result of market conditions, investment choices, and other factors. Currently, the majority of Contractor DB pension plans have accrued liabilities that exceed the value of assets in the plan trust funds, although the plans continue to have assets sufficient to meet all current obligations. As a result, DOE has experienced significant fluctuations in outlays for reimbursement of Contractor contributions to these plans. In a number of cases, growth in Contractor plan liabilities has been the result of benefit augmentations implemented when plan assets exceeded liabilities. Such augmentations have increased DOE long-term liabilities and in many cases have caused DOE to increase the level of reimbursement for Contractor pension plan contributions to pay for the incremental liability created by benefit augmentation. The financial pressures experienced by Contractor DB pension plans are similar to the financial pressures experienced by many private sector organizations that sponsor DB pension plans. In response, many private sector organizations across a broad spectrum of industries and businesses have taken actions to mitigate cost volatility and liability growth in their DB pension plans.

- a. Similarly, the costs associated with Contractor employee medical benefits have grown dramatically as a result of the rapidly rising costs of medical services. This growth is also similar to the experience of many private sector organizations that sponsor medical benefit plans for their employees and retirees. In response, organizations across a broad spectrum of industries and businesses also have taken actions to mitigate cost volatility and liability growth of medical benefit plans.
- b. Due to changes in mission requirements at certain sites and the successful remediation of legacy environmental issues at several sites, site closure has become an achievable goal at a number of locations both in the near and mid-term. As a consequence, work under certain Contracts will terminate so that the need for a continuing operational Contractor workforce at particular job sites will cease and employment of the current workforce will end. Contractor and Departmental liabilities for disposition of pension and retiree medical benefit plans associated with these closure sites has become a concern for DOE, closure Contractors, and closure Contractors' current and retired employees.
- c. The Department anticipates amending, as appropriate, DOE Order 350.1, *Contractor Human Resource Management Programs*, Chg 1, (DOE O 350.1) to incorporate the contents of this Notice. The Department also anticipates amending the Department of Energy Acquisition Regulation to include a clause that will address the requirements in the CRD.

5. REQUIREMENTS.

a. Mitigation of Cost Volatility and Liability Growth in Contractor Pension Plans.

- (1) The Department shall continue to reimburse allowable costs for pension benefits for Incumbent Defined Benefit (DB) Pension Plan Participants (as defined in this Notice) that meet the requirements of a total benefit package evaluated under DOE O 350.1 and/or specific contractual terms and conditions as applicable.
- (2) After a date to be negotiated with each Contractor, but no later than March 1, 2007, the Department will not reimburse Incremental Pension Costs (as defined in this Notice) except as required by law.
- (3) After a date to be negotiated with each Contractor, but no later than March 1, 2007, the Department will not report on its annual consolidated financial statement Incremental Pension Liability (as defined in this Notice) except as required by law.
- (4) After a date to be negotiated with each Contractor, but no later than March 1, 2007, new Contractor DB pension plans shall not be approved for reimbursement under a Contract, and a new Defined Contribution (DC) pension plan shall not be approved unless it is market-based as described in Section 5.a(5).
- (5) Contractor pension plans are market-based for purposes of reimbursement by DOE when the Contractor's:
 - (a) Pension plan is a DC Plan; and,
 - (b) The pension plan meets the following requirements:
 - 1 the pension Relative Benefit Value Index (RBVI) does not exceed the market average pension RBVI by more than five percent for New Employees (as defined in this Notice), and the average pension per capita cost as a percent of payroll does not exceed the market average pension per capita cost as a percent of payroll by more than five percent for New Employees; and,
 - 2 the total benefit package RBVI does not exceed the market average total RBVI by more than five percent for New Employees, and the total benefit average per capita cost as a percent of payroll does not exceed the total benefit market average per capita cost as a percent of payroll by more than five percent for New Employees.

- (6) Absent a compelling reason (e.g., required by law) and then only with the written approval of the Secretary of Energy, Departmental Elements shall not approve costs for reimbursement of any amendments to an Existing DB Pension Plan(s) (as defined in this Notice) that augment or potentially augment in any way the benefit for any plan participant, including any early retirement incentive. The fact that an Existing DB Pension Plan may be fully funded or have assets in excess of currently estimated liabilities is in itself not a compelling reason for benefit augmentation.
- (7) Absent a compelling reason (e.g., required by law) and then only with the written approval of the Secretary of Energy, and after incorporation of the CRD into a Contract, Departmental Elements shall not approve reimbursement of costs for lump sum pension distributions of all or any part of a plan participant's benefit (other than lump sum distributions less than or equal to \$5,000) for Incumbent DB Pension Plan Participants, except that costs for lump sum distributions for existing accruals for Incumbent DB Plan Participants in Existing DB Pension Plans that contain a lump sum distribution feature shall remain allowable.
- (8) Absent a compelling reason (e.g., required by law) and then only with the written approval of the Secretary of Energy, Departmental Elements shall not approve the reimbursement of costs for pension benefits under collective bargaining agreements negotiated subsequent to the effective date of this Notice unless the negotiated costs are consistent with the requirements of this Notice, applicable law and other DOE directives, and any written guidance by the Contracting Officer pursuant to this Notice.
- (9) DOE will reimburse the allowable costs for a Contractor to provide a one time opportunity for Incumbent DB Pension Plan Participants to transfer to a market-based pension plan within one year of the effective date of the new market-based pension plan.

b. Mitigation of Cost Volatility and Growth in Contractor Medical Benefit Plans.

- (1) The Department shall continue to reimburse the allowable costs for medical benefits for Incumbent Medical Benefit Plan Enrollees (as defined in this Notice) that meet the requirements of a total benefit package evaluated under DOE O 350.1 and/or specific contractual terms and conditions as applicable.
- (2) After incorporation of the CRD in a Contract, the Department shall not reimburse Incremental Medical Benefit Costs (as defined in this Notice) except as required by law. The Department will reimburse the allowable costs of a Contractor enrolling a New Employee in an Existing Medical Benefit Plan (as defined in this Notice) if the plan meets the requirements

of a market-based medical benefit plan as described in Section 5.b(4) or if the New Employee shares in the cost of the Existing Medical Benefit Plan so that the New Employee's benefits are brought into compliance with market-based medical benefit plans.

- (3) After incorporation of a CRD into a Contract, the Department shall not report on its annual consolidated financial statement Incremental Medical Benefit Liability (as defined in this Notice) except as required by law.
- (4) Medical benefit plans are market-based when the Contractor's
 - (a) medical benefit RBVI does not exceed the market average medical benefit RBVI by more than five percent for New Employees and the medical benefit per capita cost as a percent of payroll does not exceed the market average medical benefit per capita cost as a percent of payroll by more than five percent for new employees; and,
 - (b) the total benefit package RBVI does not exceed the market average total benefit RBVI by more than five percent for New Employees, and the total benefit average per capita cost as a percent of payroll does not exceed the total benefit market average per capita cost as a percent of payroll by more than five percent for New Employees;
 - (c) provided, however, that the Contracting Officer shall have the discretion to weigh the findings of the per capita medical benefit cost comparison against the medical RBVI when determining whether a medical benefit plan is market-based.
- (5) New medical benefit plans shall not be approved for reimbursement under a Contract unless they are market-based as described in Section 5.b(4).
- (6) Absent a compelling reason (e.g., required by law) and then only with the written approval of the Secretary of Energy, Departmental Elements shall not approve the reimbursement of costs for medical benefits under collective bargaining agreements negotiated subsequent to the effective date of this Notice unless the negotiated costs are consistent with the requirements of this Notice, applicable law and other DOE directives, and any written guidance by the Contracting Officer pursuant to this Notice.
- (7) Department Elements are not authorized, either orally or in writing, to compromise a Contractor's right to unilaterally change, suspend, or terminate any medical plan, coverage or contribution at any time.

- (8) After incorporation of the CRD into the Contract, the Department will not reimburse the costs of medical benefits for future retirees unless the Contractor conditions eligibility for retiree medical benefits based on at least five years of continuous service under a Contract(s) immediately prior to retirement unless otherwise required by law.

c. Administration of Departmental Obligations for Existing DB Pension Plans at DOE Sites Scheduled for Closure.

- (1) Departmental Elements accountable for program management and administration of Contracts for designated closure sites, in consultation with the Chief Financial Officer, shall begin preparations no later than three fiscal years in advance of anticipated site closure to enable the full discharge of the Department's obligations for Existing DB Pension Plan costs as part of Contract close-out procedures.
- (2) When a DOE site is determined by the cognizant program office to be a closure site, the Chief Financial Officer, the Office of Legacy Management, the Office of Management, and Departmental Elements accountable for program management and contract administration of the site operating Contract shall perform the following functions as applicable:
 - (a) Determine the funding status (i.e., status of assets and liabilities) on a plan termination basis, of an Existing DB Pension Plan(s) at the closure site.
 - (b) Prepare a budget plan that reflects sufficient funds to effect settlement of the Department's liabilities at the earliest practicable date, i.e., a strategy to reduce unfunded liabilities to zero by the scheduled closure date if the pension plan liabilities exceed the assets in the pension plan fund. The budget plan:
 - 1 shall include, as applicable, an assessment that weighs the risks of funding an Existing DB Pension Plan with additional contributions in excess of the required annual minimum contribution, compared to the risk of relying on out year budgets that may be constrained to provide funding at the time of Contract close-out; and,
 - 2 shall reflect analysis of the financial cost of the settlement of liabilities at the time of Contract close-out (e.g., at a time when rates may be relatively expensive) versus other Department priorities.

- (c) As necessary, ensure that the cognizant Contracting Officer takes the steps to require and approve Contractor pension plan contributions in excess of the annual minimum contribution required by the Employee Retirement Income Security Act (ERISA), and ensure that any approved contributions above the minimum required contributions do not exceed tax deductible limitations on contributions.
 - (3) When it is not practicable to discharge Departmental obligations for Existing DB Pension Plan costs at the time of a site closure, in accordance with applicable contract terms and conditions, the cognizant Contracting Officer shall provide direction to the Contractor for post-closure sponsorship and management of such plans until such time as it is practicable to fully discharge the Department's cost reimbursement obligations for such plans. Such direction shall include continued reimbursement of costs incurred by the Contractor or entity succeeding to sponsorship and/or management and administration of the plans.
- d. Administration of Departmental Obligations for Retiree Medical Benefits at DOE Sites Scheduled for Closure.
 - (1) Subject to applicable laws and other enforceable obligations, the Department shall continue to reimburse the allowable costs of Contractor retiree medical benefits subsequent to closure of a Contract.
 - (2) In accordance with applicable contract terms and conditions, the Contracting Officer shall provide direction to the Contractor regarding post-closure sponsorship and administration of retiree medical plans (e.g., regarding whether sponsorship and plan management are to be transferred to another DOE Contract or a third party entity). Such direction shall include continued reimbursement of allowable costs incurred by the Contractor or entity succeeding to sponsorship and/or management and administration of the plans.

6. DEPARTMENTAL RESPONSIBILITIES.

- a. Director, Office of Management.
 - (1) Chair a DOE policy steering committee established by the Secretary to oversee the implementation of this Notice, to oversee the development, issuance, and administration of any other policy directive necessitated or implicated by this Notice, and to provide Department-wide advice on any matter which, as a result of this Notice, requires the Secretary's written approval. The steering committee shall be composed of the Under Secretary for National Nuclear Security, the Under Secretary for Energy

and Environment, the Under Secretary for Science, the General Counsel, and the Chief Financial Officer.

- (2) In coordination with the Director, Office of Legacy Management, will complete a study of alternative vehicles for the long-term administration of reimbursement for Contractor retiree medical benefits plans, including Contractor retiree medical benefit plans at closure sites.

b. Director, Office of Procurement and Assistance Management, or Director, Office of Acquisition and Supply Chain Management, NNSA.

- (1) Pursuant to the requirements of this Notice, reviews and approves as appropriate (a) any new Contractor pension and medical benefit plans and changes thereto, and (b) any changes to Existing DB Pension Plans and Existing Medical Benefit Plans, that may result in Incremental Pension Costs, Incremental Pension Liabilities Incremental Medical Benefit Costs, or Incremental Medical Benefit Liabilities or involve matters of special interest to the Department prior to Contracting Officer written approval.
- (2) Ensures that cognizant Contracting Officers comply with this policy.
- (3) Issue and/or amend, as needed, the Department's procurement regulations and related orders and other directives to reflect and/or implement this Notice.

c. Office of General Counsel.

- (1) In consultation with the Contracting Officer, reviews Contract provisions; cost parameters for pension and medical benefits prior to negotiation of collective bargaining agreements, new Market-Based Medical Benefit Plans, new Market-Based Pension Plans, Existing Medical Benefit Plans, and Existing DB Pension Plans and underlying trust and fiduciary documents and material changes thereto.
- (2) Consult and advise DOE/NNSA elements (in coordination with the NNSA General Counsel, as appropriate) regarding compliance with applicable law and policy regarding Contractor pension and medical benefit matters including Contract closure issues.

d. Office of Legacy Management.

- (1) Assume responsibility for funding reimbursement of the allowable costs of Contractor pension and medical benefits at designated closure sites as agreed by the Director, Office of Management, the Chief Financial

Officer, and the head of Departmental Elements with cognizance for a designated closure site.

- (2) In cooperation with the Director, Office of Management, oversee implementation of any vehicle for long-term administration of and reimbursement for Contractor retiree medical benefit plans.

e. Office of the Chief Financial Officer.

- (1) In coordination with the Office of Management, develop and manage the annual call for Contractor reports relating to Financial Accounting Standards (FAS) No. 87, Employers Accounting for Pensions, and FAS No. 106, Employers' Accounting for Postretirement Benefits Other Than Pensions.
- (2) Evaluate and confirm the accuracy of annual Contractor FAS 87 and FAS 106 submissions.
- (3) Annually report aggregate Contractor FAS 87 and FAS 106 assets and liabilities in the DOE annual consolidated financial statement.
- (4) Upon request provide individual Contractor FAS 87 and FAS 106 data to the Office of Management and, as appropriate, NNSA Office of Acquisition and Supply Chain Management.
- (5) Advise and consult with Heads of Departmental elements to support the development of a budget plan and strategy to make adequate funds available to discharge Departmental obligations for reimbursement of Existing DB Pension Plans coincident with closure.

f. Heads of Departmental Elements.

- (1) Implement the requirements of this Notice through the cognizant Contracting Officer for each Contract for which they are responsible.
- (2) Coordinate all implementation issues with the Offices of Management, Legacy Management, Chief Financial Officer, and General Counsel.

g. Contracting Officers.

- (1) Immediately notify Contractors under their cognizance that for New Employees:
 - (a) Except as required by law, after a date negotiated with the Contractor, but no later than March 1, 2007, the Contractor shall establish a market-based pension plan for New Employees, and the

Department will not reimburse Incremental Pension Costs, or report Incremental Pension Liabilities on the DOE annual consolidated financial statement.

- (b) Except as required by law, after incorporation of a CRD into a Contract the Department will not reimburse Incremental Medical Benefit Costs or report Incremental Medical Benefit Liabilities on the DOE annual consolidated financial statement.
- (2) Incorporate the CRD in Contracts no later than 90 days after the effective date of this Notice, unless a different date is approved by the Director, Office of Management.
- (3) Ensure that the Office of Procurement and Assistance Management and NNSA Procurement and Supply Chain Management review and approve for reimbursement in writing and prior to Contracting Officer approval:
 - (a) Any prospective Contracting Officer determinations of cost allowability under Existing DB Pension Plans and market-based pension plans as described in Section 5.a(5) above;
 - (b) Any Contractor-proposed market-based pension plans and any material amendments to Existing DB Pension Plans and approved market-based pension plans that are not required by law prior to the adoption of such plans or amendments;
 - (c) Any Contractor-proposed pension plan amendment that augments or potentially augments in any way the benefit for any plan participant;
 - (d) Contractor-proposed lump sum pension distributions for either New Employees or Incumbent DB Plan Participants except as required by law;
 - (e) Except as required by law, Contractor-proposed new medical benefit plans and any changes to Existing Medical Benefit Plans that augment or potentially augment in any way the benefit for any plan participant(s), prior to the adoption of such plans or changes; and
 - (f) Contractor-proposed economic bargaining parameters for reimbursement of pension and medical benefits under collective bargaining agreements prior to the Contractor entering into the collective bargaining agreement.

- (4) Ensure that Contractors take appropriate steps to preserve existing rights to modify, change, suspend, or terminate in whole or in part, (e.g., by annually communicating to both active and retired plan participants an appropriate reservation of rights as permitted by law) the medical benefit plans they sponsor and not compromise any such rights in existing or new medical benefit plans without prior written approval for cost-reimbursement.
- (5) Assess the results of the contractor's relative benefit value indices and per capita employee benefits cost comparisons for Incumbent DB Pension Plan Participants, Incumbent Medical Benefit Plan Enrollees and New Employees in accordance with applicable requirements. The Contracting Officer shall provide the Office of Procurement and Assistance Management and, as appropriate, the NNSA Office of Acquisition and Supply Chain Management, with copies of the Contracting Officer's assessments and supporting Contractor documentation.
- (6) In accordance with applicable Contract terms and conditions, provide direction to the Contractor regarding the allowability of cost-reimbursement for post-closure sponsorship and administration of retiree medical plans.
- (7) Ensure that direction provided to a Contractor for post-closure medical benefit administration requires that the medical benefit plans remain subject to the cost containment requirements of DOE O 350.1 and/or specific contractual terms and conditions as applicable.

7. DEFINITIONS.

- a. Contract means for purposes of this Notice: (1) a DOE management and operating contract, or (2) any other contract where work had been previously performed under a DOE management and operating 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.
- b. Contractor means the legal entity (other than DOE) that enters into a Contract, and is legally and contractually obligated to perform under a Contract.
- c. Existing Defined Benefit (DB) Pension Plans means Contractor-sponsored DB pension plans in existence and under a Contract prior to the date that the Contractor establishes a market-based plan as described in Section 5.a(5).

- d. Existing Medical Benefit Plans means Contractor-sponsored medical benefit plans in existence and under a Contract prior to the date the CRD is incorporated into a Contract.
- e. Incremental Pension Cost means any cost incurred in excess of the Existing DB Pension Plan cost as of the date a Contractor establishes a market-based pension plan as described in Section 5.a(5) (or as of March 1, 2007, if a Contractor has not yet established a market-based plan) that is attributable to: (1) New Employees who the Contractor permits to participate in an Existing DB Pension Plan(s), and/or (2) any plan amendment that augments or potentially augments in any way the benefit to any plan participant that the Secretary of Energy has not approved in writing prior to adoption of the amendment.
- f. Incremental Pension Liability means any liability incurred in excess of the Existing DB Pension Plan liability as of the date a Contractor establishes a market-based pension plan as described in Section 5.a(5) (or as of March 1, 2007, if a Contractor has not yet established a market-based plan) that is: (1) attributable to New Employees who the Contractor permits to participate in an Existing Defined Benefit Pension Plan(s), and/or (2) any plan amendment that augments or potentially augments in any way the benefit to any plan participant that the Secretary of Energy has not approved in writing prior to adoption of the amendment.
- g. Incremental Medical Benefit Cost means any cost incurred in excess of the Existing Medical Benefit Plan cost after the CRD is incorporated into a Contract that is attributable to: (1) New Employees who are permitted to participate in an Existing Medical Benefit Plan(s) that is not market-based as described in Section 5.b(4), and/or (2) any plan change or amendment that augments or potentially augments in any way the benefits to any plan participant that the Secretary of Energy has not approved in writing prior to implementation of the change.
- h. Incremental Medical Benefit Liability means any liability incurred in excess of the existing retiree medical benefit liability after the CRD is incorporated into a Contract that is attributable to: (1) New Employees who the Contractor permits to participate in an Existing Medical Benefit Plan(s) that is not market-based as described in Section 5.b(4), and/or (2) any benefit change or amendment that augments or potentially augments in any way the benefits to any plan participants that the Secretary of Energy has not approved in writing prior to implementation of the change.
- i. Incumbent Defined Benefit (DB) Plan Participants means Contractor employees on the payroll and retirees currently participating in or who are eligible to participate in their same Existing DB Pension Plan prior to the date that a market-based pension plan, as described in Section 5.a(5) is established under the Contract.

- j. Incumbent Medical Benefit Plan Enrollees means Contractor employees on the payroll and retirees currently participating in or who are eligible to participate in their same Existing Medical Benefit Plan prior to incorporation of the CRD into a Contract.
 - k. New Employees (with respect to pension requirements) are employees who are hired by a Contractor after the establishment of a market-based pension plan as described in Section 5.a(5).
 - l. New Employees (with respect to medical benefits requirements) are employees who are hired by a Contractor after incorporation of the CRD into a Contract.
8. EFFECTIVE DATE. This Notice shall take effect immediately.
9. CONTACT. For information about this Notice, contact the Office of Procurement and Assistance Management, at (202) 287-1310.

BY ORDER OF THE SECRETARY OF ENERGY:



CLAY SELL
Deputy Secretary

DOE ELEMENTS TO WHICH DOE N 351.1 IS APPLICABLE

Office of the Secretary
Departmental Representative to the Defense Nuclear Facilities Safety Board
Energy Information Administration
National Nuclear Security Administration
Office of the Chief Financial Officer
Office of the Chief Information Officer
Office of Civilian Radioactive Waste Management
Office of Congressional and Intergovernmental Affairs
Office of Counterintelligence
Office of Economic Impact and Diversity
Office of Electricity Delivery and Energy Reliability
Office of Energy Efficiency and Renewable Energy
Office of Environment, Safety and Health
Office of Environmental Management
Office of Fossil Energy
Office of General Counsel
Office of Hearings and Appeals
Office of Human Capital Management
Office of the Inspector General
Office of Intelligence
Office of Legacy Management
Office of Management
Office of Nuclear Energy, Science and Technology
Office of Policy and International Affairs
Office of Public Affairs
Office of Science
Office of Security and Safety Performance Assurance

CONTRACTOR REQUIREMENTS DOCUMENT DOE N 351.1
Contractor Employee Pension and Medical Benefits Policy

The Contractor shall comply with the requirements of this CRD. To the extent that there are any conflicts between this CRD and the CRD requirements related to DOE Order 350.1, *Contractor Human Resources Management Programs*, Chg 1 (DOE O 350.1), this CRD is to take precedence. Contractor compliance with this CRD is subject to applicable laws and other enforceable obligations (e.g., reimbursement of costs pursuant to approved collective bargaining agreements and benefit plans).

1. DEFINITIONS.

- a. Contract means for purposes of this CRD: (1) a DOE management and operating contract, or (2) any other contract where work had been previously performed under a DOE management and operating 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.
- b. Existing Defined Benefit (DB) Pension Plans means Contractor-sponsored DB pension plans in existence and under this Contract prior to the establishment of a Market-Based Pension Plan (as defined below).
- c. Existing Medical Benefit Plans means Contractor-sponsored medical benefit plans in existence and under this Contract.
- d. Incremental Pension Cost means any cost incurred in excess of the Existing DB Pension Plan cost as of the date the Contractor establishes a Market-Based Pension Plan (but not later than March 1, 2007, if a Contractor has not yet established a Market-Based Pension Plan) that is attributable to: (1) New Employees who the Contractor permits to participate in an Existing DB Pension Plan(s) and/or (2) any plan amendment that augments or potentially augments in any way the benefit to any plan participant that the Secretary of Energy has not approved in writing prior to adoption of the amendment.
- e. Incremental Pension Liability means any liability incurred in excess of the Existing DB Pension Plan liability after the Contractor establishes a Market-Based Pension Plan (but not later than March 1, 2007, if a Contractor has not yet established a Market-Based Pension Plan) that is attributable to: (1) New Employees who the Contractor permits to participate in an Existing Defined Benefit Pension Plan(s) and/or (2) any plan amendment that augments or potentially augments in any way the benefit to any plan participant that the

Secretary of Energy has not approved in writing prior to adoption of the amendment.

- f. Incremental Medical Benefit Cost means any cost incurred in excess of the Existing Medical Benefit Plan cost that is attributable to: (1) New Employees who the Contractor permits to participate in an Existing Medical Benefit Plan(s) that are not market-based as described in the Section 7, and/or (2) any plan change that augments or potentially augments in any way the benefits to any plan participant that the Secretary of Energy has not approved in writing prior to implementation of the benefit change.
 - g. Incremental Medical Benefit Liability means any liability incurred in excess of the existing retiree medical benefit liability that is attributable to: (1) New Employees who the Contractor permits to participate in an Existing Medical Benefit Plan(s) that are not market-based as described in the Section 7, and/or (2) any plan change that augments or potentially augments in any way the benefits to any plan participant that the Secretary of Energy has not approved in writing prior to implementation of the benefit change.
 - h. Incumbent Defined Benefit (DB) Pension Plan Participants means Contractor employees on the payroll and retirees currently participating in or who are eligible to participate in their same Existing DB Pension Plans.
 - i. Incumbent Medical Benefit Plan Enrollees (Incumbent Enrollees) means Contractor employees on the payroll and retirees currently participating in or who are eligible to participate in their same Existing Medical Benefit Plans.
 - j. Market-Based Pension Plan means a pension plan as described in Section 4.
 - k. Market-Based Medical Benefit Plan means a medical benefit plan as described in Section 7.
 - l. New Employees (with respect to pension requirements) means employees who are hired by the Contractor after the establishment of a Market-Based Pension Plan.
 - m. New Employees (with respect to medical benefits requirements) means employees who are hired after incorporation of this CRD, unless a different date is approved by the Contracting Officer.
 - n. Notice means DOE N 351.1.
2. PENSION PLAN REQUIREMENTS FOR BOTH INCUMBENT DB PENSION PLAN PARTICIPANTS AND NEW EMPLOYEES.
- a. Unless authorized by the Secretary of Energy, the Department will not approve reimbursement of costs for new DB Pension Plans or any amendments to an

Existing DB Pension Plan(s) that augment or potentially augment in any way the benefits for any plan participant, including but not limited to: (1) lump sum pension distributions of all or any part of a participant's benefit (other than lump sum distributions less than or equal to \$5,000) for Incumbent DB Plan Participants; except that costs for lump sum distributions for existing accruals for Incumbent DB Pension Plan Participants in Existing DB Pension Plans that contain a lump sum distribution feature shall remain allowable; and (2) any early retirement incentive.

- b. Except to the extent required by law, DOE will not reimburse (1) lump sum pension distributions, including any lump sum distribution option for future accruals and, (2) the adoption of future changes in the actuarial assumptions basis in Internal Revenue Code §417(e).
- c. The Contractor shall submit for review and approval by the Contracting Officer in writing any material amendments to Existing DB Pension Plans and proposed Market-Based Pension Plans and changes thereto or proposed changes to the underlying trust documents of such plans, prior to the adoption of any such plans or amendments.
- d. The Contractor shall consult with, and obtain the approval of, the Contracting Officer regarding appropriate economic bargaining parameters for pension costs prior to the Contractor entering into the collective bargaining process.

3. REQUIREMENTS FOR EXISTING DB PENSION PLANS AND INCUMBENT DB PENSION PLAN PARTICIPANTS.

- a. The Department shall not reimburse costs for New Employees' participation in Existing DB Pension Plans as of the date of establishment, but not later than March 1, 2007, of a new Market-Based Pension Plan(s). DOE will reimburse the allowable costs of providing Incumbent DB Plan Participants with a one-time opportunity to transfer to a Market-Based Pension Plan within one year of the effective date of the new Market-Based Pension Plan.
- b. Benefit value and costs for the total benefit package provided for Incumbent DB Pension Plan Participants will continue to be evaluated consistent with DOE O 350.1 and/or specific contractual terms and conditions as applicable.

4. REQUIREMENTS FOR MARKET-BASED PENSION PLANS AND NEW EMPLOYEES.

- a. The Contractor shall establish a Market-Based Pension Plan(s) for New Employees as described in this Section 4. Within 60 days after incorporation of this CRD into the Contract, the Contractor shall submit to the Contracting Officer for approval an evaluation of the Contractor total employee benefit

program for New Employees based on two performance measures: a Relative Benefit Value Index (RBVI) and Per Capita Employee Benefit Cost Comparison (Cost Comparison). Subsequently, for New Employees, an RBVI must be calculated every two years and the Cost Comparison performed annually. Failure to conduct either the RBVI or Cost Comparison on a timely basis may result in a determination of unallowable pension plan costs.

- b. The RBVI shall be an actuarial calculation of the relative value of the benefit programs offered by the Contractor for New Employees measured against the average value of benefit programs offered by at least 15 comparator companies and/or institutions that the Contractor competes against for recruitment and retention of employees, and that are approved in advance and in writing by the Contracting Officer as a *bona fide* comparator group.
- c. The Cost Comparison shall analyze the Contractor's average aggregate employee benefit costs on a per capita basis per full time equivalent New Employee as a percent of New Employee payroll and compare it to the findings of a nationally recognized survey approved in advance and in writing by the Contracting Officer.
- d. Costs for a Market-Based Pension Plan will be allowable when the Contractor's:
 - (1) Pension plan is a defined contribution (DC) pension plan; and,
 - (2) The pension plan meets the following requirements:
 - (a) the pension Relative Benefit Value Index (RBVI) does not exceed the market average pension RBVI by more than five percent for New Employees, and the pension average per capita cost as a percent of payroll does not exceed the market average pension per capita cost as a percent of payroll by more than five percent for New Employees; and,
 - (b) the total benefit RBVI does not exceed the market average total benefit RBVI by more than five percent for New Employees, and the total benefit average per capita cost as a percent of payroll does not exceed the market average total benefit per capita cost as a percent of payroll by more than five percent for New Employees.
- e. New Employees may become participants in an existing DC plan if the existing DC plan is market-based as described in this Section 4.
- f. After the date a Market-Based Pension Plan is established, but not later than March 1, 2007, the Department will not reimburse Incremental Pension Costs except as required by law.

- g. After the date a Market-Based Pension Plan is established, but not later than March 1, 2007, DOE will not recognize or report in the DOE annual consolidated financial statement any Incremental Pension Liability.

5. REQUIREMENTS FOR BOTH EXISTING MEDICAL BENEFIT PLANS AND MARKET-BASED MEDICAL BENEFIT PLANS.

- a. Unless authorized by the Secretary of Energy, the Department will not approve reimbursement for costs incurred for changes to Existing Medical Benefit Plans and Market-Based Medical Benefit Plans, that augment or potentially augment in any way the benefit for any medical benefit plan participant except as required by law.
- b. The Contractor shall submit for review and approval by the Contracting Officer for purposes of reimbursement by DOE any changes proposed to Existing Medical Benefit Plans so that DOE can determine that the changes proposed do not augment or potentially augment in any way the benefit for any medical benefit plan participant except as required by law. Failure to do so may result in a determination of unallowable costs.
- c. The Contractor shall submit for review and approval by the Contracting Officer for purposes of reimbursement by DOE any proposed Market-Based Medical Benefit Plans and changes thereto with supporting cost, value, and liability documentation that demonstrate consistency with market indicia, prior to the adoption of such plans or changes. Failure to do so may result in a determination of unallowable costs.
- d. The Contractor shall consult with, and obtain the approval of, the Contracting Officer regarding appropriate economic bargaining parameters for medical benefit costs prior to the Contractor entering into the collective bargaining process.
- e. The Contractor shall take appropriate steps to preserve existing rights to modify, change, suspend, or terminate in whole or in part, (e.g., by annually communicating to both active and retired plan participants an appropriate reservation of rights as permitted by law) the medical benefit plans they sponsor and shall not compromise any such rights in existing or new medical benefit plans without prior written approval for cost reimbursement.
- f. The Department will not reimburse costs for medical benefits for future retirees that are not allocable under a Contract(s) unless the Contractor conditions eligibility for retiree medical benefits based on at least five years of continuous service under a Contract(s) immediately prior to retirement except as required by law.

6. REQUIREMENTS FOR EXISTING MEDICAL BENEFIT PLANS AND INCUMBENT ENROLLEES.

- a. The Department will not reimburse costs for New Employees' participation in Existing Medical Benefit Plans except as provided in Section 7e.
- b. Benefit value and costs for the total benefit package provided for Incumbent Enrollees will continue to be evaluated consistent with DOE O 350.1 and/or specific contractual terms and conditions as applicable.

7. REQUIREMENTS FOR MARKET-BASED MEDICAL BENEFIT PLANS AND NEW EMPLOYEES.

- a. The Contractor shall provide a Market-Based Medical Benefit Plan for New Employees. To determine allowability of costs for the Market-Based Medical Benefit Plan, within 60 days after incorporation of this CRD into the Contract, the Contractor shall submit to the Contracting Officer for approval an evaluation of the Contractor total benefit program for New Employees based on two nationally recognized performance measures: a Relative Benefit Value Index (RBVI) and Per Capita Employee Benefit Cost Comparison (Cost Comparison). Subsequently, for New Employees, an RBVI must be calculated every two years and the Cost Comparison performed annually. Failure to conduct either the RBVI or Cost Comparison on a timely basis may result in a determination of unallowable medical benefit costs.
- b. The RBVI shall be an actuarial calculation of the relative value of the benefit programs offered by the Contractor for New Employees measured against the average value of benefit programs offered by at least 15 comparator companies and/or institutions that the Contractor competes against for recruitment and retention of employees, and that are approved in advance and in writing by the Contracting Officer as a *bona fide* comparator group.
- c. The Cost Comparisons shall analyze the Contractor's average aggregate New Employee total benefit cost as a percent of New Employee Payroll on a per capita basis per full time equivalent New Employee and compare it to the findings of a nationally recognized benefit survey approved in advance and in writing by the Contracting Officer.
- d. Costs for new Market-Based Medical Benefit Plans will be allowable when the Contractor's
 - (1) Medical benefit RBVI does not exceed the market average medical benefit RBVI by more than five percent for New Employees and the medical benefit per capita cost as a percent of payroll does not exceed the market

average medical benefit per capita cost as a percent of payroll by more than five percent for new employees, and

- (2) The total benefit package RBVI does exceed the market average total benefit RBVI by more than five percent for New Employees, and the total benefit average per capita cost does not exceed the total benefit market average per capita cost by more than five percent for New Employees;
 - (3) Provided, however, that the Contracting Officer shall have the discretion to weigh the findings of the per capita medical benefit cost comparison against the medical RBVI when determining whether a medical benefit plan is market-based.
 - e. Costs for New Employees in an Existing Medical Benefit Plan may be allowable if the Existing Medical Benefit Plan is market-based as described in this Section 7, or if New Employees share in the cost of the Existing Medical Benefit Plan so that the New Employee benefits are brought into compliance with Market-Based Medical Benefit Plans.
 - f. Incremental Medical Benefit Costs will not be allowable and will not be reimbursed.
 - g. DOE will not recognize or report in the DOE annual consolidated financial statement Incremental Medical Benefit Liabilities.
8. POST-CLOSURE BENEFIT PLAN REQUIREMENTS FOR DOE CLOSURE SITES.
- a. Pension Benefits.
 - (1) When a DOE site closes and work will not be transferred to another Contractor so that there is no successor contractor to assume sponsorship and responsibility for Existing DB Pension Plans, the Department's policy is to use its best efforts to discharge Department obligations for reimbursement of costs associated with these plans as part of the close-out procedures for the closure Contract. The Contractor shall cooperate with the Department in the development of budget plans and any necessary amendments to pension benefit plan documents to facilitate discharge of the Department's obligations during the close-out period.
 - (2) When it is not practicable to settle Departmental obligations as part of Contract close-out procedures, in accordance with applicable Contract terms and conditions the Contracting Officer shall provide direction to the Contractor for continued post-closure sponsorship and management of Existing DB Pension Plans. The Contractor shall remain responsible for sponsorship and administration of Existing DB Pension Plans in

accordance with applicable Contract terms and conditions until such time as it is practicable to fully discharge the Department's cost-reimbursement obligations for such plans. Such direction shall include continued reimbursement of costs incurred by the Contractor or entity succeeding to sponsorship and/or management and administration of the pension benefit plans in accordance with applicable law and contractual terms and conditions.

b. Medical Benefit Plans.

When a DOE site closes and work will not be transferred to another Contractor so that there is no successor contractor to assume sponsorship and responsibility for Existing Medical Benefit Plans and any Contractor Market-Based Medical Benefit Plans, in accordance with applicable Contract terms and conditions the Contracting Officer shall provide direction to the Contractor for disposition of the medical benefit plans. The Contractor shall remain responsible for sponsorship and administration of the medical benefit plans in accordance with applicable law and contract terms and conditions. The Department will continue to reimburse the allowable costs incurred by the Contractor, or another entity succeeding to sponsorship and/or management and administration of the medical benefit plans, in accordance with applicable law and contractual terms and conditions.

9. FLOW DOWN.

Contractors are responsible for flowing down CRD requirements to subcontractors at any tier to the extent necessary to ensure compliance.

10. REFERENCE.

The *Value Study Desk Manual*, February 1999, as amended and updated from time to time, sets forth the requirements for a Relative Benefit Value Index.