

US. Department of Energy

Washington, D.C.

ORDER

DOE 3830.1

8-23-82

SUBJECT: POLICIES AND PROCEDURES FOR PENSION PROGRAMS UNDER OPERATING AND
ONSITE SERVICE CONTRACTS

1. PURPOSE. To establish policies, procedures, responsibilities, and authorities relating to establishment, continuity, and termination of pension programs applicable to operating and onsite service contracts subject to Department of Energy (DOE) Procurement Regulation (PR) 9-50.001.
2. SCOPE. The provisions of this Order apply to all elements of DOE which have cognizant authority over operating and onsite service contractor operations and to operating and onsite service contractors performing work for DOE.
3. DEFINITIONS.
 - a. Accrued Benefit.
 - (1) Defined Benefit Plan. Employee's retirement income earned under the contractor's plan as of the date of determination, expressed in the form of an annual benefit commencing at normal retirement age or the actuarial equivalent thereof.
 - (2) Defined Contribution Plan. The employee's account balance as of the date of determination.
 - b. Normal Cost. The annual cost associated with the current year by the actuarial cost method used for the actuarial valuation.
 - c. Past Service Costs. The amount which, together with the present value of future normal costs, will be exactly sufficient to provide all future benefits of the group included in the actuarial valuation.
 - d. Pension Plan. Defined programs established and maintained to provide payments to employees following retirement. Future payments are definite benefits determined and provided from either defined benefit plans, defined contribution plans, or a combination thereof. Plan benefits may be self-insured where the investment of the funds is handled by plan trustees. Alternatively, plan funds may be placed with an insurance company involving one of the following arrangements: totally insured (individual or deferred group annuities are purchased), partially insured (annuities are purchased at actual retirement - i.e., deposit administration or immediate participation guarantee), or uninsured (where no annuities are purchased - i.e., investment only type).

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Federal Energy Regulatory Commission (info)

INITIATED BY:

Office of Industrial Relations

- e. Vesting. The attainment, by a participant in a pension plan, of certain rights in the funds arising out of the employer's contributions made in behalf of such participant: (Such rights ordinarily are granted only after certain requirements of the plan are met, such as the participant's completion of a specified number of years of service and/or attainment of a particular age.)
- 4. POLICIES AND OBJECTIVES. DOE's policy is to reach agreement with those contractors who operate Government facilities or provide onsite services to provide for pensions to employees working on DOE contracts. The objective is to assure that employee continuity in pension programs funded by DOE contributions is protected in replacement contractor situations and in event of facility shutdown; and that the contractor neither gains nor loses financially from properly providing pension benefits.
- 5. GUIDELINES FOR APPLICABILITY. When cost-type contracts are negotiated for operation of a DOE facility on a continuing basis, consideration should be given to providing for pension cost reimbursements subject to final accounting at contract expiration or termination. In other situations when a continuing pension obligation is not deemed in the best interest of DOE, cost reimbursements should be made on a full and final settlement basis each year. The following guidance shall be considered in selecting the type of pension arrangement:
 - a. Pension arrangements which provide for a continuing DOE obligation should be considered for use in contracts for operation of DOE facilities when:
 - (1) The facility is a laboratory or institution for which there is a projected continuing national need for research and development in a scientific area(s);
 - (2) The facility involves production of a product for which there is a long term national need;
 - (3) Contractor management of such facility is subject to being recompleted or changed at periodic intervals;
 - (4) The work force will normally continue at the facility under management of the replacement contractor; or
 - (5) The long term life of the facility makes preservation of the interests of all affected parties of benefit to the Department.
 - b. Full and final settlement arrangements are normally considered appropriate for use in demonstration, pilot plant, or other types of DOE facilities when:
 - (1) The facility is expected to operate for a limited period;

- (2) Facility operation may involve one or more private establishments with a contractual interest in the facility;
- (3) The facility will be shutdown or turned over to industry when its program is complete;
- (4) Employees operating the facility may remain on the payroll of establishment(s) having an interest in the program; and
- (5) Departmental interest can be protected by cost principles set forth in Federal Procurement Regulations, FPR 1-15.205.6(f)i "Deferred Compensation."

6. RESPONSIBILITIES AND AUTHORITIES.

- a. Assistant Secretary, Management and Administration, shall be responsible for overall DOE management of DOE reimbursed contractor pension programs.
- b. Director of Industrial Relations shall:
 - (1) Assist the Director of Procurement and Assistance Management with:
 - (a) Preparation of proposed changes to DOE procurement regulations relating to deferred compensation; and
 - (b) Establishment and maintenance of cost principles relating to allowability of costs for contractor employee pension programs.
 - (2) Maintain liaison with Department of Labor, Internal Revenue Service (IRS), and Pension Benefit Guaranty Corporation (PBGC) on pension matters.
 - (3) Provide consultation, guidance, and comments as appropriate to contracting officers on:
 - (a) Policies and regulations on deferred compensation;
 - (b) Plan provisions and amendments;
 - (c) Actuarial valuation and accounting reports; and
 - (d) Other pension-related matters.
 - (4) Approve for contracting officer execution:
 - (a) Pension arrangements at inception and at contractor replacement,
 - (b) Reasonableness of pension cost figures contained in the actuarial valuation report;
 - (c) Changes in plan provisions; and

- (d) Final settlement covering pension assets and liabilities when contracts are terminated as a result of the selection of a replacement contractor, the contract is partially terminated, or the facility is shutdown.

c. Director of Procurement and Assistance Management shall:

- (1) Propose changes to DOE PR's relating to deferred compensation;
- (2) Establish and maintain cost principles relating to allowability of cost for contractor employee pension programs; and
- (3) Coordinate these pension matters with Director of Industrial Relations.

d. Contracting Officer shall:

- (1) After approval by Director of Industrial Relations, execute approval on contract provisions relating to pension programs which affect:
 - (a) New contracts or contract renewals;
 - (b) Changes in plan provisions; and
 - (c) Final agreement on allocations of assets and liabilities at partial or complete contract terminations.
- (2) Require and assure that contractors submit pension-related reports in a timely manner; and
- (3) Assure completeness of all submissions and provide the Director of Industrial Relations with such or copy thereof.

7. REQUIREMENTS. The following are requirements of pension programs funded by DOE.

a. Basic Requirements of DOE-Reimbursed Pension Programs.

- (1) Plan shall satisfy requirements of IRS, Department of Labor, 29 U.S.C. 1001, et seq., "Employee Retirement Income Security Act" (ERISA), and any other Federal statutes and regulations.
- (2) Where a contractor's program is exempt from ERISA, the contractor shall, nevertheless, follow the requirements of ERISA to the fullest practical extent.
 - (a) There must be a formal written document providing for payments to be made into a trust or under a contract with an insurance company. This must be communicated to the employees as a pension program.

- (b) The plan must be for the exclusive benefit of the employees or their beneficiaries.
 - (c) The benefits must be definitely determinable and reasonable.
 - (d) The plan must not discriminate in favor of officers, stockholders, or highly paid employees.
 - (e) Until the purposes of the plan have been fulfilled, it must be impossible for the principal or income of the plan to be diverted for any other purpose.
 - (f) The vehicle that funds a pension plan may not engage in transactions which would be prohibited transactions under ERISA.
- (3) Automatic cost-of-living adjustments are prohibited. However, ad hoc adjustments may be permitted with prior DOE approval.
- (4) Profit-sharing, employee stock ownership plan, or other supplemental pension programs may be considered provided they:
- (a) Constitute a bona fide pension program with primary purpose to provide pension benefits at a specified retirement age (as distinguished from an arrangement for the distribution of profits to the contractor's officers and employees).
 - (b) Contain an acceptable method for the determination of the value of the contractor's contributions, e.g., fair market value of contractor stock provided to the employee stock ownership plan.
 - (c) Contain a definite method for the application of the contractor's contributions for pension benefits of the employees.
 - (d) Meet the other pertinent requirements of an acceptable pension program.
- (5) Pension programs vary greatly as to the benefits to be provided and also as to areas such as provisions for vesting of rights and equities, eligibility requirements, methods of funding, and retirement ages. Regardless of a plan's compliance with ERISA, where it contains provisions for benefits beyond the scope of a bona fide pension plan, such as for deferred compensation to be paid to the employees before retirement, the plan may be approved subject to the test of reasonableness of total compensation.
- (6) The contractor is held accountable for proper management of its pension program.

- b. Plan/Fund Structure for DOE-Reimbursed Pension Programs. Contract should provide that the pension plan and trust fund covering DOE contract employees are separate plans within the meaning of Section 414 (1) of the Internal Revenue Code and comply with page 8, paragraph 10, "Termination Provisions." If necessary to deviate from the requirement for a separate plan, justification for the deviation must resubmitted to DOE for approval. Where a separate plan is not feasible, the agreement must provide that annual accounting for contributions reimbursed by DOE must be made and that assets attributable to contributions reimbursed by DOE shall be used for the benefit of contract employees. If an employee is transferred by the employer to or from work covered by a DOE contract, there shall be no transfer of funds. Instead, the accrued benefit will become payable from the appropriate fund at the time of actual retirement. If a commingled trust fund is maintained, regardless of whether DOE contract employees are covered by a separate plan, ongoing pension contributions reimbursed by DOE shall not be calculated using actuarial methods or assumptions which differ from those being used to calculate the contractor's contribution for non-DOE contract employees, unless DOE approves such difference.
- c. Funding Media of DOE-Reimbursed Pension Programs. Preferably pension funds will be self-insured with benefits paid directly from the trust fund. Contractors proposing to fund an ongoing program through an insurance company shall solicit proposals, on a participating basis, from a number of insurers to assure reasonable cost to DOE, taking into consideration expected costs, guarantees, availability, and other pertinent factors. Regardless of which medium, DOE approval is required.
- d. Prior Approval. All pension programs (includes aspects such as benefit plans, amendments, and overall funding technique) and changes therein where DOE reimbursements are involved require DOE approval prior to becoming effective.

8. PENSION COSTS.

- a. Funding. When contributions required as part of the cost of a DOE contract are made, they must be irrevocably deposited in the pension trust or paid to the insurance company issuing the contract through which the plan is funded.
- b. Pension Benefit Guaranty Corporation Premium.
 - (1) Separate Pension Plan. In the case of a separate pension plan, the contractor should seek PBGC determination as to whether or not its program is a governmental plan. Unless and until such determination that the plan is a governmental plan, the PBGC premiums will be considered as an allowable cost. Any premium refunds made by PBGC shall revert to DOE.

- (2) Commingled Pension Plan. When DOE contract employees are covered by the same plan as the contractor's other operations, the cost of the PBGC premium for DOE contract employees is an allowable cost under the DOE contract.
9. REPORTING REQUIREMENTS. The contractor shall be required to submit the following reports to the contracting officer. Actuarial valuation reports and copies of IRS Form 5500's with schedules must be submitted for DOE-reimbursed pension plans. In addition, accounting reports must be submitted for commingled trusts. Reports are due within 7 months after the end of the plan year, and shall be submitted to DOE within 30 days of completion.
- a. Actuarial Valuation Reports. Periodic (choice of annual, biennial, or triennial --as prepared) actuarial valuation reports are required for DOE-reimbursed pension programs. Also, any special actuarial reports, as prepared, are to be submitted. When pension funds are commingled both total and DOE portions must be listed. The report shall include at least the following items:
- (1) A summary of the plan, including the actuarial assumptions, the value of the vested benefits (computed on a unit credit basis without discount for withdrawal), the value of accrued nonvested benefits (computed on a unit credit basis with discount for future withdrawal), the cost methods employed, a summary of the plan, and suggested contribution for the ensuing year (which must comply with ERISA). The report required by the Financial Accounting Standards Board pursuant to statement number 35 may be acceptable in lieu thereof.
 - (2) Total number of contract employees; number of plan participants including their average age, service, and salary; value of accrued liabilities in each of the following categories: retirees; vested terminees; and active employees. If available, a breakdown of active employee liabilities by decrement should be furnished, e.g., retirement, death, withdrawal, and disability liabilities.
- b. Form 5500's. A copy of IRS Form 5500 with schedules, as submitted to IRS, is required for each year.
- c. Accounting Reports. When pension funds are commingled with other company pension funds in a single trust, annual accounting reports are required. The accounting report shall include at least the following items:
- (1) The amount of the fund at the beginning of the year;
 - (2) DOE-reimbursed contributions received during the year;
 - (3) Income (such as interest) including realized and unrealized gains and losses which represent a pro rata share of the total fund;

- (4) Actual disbursements for pension benefits excluding return of employee accumulations made during the year;
- (5) Pro rata share of expenses paid during the year; and
- (6) Fund balance at the end of the year.

10. TERMINATION PROVISIONS. Paragraph 10 does not apply when a contract is extended or is recompleted with the same contractor receiving the award. Paragraph 10 applies when a contract is terminated or expires, and references to "contract termination" and "terminated contractor" are inclusive, herein, of both termination and expiration situations. Further, the "replacement contractor" refers, herein, to the immediate successor contractor to the terminated contractor.

a. Termination of Contract.

- (1) No Replacement Contractor Situation. If upon contract termination there is no replacement contractor, then generally the pension plan is considered terminated and immediate vesting of accrued benefits, to the extent then funded, is ruled on by IRS. In that case, for purposes of this section DOE shall consider as vested only those benefits which would have been vested had termination not been ruled, plus that portion of nonvested accrued benefits which can be covered by the assets attributable to DOE, after covering the vested benefit liability. For a pension plan and/or trust fund where partial or complete termination is not ruled, DOE shall require full and immediate vesting of accrued benefits for employees who are discharged as a result of contract termination, provided such employees do not withdraw their accumulated contributions.
- (2) Replacement Contractor Situation. If there is a replacement contractor, the immediate vesting of accrued benefits may or may not be required depending upon whether or not a termination or partial termination of the pension plan is determined to have occurred, on a case-by-case basis. Whether or not termination is ruled, the rules described in subparagraph (1) will be followed. The terminated and replacement contractors shall assist DOE in preserving opportunities to attain vested rights through continuity of service for switched over employees for contract service both preceding and following switchover. Also, care must be taken to avoid giving duplicate benefits solely on account of change of contractors.
 - (a) Pension Program Continuance. Where there is a separate plan and trust, it is objective that the replacement contractor take over the terminated contractor pension program for both past and future service.

- (b) Pension Program Discontinuance. If the replacement contractor is unable or refuses to continue the terminated contractor separate pension plan or if the terminated contractor pension plan covers both DOE contract and non-DOE employees, then the replacement contractor shall establish a separate pension program covering the ongoing contract employees consistent with the following:
- 1 The replacement contractor, in cooperation with the terminated contractor, shall set up a trust fund to provide accrued benefits at the time of normal or early retirement.
 - 2 The employees' service with the terminated DOE contractor shall apply as service toward the participation requirements of the replacement contractor's plan, and also toward any length of service requirements for benefit eligibility, for example, vesting, early retirement, or disability retirement under the plan. Prior service shall not be credited where the transferring employee at any time elects early retirement under the terminated contractor's plan.
 - 3 When the employee's combined service meets the vesting requirements under either the terminated contractor or the replacement contractor pension program, the employee shall receive a credit for the benefit earned under the replacement plan for the total service, including that with the terminated contractor. In no event shall the employee receive duplicate benefits for the same service. If the terminated contractor plan is a defined contribution plan and the replacement contractor plan is a defined benefit plan, for purposes of avoiding duplication of benefits, the employee account balance at contract termination shall be converted into an annuity based on the actuarial assumptions initially used by the replacement contractor in its regular actuarial valuation.
 - 4 Where the terminated contractor's pension plan was a contributory plan and the nonvested employees are to be refunded their contributions and earnings thereon, such employees shall be encouraged to make their refunds accessible to the replacement contractor's pension program to enable them to get credit for benefits consistent with the provisions of the pension program in effect during the periods for which contributions were made. An employee not making refunds available shall forfeit the accrued benefit attributable to employer contributions to the extent permissible under ERISA; also, such employee will forfeit any credit for service with the terminated contractor toward participation and vesting under the replacement contractor's program.

- b. Methodology for Calculations at Pension Program Termination. The contractor is held accountable for proper custody and management of pension funds.
- (1) Assets. Assets shall include all accumulations of DOE-reimbursed contributions and all DOE contract employee accumulations as determined in the actuarial valuation report and/or annual accounting report (as required for commingled pension trusts) through the date of contract termination. Contributions shall include those due but unpaid as of contract termination.
 - (2) Liabilities for Present and Future Benefits. The terminated contractor actuary shall determine liabilities for DOE contract employee accrued vested-plan benefits as of the contract termination date. Whether or not there is a replacement contractor, calculations shall reflect IRS rules concerning partial or complete termination and subsequent vesting. Except for active participants switched over to replacement contractor, liabilities may be determined by purchase, through competitive bidding, of nonparticipating annuities.
 - (a) Nonactive Participants. For pensioners and vested terminees prior to contract termination, present value of accrued benefits shall be calculated using the then PBGC rates of interest and mortality.
 - (b) Active Participants Retained by Terminated Contractor. For active employees who are retained by the terminated contractor, present value of accrued benefits shall be calculated using unit credit funding method, service and salary history as of the termination date, and the then PBGC rates for interest, mortality, and retirement. Where such employee subsequently terminates within 2 years after contract termination, the value of unvested portion shall revert to DOE.
 - (c) Active Participants Switched Over to Replacement Contractor. No determination by terminated contractor is required by DOE.
 - (d) Active Participants Terminated at Contract Termination. For active employees who are not retained by terminated contractor and who are not switched over to replacement contractor, present value of vested accrued benefits shall be calculated using unit credit funding method and the then PBGC interest and mortality rates.
 - (3) Financial Settlements.
 - (a) Reconciliation of Funding Obligations. Full and final settlement shall be made, with the only exception being the return

to DOE of subsequent nonvested DOE funds at employee termination as described in subparagraph (2)(b), above. Assets, from subparagraph (1) above, at market value shall be compared with liabilities, from subparagraphs (Z)(a), (b), and (d) above.

1 If assets are lesser than liabilities, then DOE shall pay such difference to the terminated contractor or at the contractor's option directly into the plan of the terminated contractor. These payments may only be used to purchase annuity contracts for vested employees for when reimbursement is being made, or deposited into the pension plan of the terminated contractor. However, in the event that PBGC termination insurance premiums have been paid and plan terminates within 6 months of contract termination, the maximum shortage shall be limited to the amount that the contractor is held liable for as determined by PBGC; of such amount, DOE shall reimburse only that proportional amount which corresponds to the ratio of the shortage of DOE reimbursable funds to the overall shortage of funds. However, DOE retains the right, upon fund termination or transfer, to settle fund deficits in accordance with applicable contract provisions, subject to the availability of funds.

2 If assets are greater than liabilities, then the terminated contractor shall pay such difference into the replacement contractor pension plan for ongoing contract employees. However, if there is no replacement contractor, then the terminated contractor shall refund such difference to DOE. All payments are subject to IRS requirements for mandatory disbursements to contributory employees and shall include interest on the unpaid balance at an assumed rate of investment return equal to that used by PBGC for benefits in pay status.

(b) Terminated Contractor Retention of Assets and Liabilities. The terminated contractor shall retain liabilities and assets equal to liabilities associated with subparagraph (2)(a) nonactive participants, subparagraph (2)(b) active participants retained by terminated contractor, and subparagraph (2)(d) active participants terminated at contract termination.

- (c) Transfer of Assets and Liabilities Upon Establishment of a Replacement Pension Plan. Total covered DOE contract service liability associated with subparagraph (2)(c) active participants switched over to replacement contractor shall transfer with assets of subparagraph (3)(a) 2 above, if any.



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