

Approved: XX-XX-XXXX

**SUBJECT: LABOR STANDARDS COMPLIANCE, CONTRACTOR LABOR RELATIONS,
AND CONTRACTOR WORKFORCE RESTRUCTURING PROGRAMS**

1. **PURPOSE.**

- a. To ensure that Department of Energy (DOE) and National Nuclear Security Administration (NNSA) management and operating and other facility management contractors pursue collective bargaining practices that promote efficiency and economy in contract operations, judicious expenditure of public funds, equitable resolution of disputes, and effective collective bargaining relationships.
- a. To ensure DOE/NNSA Contracting Officers (COs) and contractor industrial relations/human resources specialists achieve full consultation with management and operating contractors, facility management contractors, and security contractors, prior to contractors' negotiation of collective bargaining agreements (CBA) and during the term of a CBA on matters that may have an impact on costs under DOE/NNSA contracts, work rules that impact mission performance, or exceptions to DOE/NNSA policy and past customs/practices.
- b. To ensure that applicable labor standards are included in all DOE/NNSA contracts and subcontracts.
- c. To ensure DOE/NNSA cooperation with the Department of Labor (DOL), as appropriate, to:
 - (1) obtain information,
 - (1) provide complete and timely reports, and
 - (2) exercise oversight enforcement responsibility to ensure contractor compliance with applicable laws.
- d. To ensure DOE/NNSA COs and contractor industrial relations/human resources specialists consult with management and operating contractors, facility management contractors, and security contractors, prior to the contractor performing workforce restructuring to ensure such activities are undertaken in compliance with DOE policy and practice and performed in a manner that minimizes involuntary separations, retains critical skills, and minimizes the impact on programmatic activities.

2. **CANCELLATION.** Chapter I *Labor Relations*, Chapter 2 *Labor Standards*, and Chapter III *Reductions in Contractor Employment*, of DOE O 350.1 Chg 4, *Contractor Human Resource Management Programs*, dated 9-30-1996.

Cancellation of a directive does not, by itself, modify or otherwise affect any contractual or regulatory obligation to comply with the directive. Contractor Requirements Documents (CRDs) that have been incorporated into a contract remain in effect throughout the term of the contract unless and until the contract or regulatory commitment is modified to either eliminate requirements that are no longer applicable or substitute a new set of requirements.

3. APPLICABILITY.

- a. Departmental Applicability. This Order applies to all Departmental elements as set forth in Chapters I through III of this Order.

The Administrator of the National Nuclear Security Administration (NNSA) will assure that NNSA employees comply with their respective responsibilities under this directive. Nothing in this Order will be construed to interfere with the NNSA Administrator's authority under section 3212(d) of Public Law (P.L.) 106-65 to establish Administration-specific policies, unless disapproved by the Secretary.

In accordance with the responsibilities and authorities assigned by Executive Order 12344, codified at 50 U.S.C. sections 2406 and 2511 and to ensure consistency through the joint Navy/DOE Naval Nuclear Propulsion Program, the Deputy Administrator for Naval Reactors (Director) will implement and oversee requirements and practices pertaining to this directive for activities under the Director's cognizance, as deemed appropriate.

- b. Contractor. This Order does not directly impose any requirements upon contractors.
- c. Equivalencies/Exemptions for DOE O 350.3. Seeking equivalencies and exemptions to this Order must be processed in accordance with DOE O 251.1C, *Departmental Directives Program*.

4. REQUIREMENTS. Requirements are set forth in Chapters I through III of this Order.

5. RESPONSIBILITIES. Assignments of Responsibilities are set forth in Chapters I through III of this Order. REFERENCES. Applicable References are listed in Chapters I through III of this Order.

BY ORDER OF THE SECRETARY OF ENERGY:

DANIEL B. PONEMAN
Deputy Secretary

CHAPTER I. CONTRACTOR LABOR RELATIONS

1. PURPOSE.

- a. To ensure that Department of Energy (DOE) and National Nuclear Security Administration (NNSA) management and operating and other facility management contractors pursue collective bargaining practices that promote efficiency and economy in contract operations, judicious expenditure of public funds, equitable resolution of disputes, and effective collective bargaining relationships.
- b. To ensure DOE/NNSA Contracting Officers (COs) and contractor industrial relations/human resources specialists achieve full consultation with management and operating contractors, facility management contractors, and security contractors, prior to contractors' negotiation of collective bargaining agreements (CBA) and during the term of a CBA on matters that may have an impact on costs under DOE/NNSA contracts, work rules that impact mission performance, or exceptions to DOE/NNSA policy and past customs/practices.

2. APPLICABILITY.

This chapter is applicable to all Departmental elements responsible for the management of cost reimbursable contracts that include provisions for DOE reimbursement of contractor human resources costs.

3. REQUIREMENTS.

- a. DOE/NNSA shall ensure contractor economic bargaining parameters are reasonable, allowable, and consistent with applicable DOE policies and labor laws.
- b. DOE/NNSA retains absolute authority on all questions of security, security rules, and their administration. However, to the fullest extent feasible, DOE shall consult with labor representatives and contractor management in formulating security rules and regulations that affect the collective bargaining process.
- c. DOE/NNSA shall not take a public position concerning the merits of a labor dispute between a contractor and its employees or organizations representing those employees.

4. RESPONSIBILITIES.

- a. Office of the Assistant General Counsel for Labor and Pension Law for DOE and the NNSA Office of the General Counsel for NNSA (NNSA-GC).
 - (1) Establishes and oversees the implementation of labor relations policy in consultation with the Director of the Contractor Human Resources Policy

Division for DOE and the Manager, NNSA Contractor Human Resources Division (NNSA-CHRD) for NNSA. Oversight shall also be conducted in consultation with the appropriate Heads of Departmental elements at Headquarters (HQ) and in the Field. This includes:

- (a) representing HQ on all matters involving contractor labor relations issues,
 - (b) informing senior management of significant labor relations developments,
 - (c) acting as a liaison to other government agencies and to international unions and their representatives,
 - (d) serving as a clearing-house for labor relations information,
 - (e) attending meetings and conferences initiated by Departmental elements where union representation will be present,
 - (f) during the procurement process, analyzing and commenting on proposed contract clauses and provisions related to DOE/NNSA reimbursement of contractor human resource costs,
 - (g) approving all policy affecting contractor labor relations, and
 - (h) providing guidance as to the implementation and conformance with applicable Executive Orders, such as those related to Project Labor Agreements.
- (2) Works with Departmental elements that originate or change qualification standards, testing requirements, or any other protocol that may affect conditions of employment for contractor employees to ensure they are developed and implemented consistent with DOE/NNSA policies and labor law.
 - (3) Prior to the commencement of negotiations, review any contractor economic bargaining parameters which are an exception to DOE/NNSA policy (e.g., reimbursement of enhanced benefits in the context of workforce restructuring), could involve other items of special interest to the Government (e.g., changes to any pension or other benefit plan), or otherwise upon request of the DOE/NNSA Head of contracting activity (HCA).
 - (4) Reviews, upon request of the HCAs, changes to contractor proposals during the term of collective bargaining.
 - (5) In consultation with COs, review the Contractor Labor Relations Reports of Settlement uploaded by Contractors into iBenefits on a quarterly basis.

- b. Director, Contractor Human Resources Policy Division for DOE and Manager, NNSA Contractor Human Resources Division (NNSA-CHRD) for NNSA.
 - (1) Prior to the commencement of negotiations, review any contractor economic bargaining parameters which are an exception to DOE/NNSA policy (e.g., reimbursement of enhanced benefits in the context of workforce restructuring), could involve other items of special interest to the Government (e.g., changes to any pension or other benefit plan), or otherwise upon request of the HCA.
 - (2) While negotiations for a new CBA are ongoing, review, upon request of the HCAs, changes to contractor proposals.
- c. Heads of Contracting Activities (HCA).
 - (1) For cost reimbursement purposes, review and approve the contractor's proposed economic bargaining parameters, including those for pension and medical benefit costs, prior to the Contractor entering into the collective bargaining process.
 - (2) Prior to the commencement of negotiations, provide the Office of the Assistant General Counsel for Pension and Labor Law/NNSA-GC and the Director of the Contractor Human Resources Policy Division/NNSA-CHRD the following for review: proposed contractor economic bargaining parameters which are an exception to DOE/NNSA policy (e.g., reimbursement of enhanced benefits in the context of workforce restructuring), could involve other items of special interest to the Government (e.g., changes to any pension or other benefit plan), or otherwise at the discretion of the HCA.
 - (3) Consult as necessary with the Director of the Contractor Human Resources Policy Division/NNSA-CHRD and the Office of the Assistant General Counsel for Pension and Labor Law/NNSA-GC on information received from COs during collective bargaining negotiations regarding any proposal which can be calculated to affect reimbursable costs under this Contract, are an exception to DOE/NNSA policy (e.g., reimbursement of enhanced benefits in the context of workforce restructuring), or could involve other items of special interest to the Government (e.g., changes to any pension or other benefit plan), prior to the contractor submitting to or agreeing to any such proposal with the labor organization representing its employees.
 - (4) Consult regularly with COs during the term of collective bargaining agreements to stay abreast of information related to contractor labor relations, such as Reports of Settlement uploaded to iBenefits on a quarterly basis, as well as other matters of interest and concern to DOE.
 - (5) Notify the Office of the Assistant General Counsel for Pension and Labor

Law/NNSA-GC of any National Labor Relations Board charges, any grievances, arbitrations, or legal or judicial proceedings, and any other significant labor relations issues as soon as possible after becoming aware of them, and provide any documents relevant to such proceedings.

- (6) Provide timely information to the Office of the Assistant General Counsel for Pension and Labor Law/NNSA-GC, and other cognizant Departmental elements at HQ, concerning any other contractor labor issues.

d. Contracting Officers (COs).

- (1) Receive and review contractor's proposed economic bargaining parameters.
- (2) Submit to the HCA for approval, along with a memorandum setting forth the recommendation of the CO, the contractor's proposed economic bargaining parameters.
- (3) Consult with the HCA on information received from the contractor during collective bargaining negotiations regarding any proposal which can be calculated to affect reimbursable costs under this Contract, are an exception to DOE/NNSA policy (e.g., reimbursement of enhanced benefits in the context of workforce restructuring), or could involve other items of special interest to the Government (e.g., changes to any pension or other benefit plan), prior to the contractor submitting to or agreeing to any such proposal with the labor organization representing its employees.
- (4) Consult regularly with the HCA during the term of collective bargaining agreements to stay abreast of information related to contractor labor relations, such as Reports of Settlement uploaded to iBenefits on a quarterly basis, as well as other matters of interest and concern to DOE.
- (5) Notify the HCA of any National Labor Relations Board charges, any grievances, arbitrations, or legal or judicial proceedings, and any other significant labor relations issues as soon as possible after becoming aware of them, and provide any documents relevant to such proceedings.
- (6) Provide timely information to the HCA concerning any other contractor labor issues.

5. REFERENCES.

- a. Federal Acquisition Regulation (FAR), Subpart 22.1, BASIC LABOR POLICIES, which sets forth agency requirements for COs on labor relations matters.
- b. Department of Energy Acquisition Regulation (DEAR), Subpart 970.22, APPLICATION OF LABOR POLICIES, which prescribes DOE labor policies

pertaining to the award and administration of management and operating contracts and other contracts as determined by the CO.

c. DEAR 970.3102-05-6, which addresses allowability of compensation costs.

~~4.6.~~ CONTACT. Site lead attorney from the Office of the Assistant General Counsel for Pension and Labor Law, at (202) 586-7532 or NNSA Office of General Counsel, (202) 586-2647. For a list of site lead contacts in the Office of the Assistant General Counsel for Pension and Labor Law please visit <http://energy.gov/gc/leadership/contact-us/contacts-assistant-general-counsel-labor-and-pension-law>.

CHAPTER II. LABOR STANDARDS

1. PURPOSE.

- a. To ensure that applicable labor standards are included in all Department of Energy (DOE) and National Nuclear Security Administration (NNSA) contracts and subcontracts.
- b. To ensure DOE/NNSA cooperation with the Department of Labor (DOL), as appropriate, to:
 - (1) obtain information,
 - (2) provide complete and timely reports, and
 - (3) exercise oversight enforcement responsibility to ensure contractor compliance with applicable laws.

2. APPLICABILITY.

This Chapter is applicable to all Departmental elements responsible for the management of contracts and financial assistance agreements that require payment of prevailing wages.

3. REQUIREMENTS.

- a. Labor Standards matters shall be processed as set forth in this Chapter.
- b. Proposed acquisition and designated contractor work packages shall be reviewed to determine the applicability of the Davis-Bacon Act (DBA) and/or the Service Contract Act (SCA); work shall be accomplished in accordance with such determinations.
- c. All disputed determinations must be forwarded to the Office of the Assistant General Counsel for Labor and Pension Law or the NNSA Office of General Counsel (NNSA-GC), as appropriate, for review.
- d. DOE/NNSA shall furnish enforcement reports to the Administrator, Wage and Hour Division, Department of Labor (DOL) (the Administrator) within 60 days after completion of an investigation where the DBA underpayments by a contractor or any sub-tier subcontractor totals \$1,000 or more, or where there is reason to believe the violations are willful or where a contractor does not agree with the findings and refuses to make restitution.
- e. DOE/NNSA must prepare and submit the DBA Semi-Annual Enforcement Report to the Administrator of Wage and Hour, DOL, by April 30 and October 31 of each calendar year.

- f. DOE/NNSA must ensure bidders and contractors are provided with applicable labor standards information and that, where necessary, conferences and contract orientation meetings are held for solicitations or contracts (see the References section below for a listing of relevant Labor Standards regulations).
 - g. For SCA-covered contracts in excess of \$25,000, SF-279, Federal Procurement Data System Individual Contract Action Report, or its equivalent, must be submitted to the Federal Procurement Data System (FPDS).
4. RESPONSIBILITIES.
- a. Office of the Assistant General Counsel for Labor and Pension Law.
 - (1) In consultation with NNSA-GC, serve as the labor advisors for DOE/NNSA for the purpose of acting as the primary point of contact with DOL.
 - (2) For DOE and NNSA, in consultation with NNSA-GC, coordinate comments on proposed revisions to DOL regulations and provide interpretations of final revisions to Departmental elements (both at Headquarters (HQ) and in the field).
 - (3) For DOE and NNSA, in consultation with NNSA-GC, furnish an enforcement report to the Administrator, Wage and Hour Division, DOL (the Administrator) within 60 days after completion of an investigation where the DBA underpayments by a contractor or any sub-tier subcontractor totals \$1,000 or more, or where there is reason to believe the violations are willful or where the contractor does not agree with the findings and refuses to make restitution.
 - (4) For DOE and NNSA, in consultation with NNSA-GC, submit a factual summary report detailing any violations including any data on the amount of restitution paid, the number of workers who received restitution, liquidated damages assessed under the Contract Work Hours and Safety Standards Act, and any other information necessary for an appropriate review when the DOL has requested an investigation.
 - (5) For DOE and NNSA, prepare and submit the DBA Semi-Annual Enforcement Report to the DOL by April 30 and October 31.
 - b. Office of the Assistant General Counsel for Labor and Pension Law for DOE and the NNSA Office of General Counsel (NNSA-GC) for NNSA.
 - (1) Work with the Heads of Contracting Activities (HCA) and Contracting Officers (COs) to determine classes of work for which applicability/non-applicability of the DBA is clear, and for which the HCA/CO will require no further DOE determination on coverage in advance of the work.

- (2) Coordinate responses to Congress and DOL on labor standards complaints or other labor standards inquiries.
 - (3) Review contested labor standards determinations before the determinations become final.
 - (4) Determine applicability of the DBA, the SCA, and other labor standards statutes and provide analysis and comments in procurements that require payment of prevailing wages.
- c. Heads of Contracting Activities (HCA).
- (1) Establish Labor Standards Committees to advise COs on the applicability of the various labor standards statutes to work performed under the contracts.
 - (2) Determine whether to delegate to COs the HCA authority under DEAR 970.2204-1-1(b)(3), to prescribe classes of work for which applicability/non-applicability of the DBA is clear.
 - (3) Approve “non-covered” determinations made by COs, per DEAR 970.2204-1-1(a)(2).
 - (4) Consult regularly with COs during the contract life cycle (from procurement to close-out) to stay abreast of issues related to labor standards.
- d. Contracting Officers (COs).
- (1) Consult regularly with the HCA during the contract life cycle (from procurement to close-out) to keep the HCA informed of issues related to labor standards.
 - ~~(1)~~(2) Review the e98, Notice of Intention to Make a Service Contract and Response Notice, to ensure that the contemplated work is appropriately covered by the SCA and that forms are prepared properly. Forwards such forms to DOL.
 - ~~(2)~~(3) Notify the Office of the Assistant General Counsel for Pension and Labor Law or NNSA-GC, as appropriate, of complaints by contractor employees, significant labor standards violations (i.e., all violations of \$1,000 or more), DOL investigations, and all labor standards complaints, arbitrations, or legal or judicial proceedings generated by contractor employees and others, and any other significant labor standards issues as soon as possible after becoming aware of them.
 - ~~(3)~~(4) Ensure that all contracts contain the appropriate labor standards provisions.

- ~~(4)~~(5) Ensure that bidders and contractors are provided with applicable labor standards information and that, where necessary, conferences and contract orientation meetings are held for solicitations or contracts.
- ~~(5)~~(6) Assist the DOL, in coordination with the Office of the Assistant General Counsel for Pension and Labor Law or NNSA-GC, as appropriate, in preparing for a hearing on and/or investigating any alleged violations or disputes on alleged violations.
- ~~(6)~~(7) For SCA-covered contracts in excess of \$25,000, furnish SF-279, Federal Procurement Data System Individual Contract Action Report, or its equivalent, to the Federal Procurement Data System (FPDS).
- ~~(7)~~(8) Request DBA project wage determinations from the DOL on the SF-308, Request for Determination and Response to Request for instances in which general area decisions are not available or are not appropriate to the DOE site or job.
- ~~(8)~~(9) Ensure payroll and job-site audits are conducted as may be necessary to determine compliance with the DBA.
- ~~(9)~~(10) Investigate complaints under the DBA to determine compliance and proceed as follows:
 - (a) If no violation is discovered, advise the complainant of the reasons for the conclusion.
 - ~~(b)~~(a) If a violation is discovered:
 - 1 *determine the amount of back wages, fringe benefits, and overtime pay due each employee, and request the contractor to make restitution;*
 - 2 *determine the amount of liquidated damages due, if any, and request the contractor to make restitution;*
 - 3 *withhold sufficient funds to compensate employees and to cover any liquidated damages that may be due when the contractor does not cooperate or does not agree with the findings and refuses to make restitution;*
 - 4 *notify the Office of the Assistant General Counsel for Pension and Labor Law of DBA non-compliance findings; and*
 - 5 *ensure that funds withheld to compensate employees for back wages are forwarded to the Department of Labor for disbursement, if restitution has not been made.*
- ~~(2)~~(11) Prepare and submit the DBA Semi-Annual Enforcement Report to the Office of the Assistant General Counsel for Pension and Labor Law by April 21 and October 21 of each year.

5. REFERENCES.

- a. Department of Labor Regulations at 29 C.F.R. Parts 1, 3, 4 and 5, which provide labor standards for federal service contracts, and labor standards provisions applicable to contracts covering federally financed and assisted construction.
 - b. Federal Acquisition Regulations (FAR), Subpart 5.4, RELEASE OF INFORMATION.
 - c. FAR, Subpart 22.4, LABOR STANDARDS FOR CONTRACTS INVOLVING CONSTRUCTION, which explains the applicability of the DBA.
 - d. FAR, Subpart 22.10, SERVICE CONTRACT ACT OF 1965, AS AMENDED, which explains the applicability of the Service Contract Act.
 - e. Department of Energy Acquisition Regulation (DEAR) 970.2204-1-1, ADMINISTRATIVE CONTROLS AND CRITERIA FOR APPLICATION OF THE DAVIS-BACON ACT IN OPERATIONAL OR MAINTENANCE ACTIVITIES.
 - f. DEAR Subpart 970.52, SOLICITATION PROVISIONS AND CONTRACT CLAUSES FOR MANAGEMENT AND OPERATING CONTRACTS.
 - g. DOE Acquisition Guide, Chapter 22.1, Labor Standards for Construction and Services.
6. CONTACT. Site lead attorney from the Office of the Assistant General Counsel for Labor and Pension Law, at (202) 586-7532 or the NNSA Office of General Counsel at (202) 586-2647. For a list of site lead contacts in the Office of the Assistant General Counsel for Pension and Labor Law please visit <http://energy.gov/gc/leadership/contact-us/contacts-assistant-general-counsel-labor-and-pension-law>.

CHAPTER III.

REDUCTIONS IN CONTRACTOR EMPLOYMENT

7.1. PURPOSE.

- a. To ensure contractors perform workforce planning that guarantees continued availability of critical knowledge, skills, and abilities required for the Department's mission.
- b. To ensure that contractor workforce restructuring actions are conducted in a manner that minimizes the impact on programmatic activities.
- c. To ensure contractors provide reasonable notice to employees, their representatives, public officials, and other stakeholders of necessary reductions in contractor employment, and to consult with them in planning for work force restructuring.
- d. To the extent practicable, to minimize involuntary separations at DOE defense nuclear facilities and other facilities through retraining, attrition, and other measures, as practicable.

8.2. APPLICABILITY. This chapter is applicable to all Departmental elements responsible for the management of cost reimbursable contracts that include provisions for DOE reimbursement of contractor human resource costs.

9.3. REQUIREMENTS.

- a. Workforce restructuring actions will be managed in accordance with this chapter and Departmental policies, as revised from time to time. Accountability will be with the Under Secretaries unless otherwise delegated. Collaboration is expected with the DOE and NNSA Offices of General Counsel, Management, Congressional and Intergovernmental Affairs, and Public Affairs. It remains critical to ensure complete legal reviews of all workforce restructuring actions which meet the criteria specified in section 4.f.(2) of this Chapter.
- b. DOE will develop performance measures to assess contractor success in developing strategies for contractor management to use recruitment, retention, and best practices to ensure continued availability of the critical workforce knowledge, skills, and abilities required for the Department's missions.
- c. DOE/NNSA will not approve contractor requests for enhanced benefits, i.e., benefits in excess of those provided for under the parties' contract, including benefits in excess of those provided for under any benefit plans approved by the Department.

- d. DOE/NNSA will not approve contractor requests for reimbursement of early retirement incentives that are funded through contractor pension plans.

~~10.4.~~ REQUIREMENTS APPLICABLE ONLY TO DOE/NNSA DEFENSE NUCLEAR FACILITIES.

- a. Upon a determination that a change in the work force at a DOE defense nuclear facility is necessary, the Department is obligated under section 3161 of the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484 (Section 3161), codified at 42 U.S.C. 2704, to prepare a workforce restructuring plan (herein referred to as the General Plan) for submission to Congress. A list of Defense Nuclear Facilities can be found online at <http://energy.gov/gc/services/technology-transfer-and-procurement/office-assistant-general-counsel-labor-and-pension>.
- b. The General Plan shall be submitted to the Secretary, who will approve or disapprove it for delivery to Congress.
- c. The General Plan shall lay out how contractor workforce restructuring will be conducted at the site in a manner that meets the objectives of this Chapter. The Department has developed a template for General Plans to ensure consistency and accurate application of Section 3161 and Departmental policy, as well as to expedite Departmental review. The template for the General Plan and the accompanying notice of intent to develop a plan for workforce restructuring can be found online at <http://energy.gov/gc/services/technology-transfer-and-procurement/office-assistant-general-counsel-labor-and-pension>.
- d. In order to ensure appropriate consultation with affected stakeholders in the development of a General Plan, Section 3161 provides that changes in the work force at a Department of Energy defense nuclear facility should be made only after notice of the anticipated change is provided to the Department, affected employees, and the local communities. Section 3161 requires such notice to be provided at least 120 days before the anticipated change to permit the development of a General Plan by the Department, where no General Plan is in place.
- e. The Department has interpreted Section 3161 to trigger the requirement to develop a General Plan only where the change anticipated will affect at least 100 employees within a 12-month period.
- f. General Plans developed in accordance with Section 3161 provide a framework for workforce restructuring actions at a particular DOE or NNSA site; these plans are not limited to a specific workforce restructuring action. Departmental policy on matters such as use of incentives and employee waivers has changed over time, and, accordingly, it is crucial to periodically review and update the General Plans for each site. The Department has developed a template for a

Notice to advise stakeholders that a new draft General Plan for the site is, or will become, available for comment. The notice can be found online at <http://energy.gov/gc/services/technology-transfer-and-procurement/office-assistant-general-counsel-labor-and-pension>.

- g. Certain employees involuntarily terminated during an approved workforce restructuring at a defense nuclear facility should receive preference in filling vacancies in the work force of the DOE/NNSA contractors and subcontractors. The Department has determined that employees must be identified as having helped maintain the Nation's nuclear deterrent in order to qualify for this preference. Preference eligible employees are those employees who were employed at a defense nuclear facility on or before September 27, 1991, and have worked at a DOE defense nuclear facility since that date. Complete eligibility criteria for the preference can be found online at <http://energy.gov/gc/services/technology-transfer-and-procurement/office-assistant-general-counsel-labor-and-pension>. All prime contractors and subcontractors whose contracts with the Department equal or exceed \$500,000 in value are required by Section 3161 to honor the preference.

11.5. REQUIREMENTS APPLICABLE TO BOTH DOE/NNSA DEFENSE NUCLEAR FACILITIES AND NON-DEFENSE FACILITIES

- a. The appropriate Under Secretary is charged with responsibility for approving workforce restructuring actions by its contractors as set forth herein. This approval authority may be delegated as determined by the Under Secretary. All such delegations must be made in writing. If, by the terms of the contractor's contract, it must obtain contracting officer approval to expend funds associated with a workforce restructuring action, this requirement shall in no way be construed to abrogate the contracting officer's authority.
- b. Each contractor is obligated by DOE contractor workforce restructuring policy to prepare a specific workforce restructuring plan (hereinafter referred to as the Specific Plan) if either of the following conditions are met within a rolling 12-month period:
 - (1) The contractor intends to reduce its work force by 50 or more employees through involuntary separation; or
 - (2) The contractor intends to reduce its work force by 100 or more employees through a combination of voluntary and involuntary separation actions.
- c. In order to provide substantive and helpful comments and to work with the contractors on approaches to reduce risk, Under Secretaries/ designees, in consultation with appropriate staff offices, will review any Specific Plan within 10 business days after submission of the plan, unless the contractor is notified of issues necessitating an extension of time.

- d. The Specific Plan shall lay out how contractor workforce restructuring action will be conducted at the site in a manner that meets the objectives of this Chapter. The Department has developed a template for Specific Plans to ensure consistency and accurate application of Section 3161 and Departmental policy, as well as to expedite Departmental review. The templates for the contractor Self-Select Voluntary Separation Plan and the contractor Involuntary Separation Plan, as well as the General Release and Waiver Form can be found online at <http://energy.gov/gc/services/technology-transfer-and-procurement/office-assistant-general-counsel-labor-and-pension>. If the contractor believes it will be necessary to conduct a voluntary separation program followed by an involuntary separation, the contractor may combine the Self-Select Voluntary Separation Plan and the contractor Involuntary Separation Plan into one Specific Plan to be submitted to the Department.
- e. DOE/NNSA notifications to Congress of upcoming workforce restructuring actions will occur within 48 hours (two business days) of approval of the Specific Plan, or contractors will be provided with an estimate for completing notification, to allow appropriate planning to occur. This notification to Congress must occur prior to any public announcement by DOE, NNSA, or the contractor.
- f. For non-defense DOE facilities, the delivery of a General Plan to Congress is at the discretion of the Secretary.
- g. Government contractors are prohibited by law from engaging in discrimination in the workplace and an adverse impact analysis (also known as a diversity analysis) may assist the contractor in ensuring compliance with Executive Order 11246, implemented through FAR clause 52.222.26. In analyzing contractor requests for reimbursement of costs associated with settlement of employment discrimination litigation, DOE/NNSA will take into account the results of any Office of General Counsel review of the contractor's adverse impact analysis. Information on adverse impact analyses, a template, and an example can be found online at <http://energy.gov/gc/services/technology-transfer-and-procurement/office-assistant-general-counsel-labor-and-pension>.
- h. The Department has developed a waiver of claims to be signed by any contractor employee subject to either a voluntary or involuntary contractor workforce restructuring action. The waiver can be found online at <http://energy.gov/gc/services/technology-transfer-and-procurement/office-assistant-general-counsel-labor-and-pension>.

~~12.6.~~ RESPONSIBILITIES.

- a. The Secretary. Submits General Plans to Congress.
- b. Under Secretaries/Designees.

- (1) Accountable for ensuring contractor workforce restructuring actions are managed in accordance with Departmental policy.
- (2) Collaborate as necessary with the Offices of General Counsel (either DOE or NNSA, as appropriate), Management, Congressional and Intergovernmental Affairs, and Public Affairs.
- (3) Coordinate notifications to Congress with Heads of Departmental elements in the field and with the Assistant Secretary for Congressional and Intergovernmental Affairs or the NNSA Associate Administrator for External Affairs.
- (4) Approve workforce restructuring actions conducted by contractors in a rolling 12-month period involving:
 - (a) 50 or more employees through involuntary separation; or
 - (b) 100 or more employees through a combination of voluntary and involuntary separation actions at a single site.

This approval authority may be delegated as determined by the Under Secretary. All delegations must be made in writing.

- (5) Review any workforce restructuring action within 10 business days after submission of a Specific Plan by the contractor, in consultation with applicable staff offices, as appropriate, unless the contractors are notified of issues necessitating an extension of time.
- (6) Review and submit, as appropriate, General Plans to the Secretary for approval and further submission to Congress.
- (7) Receive from the Heads of Departmental elements in the field any request by a contractor to provide involuntarily separating contractor employees anything more than 2-weeks pay in lieu of providing the actual 60-day notice as required by the WARN Act.
- (8) Approve/disapprove requests by the Contractor to provide involuntarily separating contractor employees anything more than 2-weeks pay in lieu of providing the actual 60-day notice as required by the Worker Adjustment and Retraining Notification Act (WARN).
- (9) Notify the Heads of Departmental elements in the field and COs that they are not to approve contractor requests for enhanced benefits, i.e., benefits in excess of those provided for under the parties' contract, including benefits in excess of those provided for under any benefit plans approved by the Department.

- (10) Notify the Heads of Departmental elements in the field and COs that they are not to approve requests for reimbursement of early retirement incentives funded through contractor pension plans.
 - (11) In coordination with the Heads of Departmental elements in the field, develop mechanisms to ensure contractors are not hiring or rehiring individuals, during the one-year prohibition period, who volunteered for termination during a Self-Select Voluntary Separation Plan.
 - (12) In coordination with the Heads of Departmental elements in the field, develop performance measures to assess contractor success in developing strategies for contractor management to use recruitment, retention, and best practices to ensure continued availability of the critical workforce knowledge, skills, and abilities required for the Department's missions.
- c. Office of the Assistant General Counsel for Labor and Pension Law for DOE and the NNSA Office of General Counsel (NNSA-GC) for NNSA.
- (1) Work together to serve as the focal point for all information regarding contractor workforce restructuring actions at DOE/NNSA facilities.
 - (2) Advise Departmental elements regarding legal requirements and Departmental practices and policies concerning contractor workforce restructuring.
 - (3) Provide direction and guidance in the development and implementation of workforce restructuring plans (General and Specific).
 - (4) Review and make recommendations to the Under Secretaries/designees, and concur on General Plans.
 - (5) Review and make recommendations on Specific Plans submitted to Under Secretaries/designees that vary from the templates, are exceptions to DOE policy, or upon request of the Under Secretary/designee.
 - (6) Review and make recommendations on contractor WARN Act notices, if such notice is required.
 - (7) Review and approve/disapprove contractor adverse impact analyses as requested by contractors.
- d. Director, Contractor Human Resources Policy Division for DOE, and Manager, NNSA Contractor Human Resources Division (NNSA-CHRD) for NNSA.
- (1) Provide guidance to Departmental elements regarding Departmental policies and practices concerning contractor benefits and compensation.

- (2) Review and makes recommendations to the Under Secretaries/designees on General Plans.
 - (3) Review and makes recommendations on Specific Plans submitted to Under Secretaries/designees that vary from the templates, are exceptions to DOE policy, or upon request of the Under Secretary/designee.
 - (4) Request and collect data on actual and planned contractor workforce restructuring actions through an annual data call.
- e. Heads of Departmental Elements in the Field.
- (1) Oversee the management of workforce changes consistent with Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 and Department policy, as set forth herein, and as may be amended from time to time.
 - (2) Prepare General Plans and updates in accordance with this chapter.
 - (3) In coordination with the CO, provide direction and guidance to the Contractor with respect to the development and implementation of Specific Plans, in accordance with this chapter.
 - (4) In coordination with the CO, review and make recommendations concerning contractor Specific Plans and obtain approvals from senior Departmental managers as set forth in this Chapter.
 - (5) In coordination with the CO, review contractor requests to pay separation incentives beyond those expressly authorized by contract and make a recommendation to Under Secretaries/designees for approval or disapproval of the contractor Specific Plan.
 - (6) Submit the contractor's final Specific Plan to the appropriate Under Secretary/designee.
 - (7) In coordination with the CO, obtain approval from the appropriate Under Secretary/designee for requests by the contractor to provide involuntarily separating contractor employees anything more than 2-weeks pay in lieu of providing the actual 60-day notice as required by the WARN Act.
 - (8) In coordination with the appropriate Under Secretary/designee, develop mechanisms to ensure contractors are not hiring or rehiring individuals, during the one-year prohibition period, who volunteered for termination during a Self-Select Voluntary Separation Plan.
 - (9) In coordination with the appropriate Under Secretary/designee, develop

performance measures to assess contractor success in developing strategies for contractor management to use recruitment, retention, and best practices to ensure continued availability of the critical workforce knowledge, skills, and abilities required for the Department's missions

- (10) In coordination with the CO, submit for approval/disapproval to the Office of the Assistant General Counsel for Pension and Labor Law or NNSA-GC any contractor request to use any waiver of claims other than the waiver of claims developed by the Department for use in either a voluntary or involuntary contractor workforce restructuring action.

13.7. REFERENCES.

- a. Worker Adjustment and Retraining Notification Act, Public Law 100-379 (August 4, 1988).
- b. Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484), as amended (42 U.S.C. 2704 (2013)).
- c. Secretarial Policy Memo, "Authorize Changes to Workforce Restructuring Policy," dated May 5, 2011.
- d. To access the below listed templates and forms as well as other information related to contractor workforce restructuring, please visit <http://energy.gov/gc/services/technology-transfer-and-procurement/office-assistant-general-counsel-labor-and-pension>.
 - (1) A listing of Defense Nuclear Facilities
 - (2) General Workforce Restructuring Plan Template
 - (3) Announcement of Draft Workforce Restructuring
 - (4) Section 3161 Rehiring Preference for Eligible Employees
 - (5) Self-Select Voluntary Separation Plan Template
 - (6) Involuntary Separation Plan Template
 - (7) Use of Waivers and Releases of Claims
 - (8) Workforce Restructuring Adverse Impact Analysis Examples

14.8. **CONTACT.** For guidance on legal requirements and Departmental practices and policies concerning contractor workforce restructuring, contact the appropriate site leads in the Office of the Assistant General Counsel for Labor and Pension Law at 202-586-7532 or the NNSA Office of General Counsel at (202) 586-2647. For a list of site lead contacts in

the Office of the Assistant General Counsel for Labor and Pension Law please visit <http://energy.gov/gc/leadership/contact-us/contacts-assistant-general-counsel-labor-and-pension-law>. For general information on Departmental policies and practices regarding contractor benefits and compensation, contact the Contractor Human Resources Policy Division within the Office of Management at (202) 287-1330.