

Approved: 09-29-2014
Chg 1 (Min Chg): 9-10-2018

**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 contractors, other facility management contractors, and security 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.
- c. To ensure that applicable labor standards are included in all DOE/NNSA contracts and subcontracts.
- d. 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.
- e. 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. DOE O 350.3, *Labor Standards Compliance, Contractor Labor Relations, and Contractor Workforce Restructuring Programs*, dated 9-29-2014.

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.

- b. Contractors. 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 251.1D, *Departmental Directives Program*.

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.

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.
6. REFERENCES. Applicable References are listed in Chapters I through III of this Order.

BY ORDER OF THE SECRETARY OF ENERGY:



DAN BROUILLETTE
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 contractors, other facility management contractors, and security 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.

Pursuant to the Applicability provisions set forth at the beginning of this Order, 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.
- d. For NNSA, the requirements of this Chapter shall apply to the extent the requirements are consistent with NNSA Business Operating Procedure, BOP-03.03, Acquisition Coordination and Approval Processes, or any revisions thereto. In addition, the requirements of this Chapter that are explicitly made

applicable only to DOE shall also apply to NNSA to the extent those requirements do not conflict with the NNSA BOP and set forth additional areas of responsibility not specifically addressed in NNSA BOP-03.03.

4. RESPONSIBILITIES.

- a. Office of the Assistant General Counsel for Contractor Human Resources 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, as applicable. 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, the Office of the Assistant General Counsel for Contractor Human Resources will review contractor economic bargaining parameters. For NNSA-GC, see BOP.
- (4) Reviews, upon request of the Heads of Contracting Activities (HCAs), changes to contractor proposals during the term of collective bargaining.
- (5) In consultation with COs/Designees, review the Contractor Labor Relations Reports of Settlement uploaded by Contractors into iBenefits on a quarterly basis.
- (6) The Office of the Assistant General Counsel for Contractor Human Resources will consult regularly with DOE COs, DOE HCAs, the Director of DOE's Contractor Human Resources Policy Division, and their designees, on issues pertaining to contractor labor relations. For NNSA-GC, see BOP.

b. Director, Contractor Human Resources Policy Division for DOE.

- (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. DOE Heads of Contracting Activities (HCAs).

- (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 Contractor Human Resources and the Director of the Contractor Human Resources Policy Division proposed contractor economic bargaining parameters.
- (3) Consult, as necessary, with the Director of the Contractor Human Resources Policy Division and the Office of the Assistant General Counsel for Contractor Human Resources on information received from COs during collective bargaining negotiations regarding any proposal that increases reimbursable costs above those previously approved in

the economic bargaining parameters, 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) Provide timely information to the Office of the Assistant General Counsel for Contractor Human Resources, and other cognizant Departmental elements at HQ, concerning any other contractor labor issues.

d. DOE Contracting Officers (COs)/Designees.

- (1) Receive and review contractors' proposed economic bargaining parameters.
- (2) Submit to the HCA for approval, along with written documentation 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 increases reimbursable costs above those previously approved in the economic bargaining parameters, 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 and the Office of the Assistant General Counsel for Contractor Human Resources during the term of collective bargaining agreements to keep the HCA and the Office of the Assistant General Counsel for Contractor Human Resources 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) As soon as possible after becoming aware of them, notify the HCA and the Office of the Assistant General Counsel for Contractor Human Resources of any of the following, and provide any documents relevant to such proceedings to the Assistant General Counsel for Contractor Human Resources:
 - (a) National Labor Relations Board charges;
 - (b) A semi-annual report on all third-step grievances or other grievances for which further judicial or administrative

proceedings are anticipated. Generally documents relevant to the third step grievance do not have to be included in the report; however, the report should provide the following information:

- 1 List of all third step grievances filed during the previous six-month period and dates the third step grievances were filed;
 - 2 A brief description of issues regarding the grievance (a few sentences to no more than a paragraph);
 - 3 If settled, the date of settlement, and terms of the settlement. If a denial is made at the third step and the period for requesting arbitration passes, report the matter as closed.
 - 4 If not settled during the six-month reporting period, carry over the item to subsequent six-month reporting periods until settlement, request for arbitration, closure, or other proceeding occurs.
- (c) Arbitrations, including copies of all decisions issued by an Arbitrator;
 - (d) Legal or judicial proceedings; and
 - (e) Other significant labor relations issues.
- (6) Provide timely information to the HCA and the Assistant General Counsel for Contractor Human Resources concerning any other contractor labor issues.
 - (7) Consult with the Office of the Assistant General Counsel for Contractor Human Resources on issues pertaining to contractor labor relations.

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.

6. CONTACT. Site lead attorney from the Office of the Assistant General Counsel for Contractor Human Resources, 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 Contractor Human Resources, 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.

Pursuant to the Applicability provisions set forth at the beginning of this Order, 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. Forward all disputed determinations that cannot be resolved at the field level to the Office of the Assistant General Counsel for Contractor Human Resources 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, 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 all contracts, submit SF-279, Federal Procurement Data System Individual Contract Action Report, or its equivalent, to the Federal Procurement Data System (FPDS).
- h. For NNSA, the requirements of this Chapter shall apply to the extent the requirements are consistent with NNSA Business Operating Procedure (BOP), BOP 03.03, *Acquisition Coordination and Approval Processes*.

4. RESPONSIBILITIES.

- a. Office of the Assistant General Counsel for Contractor Human Resources.
 - (1) In consultation with NNSA-GC, serve as the labor advisors for DOE/NNSA and 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, 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 Contractor Human Resources 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 for HQ procurements and, when requested, for other contracts that require payment of prevailing wages.
- c. Heads of Contracting Activities (HCA).
- (1) Establish Labor Standards Committees, where appropriate, 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)/Designees.
- (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.
 - (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. Forward such forms to DOL prior to the solicitation of an SCA covered contract when

a general area wage determination is not available at <http://www.wdol.gov/>.

- (3) Notify the Office of the Assistant General Counsel for Contractor Human Resources or NNSA-GC, as appropriate, of complaints by contractor employees, significant labor standards violations (i.e., all violations of \$1,000 or more), disputed labor standards determinations that cannot be resolved at the field level, 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.
- (4) Ensure that all contracts contain the appropriate labor standards provisions.
- (5) Ensure that bidders and contractors are provided with applicable labor standards information and, where necessary, hold conferences and contract orientation meetings for solicitations or contracts.
- (6) Assist the DOL, in coordination with the Office of the Assistant General Counsel for Contractor Human Resources or NNSA-GC, as appropriate, in preparing for a hearing on and/or investigating any alleged violations or disputes on alleged violations.
- (7) For all contracts, furnish SF-279, Federal Procurement Data System Individual Contract Action Report, or its equivalent, to the Federal Procurement Data System (FPDS).
- (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. When appropriate, the general area wage determination may be found on the DOL website at <http://www.wdol.gov/>.
- (9) Ensure payroll and job-site audits are conducted as necessary to determine compliance with the DBA.
- (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) 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 pay the amount;
- 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 Contractor Human Resources and NNSA-GC, as appropriate, of DBA 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.

(11) Prepare and submit the DBA Semi-Annual Enforcement Report to the Office of the Assistant General Counsel for Contractor Human Resources 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 Regulation (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 Contractor Human Resources, 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 Contractor Human Resources, please visit <http://energy.gov/gc/leadership/contact-us/contacts-assistant-general-counsel-labor-and-pension-law>.

CHAPTER III. REDUCTIONS IN CONTRACTOR EMPLOYMENT

1. PURPOSE.

- a. To ensure contractors perform workforce planning that provides for continued availability of critical knowledge, skills, and abilities required for the Department's mission.
- b. To ensure 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.

2. APPLICABILITY.

Pursuant to the Applicability provisions set forth at the beginning of this Order, 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.

3. REQUIREMENTS.

- a. Manage workforce restructuring actions 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 as specified in this Chapter.
- b. DOE/NNSA will review contractor specific workforce restructuring plans (Specific Plans) for use of 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 only require notification (not approval) of laboratory/contractor Self-Select Voluntary Separation Programs if consistent with the following parameters: 1) in accordance with approved laboratory and contractor policies and contract requirements; 2) no enhanced benefits

(severance or pension); 3) no backfilling¹ or re-employment of employees for a one-year period after severance is paid; 4) business case submitted 5 days in advance of notification date that includes maximum number of voluntary separations, maximum dollars, positions/skills impacted; reasons separations are needed, including how conducting a SSVSP will better position the contractor to conduct the mission work; copies of the self-select application (see 7(c)(5)) and any employee waivers or releases of claims, and a communication plan; and 5) voluntary separations offered to employees in a non-discriminatory and legally compliant manner. The contractor is responsible and accountable for conducting and defending all voluntary separation actions in compliance with applicable laws, regulations, and the contract terms and conditions.

- d. DOE/NNSA will not approve contractor requests for enhanced benefits other than severance, 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, unless otherwise approved by the Secretary or Deputy Secretary.
- e. DOE/NNSA will not approve contractor requests for enhanced severance benefits (benefits that are not consistent with the approved laboratory and contractor policies and contract requirements), unless otherwise approved by the Under Secretary. Questions regarding what constitutes "enhanced" severance in particular circumstances should be directed to GC-63 or, for NNSA elements, NNSA OGC.
- f. DOE/NNSA will not approve contractor requests to provide involuntary separating contractor employees pay in lieu of notice in excess of two weeks, unless otherwise approved by the Secretary or Deputy Secretary.
- g. Absent Secretarial approval, DOE/NNSA will not approve contractor requests for reimbursement of early retirement incentives funded through contractor pension plans.
- h. For NNSA, the requirements of this Chapter shall apply to the extent the requirements are consistent with NNSA Business Operating Procedure (BOP), BOP 03.03, *Acquisition Coordination and Approval Processes*.

¹ There is no backfilling within the meaning of this Order where a separating employee is replaced by an internal candidate so long as:

- The separating employee is leaving voluntarily;
- The internal replacement is a regular, permanent employee on the contractor's payroll, not a temporary hire, staff augmentee, or someone serving under a post-doctoral program, etc.;
- The replacement results in a net reduction in headcount and costs of regular employees; and
- The replacement is accomplished in an otherwise legally compliant manner, including no unlawful intent to discriminate based upon age.

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 50 U.S.C. 2704, to prepare a workforce restructuring plan (General Plan) for submission to Congress. A list of Defense Nuclear Facilities is available 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 is available 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 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 is available 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 are available online at <http://energy.gov/gc/services/technology-transfer-and-procurement/office-assistant-general-counsel-labor-and-pension>. Section 3161 requires all prime contractors and subcontractors whose contracts with the Department equal or exceed \$500,000 in value to honor the preference.

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 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 Plan if the contractor intends to reduce its workforce by 100 or more employees through an involuntary separation action within a rolling 12-month period.
- 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 and approve any Specific Plan, within 10 business days after submission of a complete package by the contractor unless the contractor is notified of issues necessitating an extension of time and the contractor responds to requests for additional information from DOE within 3 business days.
- d. The Specific Plan shall lay out how the contractor will conduct its workforce restructuring action 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 Involuntary Separation Plan, as well as the General Release and Waiver Form are available online at <http://energy.gov/gc/services/technology-transfer-and-procurement/office-assistant-general-counsel-labor-and-pension>.

- 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 receive 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. Consistent with the contract clauses set forth in Section H, Special Contract Requirements, the contractor must perform an adverse impact analysis (also known as a diversity analysis) when the involuntary separation action affects 100 or more contractor employees within a rolling 12-month period. A copy of the analysis shall be provided to the DOE/NNSA site counsel (to protect Attorney-Client privilege) to assist in determinations regarding cost allowability. 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 the Assistant General Counsel for Contractor Human Resources 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>. An adverse impact analysis is used to assist the contractor in ensuring compliance with Executive Order 11246, implemented through FAR clause 52.222.26. The contractor is responsible and accountable for conducting and defending all involuntary separation actions in compliance with applicable laws, regulations, and contract terms and conditions.
- h. Contractors are encouraged to consider the use of employee waivers and releases. The Department has developed a model waiver and release of claims. If a contractor decides to use an employee waiver/release, the Office of the Assistant General Counsel for Contractor Human Resources or NNSA-GC, as appropriate, must approve any deviation from the Departmental model. The Departmental model waiver and release of claims is available online at <http://energy.gov/gc/services/technology-transfer-and-procurement/office-assistant-general-counsel-labor-and-pension>.
- i. The Department shall ensure contractors are not hiring or rehiring individuals, who volunteered for termination during a Self-Select Voluntary Separation Plan for a one-year period after the separation. If an employee is rehired prior to the one year period, the employee may be required to pay back all or a pro-rata amount of the severance received.

6. RESPONSIBILITIES.

- a. The Secretary or Deputy Secretary, as appropriate.
 - (1) Approves and Submits General Plans to Congress.
 - (2) Approve/disapprove contractor requests for enhanced benefits other than severance, 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.
 - (3) Approve/disapprove contractor requests to provide involuntarily separating contractor employees pay in lieu of notice in excess of two weeks.
 - (4) Approve/disapprove contractor requests for reimbursement of early retirement incentives funded through contractor pension plans.
- 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 100 or more employees through an involuntary separation action at a single site.
 - (5) This approval authority may be delegated as determined by the Under Secretary. All delegations must be in writing.
 - (6) Review for approval/disapproval any workforce restructuring action within 10 business days after submission of a Specific Plan, in consultation with applicable staff offices, as appropriate, unless the contractor is notified of issues necessitating an extension of time, and the contractor responds to requests for additional information from DOE within 3 business days.

- (7) Approve/disapprove contractor requests to provide enhanced severance benefits (benefits that are not consistent with the approved laboratory and contractor policies and contract requirements).
- (8) Approve/disapprove and submit, as appropriate, General Plans to the Secretary for approval/disapproval and further submission to Congress.
- (9) Ensure the Heads of Departmental elements in the field and COs are not approving 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, unless approved by the Secretary or Deputy Secretary.
- (10) Either disapprove or provide the Secretary or Deputy Secretary, as appropriate, with a recommendation whether to approve contractor requests to provide involuntary separating contractor employees pay in lieu of notice in excess of two weeks.
- (11) Absent Secretarial approval, ensure the Heads of Departmental elements in the field and COs do not approve contractor requests for reimbursement of early retirement incentives funded through contractor pension plans.
- (12) In coordination with the HCA or the Heads of Departmental elements in the field, as appropriate, 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, unless the rehired individual repays all or a pro-rata amount of the severance, or obtains a waiver from the DOE Office having oversight for the contractor who released the individual.
- (13) In coordination with the HCA or the Heads of Departmental elements in the field, as appropriate, review Specific Plans for use of 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 Contractor Human Resources 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 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.
 - (6) Upon request, review and make recommendations on contractor WARN Act notices.
 - (7) Upon request of the contractor, review and provide feedback on contractor adverse impact analyses. If the contractor seeks Departmental approval of the adverse impact analysis, approve/disapprove. Notify field counsel and COs/designees of the approval/disapproval.
- 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 make recommendations to the Under Secretaries/designees on General Plans.
 - (3) Review and make recommendations on Specific Plans submitted to Under Secretaries/designees.
 - (4) Review annual data collection reported in iBenefits by each Field Office on actual and planned contractor workforce restructuring actions through an annual data call.
- e. HCA or Heads of Departmental Elements in the Field, as appropriate.
- (1) Oversee the management of contractor 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 amended from time to time.
 - (2) Prepare General Plans and updates in accordance with this chapter.
 - (3) In coordination with the CO/designee, provide 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/designee, review and make recommendations concerning contractor Specific Plans and obtain approvals from senior

Departmental managers as set forth in this Chapter and Department policies as revised from time-to-time.

- (5) Submit the contractor's final Specific Plan to the appropriate Under Secretary/designee.
- (6) In coordination with the CO/designee disapprove or obtain requisite approvals for:
 - (a) 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;
 - (b) Contractor requests to provide involuntary separating contractor employees pay in lieu of notice in excess of two weeks; and
 - (c) Contractor requests for reimbursement of early retirement incentives funded through contractor pension plans.
- (7) In coordination with the appropriate Under Secretary/designee, 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, unless the rehired individual repays all or a pro-rata amount of the severance, or obtains a waiver from the DOE Office having oversight for the contractor who released the individual.
- (8) In coordination with the appropriate Under Secretary/designee review Specific Plans for use of recruitment, retention, and best practices to ensure continued availability of the critical workforce knowledge, skills, and abilities required for the Department's missions.
- (9) In coordination with the CO/designee, submit for approval/disapproval to the Office of the Assistant General Counsel for Contractor Human Resources or NNSA-GC any contractor request to use any waiver of claims other than the model waiver and release of claims developed by the Department for use in an involuntary contractor workforce restructuring action.

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 (50 U.S.C. 2704 (2017)).

- c. 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 Separated Employees
 - (5) Self-Select Application
 - (6) Involuntary Separation Plan Template
 - (7) Separation Programs Releases and Waivers
 - (8) Adverse Impact Analysis Guidance
 - (9) Involuntary Separation Program General Release and Waiver
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 Contractor Human Resources 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 Contractor Human Resources 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 Acquisition Management at (202) 287-1330.