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SANTA BARBARA • SANTA CRUZ

OFFICE OF THE SENIOR VICE PRESIDENT –
BUSINESS AND FINANCE

OFFICE OF THE PRESIDENT
1111 Franklin Street, 5th Floor
Oakland, California 94607-5206

August 7, 1998

Ronna Promani, Contracting Officer
U.S. Department of Energy
Oakland Operations Office
1301 Clay Street, Room 700N
Oakland, CA 94612

Tim Coalson, Contracting Officer
U.S. Department of Energy
Albuquerque Operations Office
P.O. Box 5400
Albuquerque, NM 87185-5400

Re: Implementation of DOE Order 350.1 Contractor Human Resource Management Programs Under Contracts W-7405-ENG-36 and -48, and DE-AC03-76SF00098

Dear Ms. Promani and Mr. Coalson:

Last September, in a spirit of partnership and as part of the baselining of the DOE directives for the contracts extension effective October 1, 1997, the University accepted DOE Order 350.1 onto the List of Applicable Directives notwithstanding some concerns regarding implementation and conflicts with other provisions of the contract. Clause 5.5(b) acknowledges that adding directives to the List cannot, in and of itself, modify other provisions of the contract. In fact, in accordance with Clause 1.2, directives have the lowest order of precedence as they are "other documents." In light of this, the University conducted a review of DOE Order 350.1 to clarify the points of conflict and to report them to you.

In the course of the review we were struck by a potential weakness in the DOE directives system that is stretched to the breaking point when, as in DOE Order 350.1, DOE abandons a focus on results in favor of a focus on prescription. Thus you have the anomaly of the Procurement Executive appropriately approving contracts with prime and appendix provisions which focus on results while a functional area within DOE issues a directive that conflicts with the approved contract. This puts significant pressure on the contracting officer to communicate to functional specialists where and how to depart from their Headquarters direction in order to conduct oversight activities

consistent with the contract entered into by the contracting officer on behalf of all of DOE. This seems to run counter to DOE's objectives and we can only encourage the Department to align behind results-oriented contracting.

Attached is a table outlining the specific results of the analysis. The analysis classifies the provisions of the nine contractor requirements documents (CRDs) in one of four ways: (1) the specific provisions of the CRD do not relate to an activity conducted by the contractor (either not at all or only by subcontract); (2) the entire substance or specific provisions of the CRD for the particular topic have been superseded by other terms of the prime contract and/or an appendix; (3) specific provisions of the CRD are redundant to, but not in conflict with, other terms of the prime contract and/or an appendix; or (4) specific provisions of the CRD are new requirements to be implemented.

As a result of the analysis, the University has concluded that the CRDs relating to Compensation, Pensions, and Benefits have been superseded by the expectations surrounding, and terms of, specifically negotiated provisions of the prime contract and Appendix A, and the CRD relating to Labor Standards is not applicable as all of the activities involve subcontracting. Consequently oversight activities for Compensation, Pensions, and Benefits are to be guided by the contract provisions, not DOE Order 350.1, and oversight activities for Labor Standards are to be conducted through the laboratories' purchasing programs, not human resources.

In addition, the CRD for Labor Relations has redundancies to the prime contracts and Appendix A. The CRD language also assumes the existence of a legal (statutory) structure for collective bargaining, which is not the case at LANL. The University is in the process of implementing policies and practices intended to confer equivalent rights to employees to those arising from collective bargaining statutes. In the absence of a statutory framework there are a variety of alternatives for the Lab in how to carry out the requirements of the CRD. DOE concurrence will be obtained for those practices proposed to be adopted, after employee comment, that involve new costs to the government that are voluntarily incurred as opposed to those typically incurred by contractors under collective bargaining statutes. Such DOE concurrence will be evidence of compliance with the CRD.

The CRD for Reductions in Contractor Employment is already covered in the prime contract by Clause 9.14, and for LBNL, the employment preference is specifically excluded from Clause 9.14 because it is not a Defense Nuclear facility as defined in Section 3161 of the National Defense Authorization Act for Fiscal Year 1993.

The CRDs for Contractor Workplace Substance Abuse Programs, and Employee Assistance Programs are noted as redundant and covered by clauses in the prime contracts, as is the CRD for Risk Management and Liability Programs, except for the requirement of annual experience reports for each type of liability per paragraph 2.

For those requirements that are designated as merely redundant to the contract, we would not expect any change in the current manner of implementation unless the contract provision is new (added in the 1997 extension) or there is a demonstrable weakness in the implementation. We do not support, nor do we believe the contracting

officer supports, change for change sake alone. Therefore, even where there is a new non-redundant requirement pursuant to Clause 5.5, we hope that every effort will be made, in partnership with DOE, to avoid non-value added activities.

If you have any questions regarding this letter, please call me at (510) 987-0800.

Sincerely,

**original signed 8/7/98 by Sandy Vinson
for
Ronald A. Nelson
Director, Contracts Management
Laboratory Administration Office**

Attachment a/s

cc: Art Garcia, LANL
John Gilpin, LLNL
Gloria Kwei, LLNL
Karl Olson, LBNL
Joe Ortega, LANL
Suzanne Stroh, LBNL
Steve Yabroff, LLNL
Sam Gibson, UCLAO
Jeannette Harroun, UCLAO
J. Buck Koonce, UCLAO
Sandy Vinson, UCLAO

UC Review of DOE Order 350.1 Contractor Human Resource Management Programs

CRD Topic	Paragraph	Comment
LABOR RELATIONS		
	<p>1. Develop and implement labor relations policies that will promote orderly collective bargaining relationships, equitable resolution of disputes, efficiency and economy in operations, and the judicious expenditure of public funds</p>	<p>Clause 9.12</p> <p>Redundant for LBNL and LLNL.</p> <p>See note in cover letter re: LANL status.</p>
	<p>2. Consult with the contracting officer prior to and during the course of negotiations with labor unions, and during the term of resultant contracts, on economic issues and other matters that have a potentially significant impact on work rules, make-or-buy decisions, or other matters that may cause a significant deviation from past customs or practices.</p>	<p>App A Sec VII(a)</p> <p>Redundant</p> <p>The term “consult” means advising DOE of anticipated plans in time to permit DOE to make any objections and concerns known before an action is taken by UC.</p>
	<p>3. Provide the contracting officer with a settlement summary within 30 to 60 days after formal ratification of the agreement, using the “Report of Settlement” form.</p>	<p>App A Sec VII(a) Clause 3.1(e)</p> <p>Redundant; however time standard and form may be new</p>
	<p>4. Immediately advise the DOE Field Element of the following: a. Possible strike situations or other job actions affecting the continuity of operations; in the event of work stoppage, the contractor is responsible for completing Bureau of Labor Statistics (BLS) Form 817 and forwarding</p>	<p>Clause 9.1</p> <p>Redundant; however form may be new</p>

UC Review of DOE Order 350.1 Contractor Human Resource Management Programs

CRD Topic	Paragraph	Comment
	two copies to the DOE Field Element.	
	b. Formal action by the National Labor Relations Board or the National Mediation Board (copies of the Board correspondence shall be provided to the Field Element).	Clause 4.1 (b) Redundant
	c. Recourse to procedures under the Labor-Management Relations Act of 1947, as amended, or any other federal or state law.	Clause 4.1 (b) Redundant
	d. Any grievance scheduled for arbitration under a collective bargaining agreement that has the potential for significant economic or other impact.	App A Sec VII(b)(1) Redundant Reporting will not be done under \$60K threshold
	e. Other significant issues that may involve review by other federal or state agencies.	Clause 4.1 (b) Redundant
LABOR STANDARDS	All	UC does not perform work subject to Davis-Bacon (DB) and the Service Contract Act (SCA). However, all relevant subcontracts are subject to DB and SCA requirements. See Clauses 8.5 and 8.12.
REDUCTIONS IN CONTRACTOR EMPLOYMENT		

UC Review of DOE Order 350.1 Contractor Human Resource Management Programs

CRD Topic	Paragraph	Comment
	<p>1. Contractors will regularly analyze work force requirements consistent with mission and will develop appropriate work force transition strategies coinciding with restructuring objectives consistent with DOE Interim Planning Guidance for Contractor Work Force Restructuring, Federal Register, Vol. 61, No. 44, pp. 8593-8602 (March 5, 1996) as may be amended from time to time.</p>	<p>Clause 3.1(e) Clause 9.14 Redundant</p>
	<p>2. Where a change in the nature or structure of a contractor's work force may affect 100 or more employees at a site within a 12-month period, the contractor shall provide such information as directed by the contracting officer or his designee to enable compliance with section 3161 of the National Defense Authorization Act for Fiscal Year 1993; DOE Interim Planning Guidance for Contractor Work Force Restructuring Federal Register vol. 61, no. 44, pp 8593-8602 (March 5, 1996) , as may be amended from time to time; and Chapter III of DOE Order 350.1.</p>	<p>Clause 3.1(e) Clause 9.14 Redundant</p>
	<p>3. Provide notifications to employees, the public, and stakeholders in accordance with a schedule approved by the contracting officer or his designee.</p>	<p>Clauses 9.14 and 6.2 (b) (LBNL and LLNL) Clauses 9.14 and 2.8 (b) (LANL) Redundant</p>
	<p>4. Extend preferences, to the extent practicable, in filling vacancies in their work force to employees terminated from a defense nuclear facility. Guidance for this program is contained in section V of Department of Energy Interim Planning Guidance for Contractor Work Force Restructuring, Federal Register Vol. 61, No. 44, pp. 8593 - 8602 (March 5, 1996), as may be amended from time to</p>	<p>Clause 9.14 (b) (LLNL and LANL) Redundant Employment preference specifically excluded from</p>

UC Review of DOE Order 350.1 Contractor Human Resource Management Programs

CRD Topic	Paragraph	Comment
	time.	Clause 9.14 of the LBNL contract because it is not a facility within the terms of Section 3161.
	5. Notify the contracting officer or his designee of any work force reduction that involves the involuntary separation of 10 or more employees at least 10 work days prior to such separations. The notification shall include affected job classifications, numbers of employees affected, and actions taken to assist the employees find other employment or otherwise lessen the impact of the involuntary separation.	New
COMPENSATION	All	Compensation policies governed by Clause 3.2(d)(14) and Appendix A sections I(a), III, IV, VIII through XII; and Clause 9.13.
EMPLOYEE BENEFITS	All	Benefits policies governed by Clause 3.2(d)(14) and Appendix A Sections I(a) and V.
DOE CONTRACTOR PENSION PLANS	All	Pension policies governed by Clause 3.2(d)(14) and Appendix A Sections I(a) and V; Clauses 3.14 and 3.15.
RISK MANAGEMENT AND LIABILITY PROGRAMS		

UC Review of DOE Order 350.1 Contractor Human Resource Management Programs

CRD Topic	Paragraph	Comment
	<p>1. BASIC REQUIREMENTS.</p> <p>a. Maintain commercial insurance or self-insurance programs required by law, regulation, and the requirements of the contract.</p> <p>b. Contractors shall not purchase insurance to cover public liability for nuclear incidents without DOE authorization. (See DEAR 950.7010 and 970.2870.)</p> <p>c. Demonstrate that insurance program costs comply with cost limitations and exclusions at FAR 31.205.19, INSURANCE AND INDEMNIFICATION.</p> <p>d. Demonstrate that the liability insurance program is being conducted in the government's best interest and at reasonable cost.</p> <p>e. Provide current copies of all insurance policies or insurance arrangements, throughout the contract term, to the contracting officer.</p> <p>f. Ensure that self-insurance programs include the following elements.</p> <p>(1) Criteria required to justify self-insurance costs. (See FAR 28.308, SELF-INSURANCE.)</p> <p>(2) Demonstration of full compliance with applicable state and federal regulations and related professional administration necessary for participation in alternative insurance programs.</p> <p>(3) Safeguards to ensure that third party claims and claim settlements are processed in accordance with approved procedures.</p>	<p>Clause 4.1 and App A Sec X</p> <p>Redundant</p>
	<p>2. Plan Experience Reporting.</p> <p>a. Provide the contracting officer with annual experience reports for each type of liability (i.e., automobile and commercial general liability) listing the following for each category.</p> <p>(1) The amount paid for each claim.</p> <p>(2) The amount reserved for each claim.</p>	<p>New</p>

UC Review of DOE Order 350.1 Contractor Human Resource Management Programs

CRD Topic	Paragraph	Comment
	<p>(3) The direct expenses related to each claim. (4) A summary for the year showing total number of claims. (5) A total amount for claims paid. (6) A total amount reserved for claims. (7) The total amount of direct expenses. b. When applicable, separately identify total policy expenses (e.g., commissions, premiums, and costs for claims servicing) and major claims during the year including those expected to become major claims (e.g., those valued at \$100,000 or greater). c. Additional claim and financial experience data may be requested from the policyholder on a case by case.</p>	
	<p>3. TERMINATING OPERATIONS. Responsible officials shall ensure: a. That the government’s interests are protected through proper recording of cancellation credits due to policy terminations and/or experience rating. b. Continuing policy administration requirements are identified and provided by the terminated contractor, another DOE contractor, or a DOE Operations/Field Office. c. DOE and any self-insured contractor reach agreement on handling and settlement of claims incurred but not reported at time of contract termination; otherwise, the contractor shall retain this liability; and d. Insurance policies are transferred to DOE through an “assignment” of policies after all claims are closed.</p>	<p>Clauses 3.5 (f) and 13.2</p>
	<p>4. SUCCESSOR CONTRACTOR OR INSURANCE POLICY CANCELLATION. Unless otherwise determined to be in the government’s best interests, contractors shall ensure: a. That insurance policies of a former DOE contractor are assumed by the successor;</p>	<p>Not applicable to an incumbent contractor that is not a successor contractor.</p>

UC Review of DOE Order 350.1 Contractor Human Resource Management Programs

CRD Topic	Paragraph	Comment
	<p>b. the contractor protects the government’s interests, through proper recording of all cancellation credits, due to policy terminations and/or experience rating;</p> <p>c. the successor contractor assumes any continued claims administration relating to the former DOE contractor operation;</p> <p>d. incurred but not reported claims relating to the former DOE contractor's operation are reported to and handled by the appropriate insurer;</p> <p>e. successor DOE contractors obtain the written approval by the contracting officer for any change in program direction; and</p> <p>f. insurance coverage replacement is maintained as required and/or approved by the contracting officer.</p>	
<p>CONTRACTOR WORKPLACE SUBSTANCE ABUSE PROGRAMS</p>	<p>All</p>	<p>Clause 9.8</p> <p>Redundant</p>
<p>EMPLOYEE ASSISTANCE PROGRAMS</p>	<p>All</p>	<p>EAP generally governed by Clause 3.2 (d)(14) and Appendix A Sections I (a) and XIV (d). Portions of the EAP program are approved by DOE as required to implement the provisions of Clause 9.8 that extend beyond programs implemented under UC policies.</p>