

NNS-H-1026 WORK FORCE TRANSITION, MANAGEMENT, PAY AND BENEFITS (MAY 2011)

(a) Pay:

(1) Except as otherwise provided herein, employees of the incumbent contractor who are members of the collective bargaining unit on the date of contract award and individuals who are hired by the successor contractor will, through the term of the existing Collective Bargaining Agreement (CBA), be provided the employee pay and benefits as specified in the CBA listed at Part III, Section J, Attachment J-5.

(2) Wages and fringe benefits paid to employees represented by the collective bargaining unit shall not be less than those provided in the CBA listed in Part III, Section J, Attachment J-5 and such costs shall be included in the fixed billing rates set forth in clause NNS-B-1014, Price and Rate Schedules. The reasonable amounts of all other costs, such as expenses relating to the grievance processing and settlements, arbitration and arbitration awards and other costs and expenses incurred pursuant to the provision of the CBA and revisions thereto listed in Section J, are allowable as an indirect cost component of the fixed billing rates set forth in clause NNS-B-1014. Wages and fringe benefits paid to service employees who are not included in the bargaining unit shall not be less than those set forth in Service Contract Wage Determination, No. 05-2331 found in Part III, Section J, Attachment J-4. Any "sign-on" bonuses offered or paid to employees of the incumbent as employment inducements is unallowable and shall not be included in the fixed billing rates set forth in clause NNS-B-1014.

(3) Vacation Costs:

- (i) Under the previous contract, accrued vacation benefits would be reimbursed when used rather than when earned. As such, the costs of vacation benefits earned but not used were never reimbursed by NNSA. Therefore, the Contractor is authorized to include in its monthly invoice as an Other Direct Cost, the amount expended for reimbursing incumbent contractor employees for using those vacation benefits earned but not used on the previous contract, when vacation time is used under the current contract. All other vacation costs shall be included as a fringe component of the fixed labor billing rates.
- (ii) The Contractor shall carry-over the length of service credit and leave balances accrued as of the date of the Contractor's assumption of contract performance.

(4) Severance Pay:

- (i) Severance pay is not payable to an employee performing work under this Contract if the employee:
 - (A) Voluntarily separates, resigns, or retires from employment;
 - (B) Is offered comparable employment with a successor/replacement contractor;
 - (C) Is offered comparable employment with a parent or affiliated company;
 - (D) Receives an offer to transfer from one DOE/NNSA site to another DOE/NNSA site with comparable benefits; or
 - (E) Is discharged for cause.

- (ii) An employee of the Contractor who does not receive an offer from the successor contractor at the end of the period-of-performance will be paid severance pay by the Contractor.
- (iii) Prorated repayment of severance pay shall be required if an employee receives severance and is subsequently re-employed by the Contractor with comparable pay and benefits. The amount of pro rata repayment shall be based on the length of time between separation and new hire date.
- (iv) Allowable severance pay will be reimbursable as an Other Direct Cost to the extent approved by the Contracting Officer.

(b) Benefits:

(1) Existing Defined Benefit Pension Plans - The cost of contributions to the Pension Plan for the Non-bargained Employees of Wackenhut Services, Inc.–Las Vegas and the cost of contributions to the Independent Guard Association of Nevada Pension Trust Funds (collectively referred to as the “existing defined benefit pension plans”) shall be excluded from the fixed hourly rate. The aggregate annual contributions incurred under the terms of the existing defined benefit pension plans are allowable as an Other Direct Cost to the extent approved by the Contracting Officer.

The Contractor shall become a sponsor of the existing defined benefit pension plans sponsored by the incumbent contractor with responsibility for management and administration of the plans. The Contractor shall be responsible for funding, administering, and maintaining the qualified status of all pension and benefit plans. All matters relating to existing defined benefit pension plans will be governed by the applicable provisions the Internal Revenue Code (IRC), the Employee Retirement Act of 1974 (ERISA), the Pension Protection Act of 2006 (PPA), Part 31 of the Federal Acquisition Regulation (FAR) and any other applicable laws.

- (i) Changes or amendments to any of the existing defined benefit pension plans or to policies affecting any such plans, or to any underlying trust documents that affect such policies or plans, shall be consistent with applicable law, terms of the respective plans with respect to the procedures for amending such plans, and the terms of this contract and shall be made only with the express, advance, written consent of the DOE/NNSA Contracting Officer (CO). In collective bargaining, the Contractor shall make no commitments nor enter into any agreements to change any pension or benefit plans or policies affecting such plans without the prior approval of the DOE/NNSA CO. Further, the Contractor shall request the DOE/NNSA CO approval in advance of any early-out program, window benefit, disability program, plan-loan feature, employee contribution refund, asset reversion, or incidental benefit. Costs of changes or amendments to any of the existing defined benefit pension plans are unallowable until specifically approved by the Contracting Officer.
- (ii) No presumption of allowability will exist when the Contractor implements a new defined benefit pension plan or makes changes to existing defined benefit pension plans until the Contracting Officer makes a determination of cost allowability for reimbursement for new or changed defined benefit pension plans. Contractors shall submit new benefit plans and changes to plan design or funding methodology with justification to the Contracting Officer for approval. The justification must:

- (A) Provide the dollar estimate of savings or costs and
- (B) Provide the basis of determining the estimated savings or cost.

(2) The Contractor shall conduct an Employee Benefits Value Study (Ben Val) for non-bargaining unit employees and submit it to the Contracting Officer no later than 60 days after the date of the effective contract. A Ben Val is an actuarial study of the relative value (RV) of the benefits programs offered by the Contractor to employees measured against the RV of benefit programs offered by at least 15 comparator companies approved by the Contracting Officer. The Ben Val shall include major non-statutory benefit plans offered by the Contractor, including qualified defined benefit (DB) and/or defined contribution (DC) retirement and capital accumulation plans and death, disability, health, and paid time off welfare benefit programs. To the extent that the Ben Val does not address post retirement benefits other than pensions, the Contractor shall provide a separate cost and plan design data comparison for the post retirement benefits other than pensions using external benchmarks derived from nationally recognized and Contracting Officer approved survey sources.

(i) An Employee Benefits Value Study for non-bargaining unit employees must be completed every two years.

(A) With respect to the results of the Ben Val for non-bargaining unit employees, when the net benefit value of the benefits provided by the Contractor exceeds the net benefit value of the benefits provided by the comparator group by more than five percent and the net benefit value of the retirement benefits is greater than or equal to 100%, the Contractor shall submit a corrective action plan no later than 90 days after the Ben Val is provided to the Contracting Officer. If a corrective action plan is necessary, it must propose changes to the terms of the existing defined benefit pension plans in lieu of proposing changes to other benefit changes that may lower the relative value of the overall benefits package of the Contractor. The Contractor and NNSA may agree to contract modifications necessitated by any changes to the existing defined benefit pension plans.

(ii) A Ben Val for bargaining unit employees must be completed 6 months prior to the expiration of the collective bargaining agreement.

(A) Within two years of Contracting Officer approval of the Contractor's corrective action plan for non-bargaining unit employees, or pursuant to negotiation of the subsequent collective bargaining agreement for bargaining unit employees, the Contractor shall align employee benefit programs with the benefit value as approved by the Contracting Officer.

(iii) In addition, the Contractor shall submit an updated Ben Val to the Contracting Officer for approval prior to the adoption of any change to any existing defined benefit pension plan.

(3) Because the Contractor is responsible for administering and maintaining the qualified status of all pension and benefit plans, the Contractor must submit annual actuarial and employer certification as the sponsoring employer and participating employer in the pension plans demonstrating full compliance with the IRC and ERISA requirements including, but not limited to, any applicable non-discrimination testing.

(4) The Contractor must make annual contributions to the existing defined benefit pension plans in amounts necessary to ensure that the plans are funded to meet the annual minimum required contributions under ERISA, as amended by PPA and any subsequent amendments to ERISA. The Contractor shall notify the Contracting Officer at least sixty (60) days prior to the date a payment is due if the payment of the minimum required contribution will result in benefit restrictions to plan participants. Reimbursement above the annual ERISA required minimum contribution will require prior approval of the Contracting Officer.

- (i) The contributions will be based on the actuarial valuation, as determined under ERISA, as amended from time to time, for the most recent plan year for each fund. At the Contracting Officer's request, the Contractor shall provide an annual itemization of costs planned to be incurred for administration of each defined pension plan. The defined pension plan funds, not the Contractor, shall be liable for costs incurred in the course of administration.
- (ii) Actuarial gains and losses developed by annual valuations will be taken into account for purposes of establishing contributions to each pension plan as soon as reasonably possible and consistent with requirements of the Employee Retirement Income Security Act (ERISA) of 1974, amendments thereto, and any other applicable laws.

(5) The Contractor will provide to the DOE/NNSA Contracting Officer copies of the following annual reports:

- (i) Actuarial Valuation Reports: The annual actuarial valuation report for each DOE-reimbursed pension plan. When a pension plan is commingled, the Contractor shall submit separate reports for the DOE/NNSA's portion and the plan total.
- (ii) Forms 5500: Copies of IRS Forms 5500 with Schedules for each DOE/NNSA-funded pension plan.
- (iii) Forms 5300: Copies of all forms in the 5300 series submitted to the IRS that document the establishment, amendment, termination, spin-off, or merger of a plan.

(6) If the Contractor and the DOE/NNSA agree to terminate a defined benefit pension plan, the provisions of Sections (8) and (9) below will apply.

(7) No amendment to an existing defined benefit pension plan shall result in allowable costs under this contract if the adoption date of such amendment is less than twelve (12) months before the termination or expiration date of the Contract, unless such amendment is required by law or if the Contracting Officer has provided approval.

(8) The Contractor shall not terminate any pension or other benefit plan without notifying the Department at least 60 days prior to the scheduled date of plan termination and receiving approval from the Contracting Officer.

- (i) To the extent possible, the Contractor shall satisfy plan liabilities to plan participants by the purchase of annuities through competitive bidding on the open annuity market. Insurance companies bidding for this business shall satisfy Department of Labor standards. The Contractor shall apply the assumptions and termination procedures of the Pension Benefit Guaranty Corporation.
- (ii) Funds to be paid or transferred to any party as a result of settlements relating to pension plan termination or reassignment shall accrue interest from the effective date of termination or reassignment until the date of payment or transfer. The rate of accrued interest shall be negotiated in good faith between the parties to the contract.
- (iii) If ERISA or IRC rules prevent a full transfer of excess NNSA reimbursed assets from the terminated plan, the contractor shall pay any deficiency directly to the DOE/NNSA according to a schedule of payments to be negotiated by the parties.
- (iv) On the same day as the contractor notifies the IRS of the plan termination, all the DOE/NNSA assets will be placed in a high-yield, fixed-income portfolio until full disposition of the terminating plan's liabilities. The portfolio shall be rated no lower than Standard & Poor's "AA."
- (v) The DOE/NNSA liability to a commingled pension plan shall not exceed that portion which corresponds to participants' service accrued for their work under a DOE/NNSA contract. The DOE/NNSA shall have no other liability to the plan, to the plan sponsor, or to the plan participants.
- (vi) After all liabilities of the plan are satisfied the contractor shall return to the DOE/NNSA an amount equaling the asset reversion from the plan termination and any earnings which accrue on that amount because of a delay in the payment to the DOE/NNSA. Such amount and such earnings shall be subject to a DOE/NNSA audit. To affect the purposes of this paragraph, the DOE/NNSA and the contractor may stipulate to a schedule of payments.

(9) Post Contract Responsibilities for Pension and Other Benefit Plans:

- (i) If this Contract expires or terminates and the DOE/NNSA has awarded a contract under which the new contractor becomes a sponsor and assumes responsibility for management and administration of the pension or other benefit plans covering active or retired contractor employees with respect to service, the Contractor shall cooperate and transfer to the new contractor its responsibility for sponsorship, management and administration of the plans consistent with direction from the Contracting Officer. If a comingled plan is involved, the contractor shall:

- (A) Spin off the DOE/NNSA portion of any commingled plan that provides benefits for employees working at the DOE/NNSA facility into a separate plan. The new plan shall provide benefits similar to those provided by the commingled plan and shall carry with it the NNSA assets on an accrual basis market value, including the DOE/NNSA assets that have accrued in excess of the DOE/NNSA liabilities.
 - (B) Bargain in good faith with the DOE/NNSA or the successor contractor to determine the assumptions and methods for establishing the liabilities involved in a spinoff. The DOE/NNSA and the contractor(s) shall establish an effective date of spinoff. On the same day as the contractor notifies the IRS of the spinoff, all DOE/NNSA assets assigned to a spun-off plan shall be placed in a high-yield, fixed income portfolio until the successor trustee is able to assume stewardship of those assets. The portfolio shall be rated no lower than Standard & Poor's "AA."
- (ii) If this Contract expires or terminates and the DOE/NNSA has not awarded a contract to a new contractor under which the new contractor becomes a sponsor and assumes responsibility for management and administration of the Plans, or if the Contracting Officer determines that the scope of work under the Contract has been completed (any one such event may be deemed by the Contracting Officer to be "Contract Completion" for purposes of this clause), whichever is earlier, and notwithstanding any other obligations and requirements concerning expiration or termination under any other clause of this Contract, the following actions shall occur regarding the Contractor's obligations regarding the Plans at the time of Contract Completion:
- (A) Subject to paragraph (B) immediately below, and notwithstanding any legal obligations independent of the Contract the Contractor may have regarding responsibilities for sponsorship, management, and administration of the Plans, the Contractor shall remain the sponsor of the Plans, in accordance with applicable legal requirements.
 - (B) The parties shall exercise their best efforts to reach agreement on the Contractor's responsibilities for sponsorship, management and administration of the Plans prior to or at the time of Contract Completion. However, if the parties have not reached agreement on the Contractor's responsibilities for sponsorship, management and administration of the Plans prior to or at the time of Contract Completion, unless and until such agreement is reached, the Contractor shall comply with written direction from the Contracting Officer regarding the Contractor's responsibilities for continued provision of pension and welfare benefits under the Plans, including but not limited to continued sponsorship of the Plans, in accordance with applicable legal requirements. To the extent that the Contractor incurs costs in implementing direction from the Contracting Officer, the Contractor's costs will be reimbursed pursuant to applicable Contract provisions.

(c) Labor Relations: (Also refer to the clause entitled "Collective Bargaining Agreements-Protective Services" (DEAR 952.237-70) contained in Section I)

- (1) The Contractor will respect the rights of employees (1) to organize, form, join or assist labor organizations, bargain collectively through representatives of the employees own choosing, and engage in other protected concerted activities for the purpose of collective bargaining, and (2) to refrain from such activities. The Contractor shall comply with the National Labor Relations Act (NLRA) and any applicable state labor laws.
- (2) To the extent required by law, the Contractor shall give notice to any lawfully designated representative of its employees for purposes of collective bargaining agreement and, upon proper request, bargain to good faith impasses or agreement, or otherwise satisfy applicable bargaining.
- (3) The Contractor shall promptly advise the Contracting Officer of, and provide all appropriate documentation regarding, any labor relations developments that involve or appear likely to involve:
 - (i) Possible strike situations affecting the facility;
 - (ii) Formal action by the National Labor Relations Board (NLRB) including but not limited to issuance of a Complaint against the Contractor. Copies of complaints, settlement agreements, judgments and any other documents issued in connection with Contractor action with respect labor practices to shall be provided to the Contracting Officer;
 - (iii) Recourse to procedures under the Labor-Management Act of 1947, as amended, or any other Federal or State Labor Law;
 - (iv) Any grievance scheduled for arbitration under any collective bargaining agreement that has the potential for significant economic or other impact as well as the decision of the arbitrator; or
 - (v) Other significant issues that may involve review by other federal or state agencies.
- (4) The Contractor shall meet with the Contracting Officer or designee(s) for the purpose of reviewing the Contractor's bargaining objectives including economic parameters, prior to negotiation of any collective bargaining agreement, extension or revision thereto. During the collective bargaining process, the Contractor shall notify the Contracting Officer before submitting or agreeing to any collective bargaining proposal which could change costs under this Contract or which could involve other items of special interest to the Government. During the collective bargaining process, the Contractor shall obtain the approval of the Contracting Officer in advance before proposing or agreeing to changes in any pension or other benefit plans.
- (5) The Contractor shall provide an electronic copy of the bargaining agreement to the Contracting Officer no later than 30 days after formal ratification. The Contractor shall provide the "Report of Settlement" 30 days after formal ratification using the Work Force Information System (WFIS).

- (6) Contractor shall notify the Contracting Officer in a timely fashion of all labor relations issues including 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.

(d) Workforce Restructuring: The Contractor has authority to conduct employee separations involving 100 employees or less in a 12-month period without prior approval from the Contracting Officer. At least fifteen workdays prior to implementing the separations, the Contractor shall notify the Contracting Officer. For separations involving more than 100 employees, the Contractor will need the approval of the NSO Site Office Manager and the Contracting Officer.

(e) Pension Management Plan:

The Contractor shall submit a plan for management and administration (Pension Management Plan) for each defined benefit pension plan (Plan) for which the Department has a continuing obligation to reimburse pension contributions that is consistent with the terms of this Contract and which includes estimated assets, estimated liabilities, and estimated contributions and the prior year's actuarial valuation report annually on January 30.

(1) The Pension Management Plan shall include:

- (i) The Contractor's best estimate of the contributions which it will be legally obligated to make to the Plan(s), beginning with the required contributions for the current fiscal year, based on the latest actuarial valuation, and continuing for the following four fiscal years. This estimate will be based upon compliance with all applicable legal requirements relating to the determination of contributions and upon the assumptions set out in the Plan document(s). All contribution calculations should reflect payments made during DOE fiscal years, beginning October 1 through September 30, and the next succeeding four fiscal years. The Contractor shall include a summary of the key actuarial assumptions used to determine the required contribution. All estimates must be based upon the most recently available asset information for the Plan. For example, for a Plan with a July 1 valuation date, project the July 1, value of assets for the current year to be used in the calculation from the actual January 1, value of assets from the same year.
- (ii) If the actuarial valuation submitted pursuant to the annual Pension Management Plan update indicates that the sponsor of the Plan must impose benefit restrictions, the Contractor shall provide the following information:
- (A) The type of benefit restriction that will take place;
 - (B) The number of Contractor employees that potentially could be impacted and the nature of the restriction (e.g., financial impact) by imposition of the required benefit restriction;
 - (C) The amount of money that would need to be contributed to the Plan and the timing of such contribution to avoid legally required benefit restrictions; and
 - (D) A recommendation regarding whether the additional money should be contributed to the Plan and the rationale for the recommendation.

(2) A detailed discussion of how the Contractor intends to manage the Plan(s) to maximize contribution predictability (i.e. forecasting accuracy) and to contain current and future costs, to include the rationale for selection of all Plan assumptions (i.e., actuarial experience studies) that determine the required contributions and which impact the level and predictability of required contributions. As part of the Contractor's plan to maximize contribution predictability, the Contractor may propose funding strategies other than ERISA minimums for the DOE/NNSA's consideration and approval. The Contractor shall submit the following for the DOE/NNSA to consider in deciding on the alternate funding strategy:

- (i) Identify whether the current year additional amount can be absorbed within the current operating budget.
- (ii) Discuss the integration of Plan's funding strategy and investment strategy taking into consideration the plan's demographic profile, liability duration, and impact of current year funding decisions on future year contribution requirements.
- (iii) Discuss the strategy for achieving fully funded status and protecting against erosion of the Plan's funded status.
- (iv) Discuss the strategy for specifically protecting any pension funding contributions reimbursed in excess of the minimum required contribution against the risk of significant loss.
- (v) Discuss whether the plan has a prefunding or funding standard carryover balance that could be used to improve the plan's AFTAP without requiring additional contributions. Provide a rationale regarding the recommended use of the available balance(s).

(3) An assessment to evaluate the effectiveness of the Contractor's Plan(s) investment management/results. The assessment must include at a minimum: a review and analysis of Plan investment objectives and asset allocations; results of the most recent asset liability study and investment policy review; the strategies employed to achieve the Plan's investment objectives; and the methods used to monitor execution of those strategies and the achievement of the investment objectives. The Contractor shall also identify its plans, if any, for revising any aspect of its Pension Management Plan based on the results of the review.

Within thirty (30) days after the date of the submission, appropriate Contractor representatives will meet with the Contracting Officer and other DOE/NNSA representatives to discuss the Contractor's proposed Pension Management Plan. The Contractor must be prepared to discuss any differences between the prior fiscal year's estimated pension contributions for future fiscal years and the most recent estimated pension contributions for future fiscal years and the rationale for any such discrepancies. In addition, discrepancies between the actual contributions made for the most recent fiscal year preceding the meeting and the estimated contributions for that fiscal year and the rationale for any such discrepancies, and funding strategies for the Plan will be discussed.

(f) The above clause, as all other clauses, is not enforceable by, or for the benefit of, and shall create no obligation to any person or entity other than the contracting parties.

(End of clause)