The Secretary of Energy
Washington, DC 20585
November 4, 2011

MEMORANDUM FOR THOMAS P. D'AGOSTINO
UNDER SECRETARY FOR NUCLEAR SECURITY/
ADMINISTRATOR OF THE NATIONAL NUCLEAR SECURITY
ADMINISTRATION

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FROM: STEVEN CHU

SUBJECT: Policy Concerning Contractor Labor Relations

This memorandum sets forth Department policy regarding contractor labor relations.

The Department's contractor work force is critical to the success of the Department's missions. Nonetheless, the Department is not the employer of the Department's contractor work force. Wages, hours, and working conditions that are the subjects of collective bargaining will be left to the orderly processes of negotiation and agreement between DOE contractor management and employee representatives with maximum possible freedom from Government interference. It is critical that DOE contractors follow practices that experience has shown are consistent with the stability of collective bargaining relationships. DOE's expectation is that its contractors maintain positive labor-management relations and adopt labor relations policies and practices that reflect the best experience of American industry in aiming to achieve the stable labor-management relations essential to successful accomplishment of DOE's programs at reasonable costs.

DOE's long-standing practice with respect to facility management, laboratory, management and operating, and security contracts, is to require new contractors to provide preferences in hiring to the incumbent contractor work force. In these situations, the new contractor typically is continuing, in significant respects, the operations of the prior contractor. As a result of the hiring preferences, the new contractor's work force usually will have a large proportion of individuals employed by the prior contractor. In these situations, the new contractor generally will be legally obligated to recognize and bargain with the employees' collective bargaining representative. In keeping with applicable law, the Department's long-standing practice is to include provisions in its contracts reinforcing the legal requirement that its contractors recognize and bargain with labor organizations representing their employees.

Also consistent with past practices, DOE does not generally require a new contractor to adopt the collective-bargaining agreements (CBAs) of the prior contractor. However, this does not mean that the new contractor is free to unilaterally set materially different terms and conditions of employment. DOE solicitations for facility management and similar contracts typically require contractors to provide equivalent pay to incumbent employees for at least the first year of the new contract, and to keep incumbent employees in their existing pension and benefit plans pursuant to pension plan eligibility requirements and applicable law. If a new contractor determines, in its business judgment, to negotiate certain terms and conditions of employment that are different than those set out in the existing CBA of the prior contractor, it is the expectation of the Department that negotiations will commence as soon as practicable after contract award. DOE policy also establishes how and to what extent DOE will provide cost reimbursement of labor and benefit costs to its cost-type contractors, consistent with being a good steward of the public fisc.

Any CBA entered into by a contractor is an agreement between that contractor and the bargaining representative of its employees *only*. The incumbent contractor does not have any authority to make any representations regarding what the Department or any subsequent contractor may or may not do, nor would it be appropriate for the contractor to appear to commit other entities to particular terms and conditions of employment. Any subsequent contractor will be bound by the terms of its contract with the Department, and applicable law, including labor law.

The Department recognizes that the project labor agreements (PLAs) entered into by its contractors have been a valuable tool for constructing Departmental facilities and accomplishing the Department's missions. Executive Order 13502, "Use of Project Labor Agreements for Federal Construction Projects" (February 6, 2009), encourages agencies to require the use of PLAs on large-scale construction contracts of $25 million or more if use of a PLA would promote efficiency and economy. The Department is proud of the history of success of PLAs at DOE facilities and supports the use of PLAs as they ensure timely completion of the Department's projects in an economical, safe, and efficient manner.

Questions or concerns regarding any of the above-mentioned obligations should be directed to the DOE Office of General Counsel or NNSA Office of General Counsel, as appropriate. The Department's Operations Offices and DOE/NNSA site counsels are also available for assistance.