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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT  
PURSUANT TO SECTION 13 OR 15(D) OF THE  
SECURITIES EXCHANGE ACT OF 1934

Date of report (Date of earliest event reported): January 4, 2005

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DYNAVAX TECHNOLOGIES  
CORPORATION

(Exact name of Registrant as Specified in its Charter)

Delaware

000-50577

33-0728374

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(State or Other Jurisdiction  
of Incorporation)

(Commission File  
Number)

(IRS Employer  
Identification No.)

2929 Seventh Street, Suite 100, Berkeley, CA

94710

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(Address of Principal Executive Offices)

(Zip Code)

Registrant's telephone number, including area code: (510) 848-5100

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N/A

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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### **Item 1.01 Entry into a Material Definitive Agreement.**

On January 4, 2005, Dynavax Technologies Corporation (“Dynavax” or the “Registrant”) entered into a Management Continuity and Severance Agreement (the “Agreement”) with Deborah A. Smeltzer, the Registrant’s Vice President, Operations and Chief Financial Officer, as further described below. A copy of the Agreement is attached hereto as Exhibit 10.20 and incorporated by reference herein.

### **Item 5.02 Departure of Directors of Principal Officers; Election of Directors; Appointment of Principal Officers.**

On January 5, 2005, the Registrant issued a press release announcing that Ms. Smeltzer, age 51, had joined Dynavax as Vice President, Operations and Chief Financial Officer, effective January 4, 2005. Prior to joining Dynavax, Ms. Smeltzer served as Vice President and General Manager of the Genetic Analysis business of Applied Biosystems, Inc., an operating group of Applera Corporation. While at Applied Biosystems, Ms. Smeltzer built the growth strategy and business plan for the genomics applications products business and previously served as Vice President, Finance for the organization. Prior to Applied Biosystems, Ms. Smeltzer served as Chief Financial Officer and Vice President for Genset S.A., a Paris-based global genomics company. Ms. Smeltzer earned her MBA from Stanford University Graduate School of Business, and both her B.S. in Biological Sciences and her M.S. in Medical Microbiology from the University of California, Irvine. A copy of the press release announcing the appointment of Ms. Smeltzer is attached hereto as Exhibit 99.1.

In connection with Ms. Smeltzer’s appointment, the Registrant and Ms. Smeltzer entered into the Agreement referenced in Item 1.01 above. Under the terms of the Agreement, if Ms. Smeltzer is terminated without cause or is otherwise terminated involuntarily, she is entitled to a severance payment equal to six months salary, payable over six months, six months of paid COBRA continuation coverage and an additional six months’ vesting of her option to purchase Dynavax stock. In the event of death or disability, the Agreement provides that the exercise period of all vested options will be extended to twelve months from the date of termination due to such death or disability. In addition, the Registrant agreed to accelerate by two years the vesting of any stock options held by Ms. Smeltzer as of and upon a change in control of Dynavax if she either accepts a position with the successor company or is not offered an executive position with the successor company. If Ms. Smeltzer is terminated within twenty-four months following such a change in control, she is also entitled to a severance payment equal to twelve months of her base salary, payable over twelve months, plus her target incentive bonus and twelve months of paid continued COBRA continuation coverage. This description is qualified in its entirety by reference to the Agreement, a copy of which is attached hereto as Exhibit 10.20 and incorporated by reference herein.

### **Item 9.01 Financial Statements and Exhibits.**

(c) Exhibits.

10.20	Management Continuity and Severance Agreement, dated as of January 4, 2005, between the Registrant and Deborah A. Smeltzer.
99.1	Press release issued by the Registrant, dated January 5, 2005.

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**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**Dynavax Technologies Corporation**

Date: January 5, 2005

By: /s/ Timothy G. Henn  
Timothy G. Henn  
Vice President, Finance and Administration

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**EXHIBIT INDEX**

<u>Exhibit No.</u>	<u>Description</u>
10.20	Management Continuity and Severance Agreement, dated as of January 4, 2005, between the Registrant and Deborah A. Smeltzer.
99.1	Press release issued by the Registrant, dated January 5, 2005.

**DYNAVAX TECHNOLOGIES CORPORATION**

**MANAGEMENT CONTINUITY AND SEVERANCE AGREEMENT**

This Management Continuity and Severance Agreement (the "Agreement") is dated as of January 4, 2005, by and between Deborah A. Smeltzer, Chief Financial Officer and Vice President, Operations, Dynavax Technologies Corporation ("Employee"), and Dynavax Technologies Corporation, a Delaware corporation (the "Company" or "Dynavax").

**RECITALS**

A. It is expected that another company may from time to time consider the possibility of acquiring the Company or that a change in control may otherwise occur, with or without the approval of the Company's Board of Directors. The Board of Directors recognizes that such consideration can be a distraction to Employee and can cause Employee to consider alternative employment opportunities. The Board of Directors has determined that it is in the best interests of the Company to assure that the Company will have the continued dedication and objectivity of the Employee, notwithstanding the possibility, threat, or occurrence of a Change of Control (as defined below) of the Company.

B. The Company's Board of Directors believes it is in the best interests of the Company to retain Employee and provide incentives to Employee to continue in the service of the Company.

C. The Board of Directors further believes that it is imperative to provide Employee with certain benefits upon a Change of Control and, under certain circumstances, upon termination of Employee's employment in connection with a Change of Control and independent of a Change of Control, which benefits are intended to provide Employee with encouragement to Employee to remain with the Company, notwithstanding the possibility of a Change of Control or an employment termination.

D. To accomplish the foregoing objectives, the Board of Directors has directed the Company, upon execution of this Agreement by Employee, to agree to the terms provided in this Agreement.

Now therefore, in consideration of the mutual promises, covenants, and agreements contained herein, and in consideration of the continuing employment of Employee by the Company, the parties hereto agree as follows:

1. **At-Will Employment.** The Company and Employee acknowledge that Employee's employment is and shall continue to be at-will, as defined under applicable law, and that Employee's employment with the Company may be terminated by either party at any time for any or no reason. If Employee's employment terminates for any reason, Employee shall not be entitled to any payments, benefits, damages, award, or compensation other than as provided in

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this Agreement, and as may otherwise be available in accordance with the terms of the Company's established employee plans and written policies at the time of termination. The terms of this Agreement shall terminate upon the earlier of: (i) the date on which Employee ceases to be employed as an executive corporate officer of the Company, other than as a result of an Involuntary Termination by the Company without Cause; or (ii) the date that all obligations of the parties hereunder have been satisfied. A termination of the terms of this Agreement pursuant to the preceding sentence shall be effective for all purposes, except that such termination shall not affect the payment or provision of compensation or benefits on account of a termination of employment occurring prior to the termination of the terms of this Agreement. The rights and duties created by this Section 1 may not be modified in any way except by a written agreement executed by an officer of the Company upon direction from the Board of Directors.

## **2. Benefits Upon Termination of Employment.**

(a) **Termination for Cause.** If Employee's employment is terminated for Cause at any time, then Employee shall not be entitled to receive payment of any severance benefits. Employee will receive payment for all salary as of the date of Employee's termination of employment and Employee's benefits will be continued under the Company's then existing benefit plans and policies in accordance with such plans and policies in effect on the date of termination and in accordance with applicable law.

(b) **Voluntary Resignation.** If Employee voluntarily resigns from the Company (the Employee's employment does not end by reason of Involuntary Termination), then Employee shall not be entitled to receive payment of any severance benefits. Employee will receive payment for all salary as of the date of Employee's termination of employment and Employee's benefits will be continued under the Company's then existing benefit plans and policies in accordance with such plans and policies in effect on the date of termination and in accordance with applicable law.

(c) **Involuntary Termination.** If Employee's employment is terminated for Involuntary Termination, then the Employee shall be entitled to: (1) six (6) months of Employee's then current annual base salary (less appropriate withholding deductions) to be paid over 6 months in accordance with the Company's payroll cycle; (2) six (6) months of COBRA Continuation paid by the Company if COBRA Continuation is elected; (3) an additional six (6) months vesting of employee's stock option to purchase the Company's Common Stock; and (4) as per the Dynavax Technologies 2004 Stock Option Plan, ninety (90) days to exercise vested options.

(d) **Termination for Death or Disability.** If Employee's employment terminates due to Employee's death, then Employee's beneficiary will receive any salary earned (less appropriate withholding deductions) through the date of termination of employment. If Employee's employment terminates due to becoming disabled, all salaries due to Employee will be paid through the date of inception of Employee's disability.



In the event of termination for either death or disability, the exercise period of all vested options granted to Employee by the Company is extended to twelve (12) months from the date of termination of employment.

### **3. Benefits Upon a Change of Control.**

(a) **Treatment of Stock Options.** In the event of a Change of Control and the Employee: (i) is offered and accepts a position with the New Company, or (ii) is not offered a position as an executive officer with the New Company, then immediately prior to the effective date of the Change of Control an additional two (2) years vesting of Employee's stock option to purchase the Company's Common Stock granted to Employee over the course of his employment with the Company and held by Employee on the effective date of a Change of Control shall immediately vest on such date as to that number of shares that would have vested in accordance with the terms of the 1997 Incentive Plan, as amended. "New Company," as used in this section, shall mean: (a) in the case of a Change of Ownership (as defined in Section 4(a)(i) below), the Company; (b) in the case of a Merger (as defined in Section 4(a)(ii) below), the surviving entity; or (c) in the case of a Sale of Assets (as described in section 4(a)(ii) below), the purchaser of all or substantially all of the Company's assets.

(b) **Severance.** In the event that Employee's employment is terminated within twenty-four (24) months of a Change of Control, the Employee shall be entitled to: (1) twelve (12) months of Employee's then current annual base salary, less applicable withholding deductions to be paid over 12 months in accordance with the Company's payroll cycle; (2) a lump-sum cash payment equal to the Employee's target incentive bonus of forty percent (40%) (or such higher percentage then in effect under the management incentive program or other similar bonus program) of the Employee's then current annual base salary, less applicable withholding deductions; and (3) twelve (12) months Company-paid COBRA continuation coverage upon Employee's election of COBRA Continuation Coverage.

4. **Definition of Terms.** The following terms referred to in this Agreement shall have the following meanings:

(a) **Change of Control.** "Change of Control" shall mean the occurrence of any of the following events:

(i) **Change of Ownership.** Any "Person" (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended) is or becomes the "Beneficial Owner" (as defined in Rule 13d-3 under said Act), directly or indirectly, of securities of the Company representing 50% or more of the total voting power represented by the Company's then outstanding voting securities; or

(ii) **Merger/Sale of Assets.** A merger or consolidation of the Company whether or not approved by the Board, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) at least 50% of the total voting power represented by the voting

securities of the Company or such surviving entity outstanding immediately after such merger or consolidation, or the stockholders of the Company approve a plan of complete liquidation of the Company or an agreement for the sale or disposition by the Company of all or substantially all of the Company's assets.

(b) **Cause.** "Cause" shall mean: (i) gross negligence or willful misconduct in the performance of Employee's duties to the Company, where such gross negligence or willful misconduct has resulted or is likely to result in substantial and material damage to the Company or its subsidiaries; (ii) repeated unexplained or unjustified absence from the Company; (iii) a material and willful violation of any federal or state law; (iv) commission of any act of fraud with respect to the Company; or (v) conviction of a felony or a crime involving moral turpitude causing material harm to the standing and reputation of the Company, in each case as determined in good faith by the Board.

(c) **Involuntary Termination.** "Involuntary Termination" shall mean: (i) any termination by the Company other than for Cause; (ii) Employee's voluntary termination following a material reduction or change in job duties, responsibilities, and requirements inconsistent with the Employee's position with the Company and the Employee's prior duties, responsibilities, and requirements, or a change in the level of management to which the Employee reports; (iii) any reduction of Employee's base compensation (other than in connection with a general decrease in base salaries for most officers of the successor corporation); or (iv) Employee's refusal to relocate to a facility or location more than 15 miles from the Company's current location.

5. **Conflicts.** Employee represents that his performance of all the terms of this Agreement will not breach any other agreement to which Employee is a party. Employee has not entered, and will not during the term of this Agreement enter, into any oral or written agreement in conflict with any of the provisions of this Agreement. Employee further represents that he is entering into or has entered into an employment relationship with the Company of his own free will and that he has not been solicited as an employee in any way by the Company.

6. **Successors.** Any successor to the Company (whether direct or indirect and whether by purchase, lease, merger, consolidation, liquidation, or otherwise) to all or substantially all of the Company's business and/or assets shall assume the obligations under this Agreement and agree expressly to perform the obligations under this Agreement in the same manner and to the same extent as the Company would be required to perform such obligations in the absence of a succession. The terms of this Agreement and all of Employee's rights hereunder and thereunder shall inure to the benefit of, and be enforceable by, Employee's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, and legatees.

7. **Notice.** Notices and all other communications contemplated by this Agreement shall be in writing and shall be deemed to have been duly given when personally delivered or when mailed by U.S. registered or certified mail, return receipt requested and postage prepaid. Mailed notices to Employee shall be addressed to Employee at the home address that Employee most recently communicated to the Company in writing. In the case of the Company, mailed

notices shall be addressed to its corporate headquarters, and all notices shall be directed to the attention of its Secretary.

8. **Miscellaneous Provisions.**

(a) **No Duty to Mitigate.** Employee shall not be required to mitigate the amount of any payment contemplated by this Agreement (whether by seeking new employment or in any other manner), nor shall any such payment be reduced by any earnings that Employee may receive from any other source.

(b) **Waiver.** No provision of this Agreement shall be modified, waived, or discharged unless the modification, waiver, or discharge is agreed to in writing and signed by Employee and by an authorized officer of the Company (other than Employee). No waiver by either party of any breach of, or of compliance with, any condition or provision of this Agreement by the other party shall be considered a waiver of any other condition or provision or of the same condition or provision at another time.

(c) **Whole Agreement.** No agreements, representations, or understandings (whether oral or written and whether expressed or implied) which are not expressly set forth in this Agreement have been made or entered into by either party with respect to the subject matter hereof, except as set forth in the employment offer letter from the Company to the Employee dated December 18, 2004. This Agreement supersedes any agreement of the same title and concerning similar subject matter dated prior to the date of this Agreement, and by execution of this Agreement both parties agree that any such predecessor agreement shall be deemed null and void.

(d) **Choice of Law.** The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of California without reference to conflict of laws provisions.

(e) **Severability.** If any term or provision of this Agreement or the application thereof to any circumstance shall, in any jurisdiction and to any extent, be invalid or unenforceable, such term or provision shall be ineffective as to such jurisdiction to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining terms and provisions of this Agreement or the application of such terms and provisions to circumstances other than those as to which it is held invalid or unenforceable, and a suitable and equitable term or provision shall be substituted therefore to carry out, insofar as may be valid and enforceable, the intent and purpose of the invalid or unenforceable term or provision.

(f) **Arbitration.** Any dispute or controversy arising under or in connection with this Agreement may be settled at the option of either party by binding arbitration in the County of Alameda, California, in accordance with the rules of the American Arbitration Association then in effect before a single arbitrator. The judgment may be entered on the arbitrator's award in any court having jurisdiction. Punitive damages shall not be awarded.

(g) **Legal Fees and Expenses.** The parties shall each bear their own expenses, legal fees, and other fees incurred in connection with this Agreement. This means the Company pays its own legal fees in connection with this Agreement and the Employee is responsible for his own legal fees in connection with this Agreement. However, the arbitrator may award legal fees and expenses in connection with any arbitration as deemed appropriate.

(h) **No Assignment of Benefits.** The rights of any person to payments or benefits under this Agreement shall not be made subject to option or assignment, either by voluntary or involuntary assignment or by operation of law, including (without limitation) bankruptcy, garnishment, attachment, or other creditor's process, and any action in violation of this Section 8(h) shall be void.

(i) **Employment Taxes.** All payments made pursuant to this Agreement will be subject to withholding of applicable income and employment taxes.

(j) **Assignment by Company.** The Company may assign its rights under this Agreement to an affiliate, and an affiliate may assign its rights under this Agreement to another affiliate of the Company or to the Company; provided, however, that such assignee is the employer of the Employee. In the case of any such assignment, the term "Company" when used in a section of this Agreement shall mean the corporation that actually employs the Employee except that the term "Company" shall continue to mean Dynavax Technologies Corporation with regard to the definition of a Change of Control.

(k) **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]





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Berkeley, CA 94710

Contact:  
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**DYNNAVAX APPOINTS DEBORAH A. SMELTZER  
AS CHIEF FINANCIAL OFFICER**

BERKELEY, Calif. – January 5, 2005 – Dynavax Technologies (Nasdaq: DVAX) announces that Deborah A. Smeltzer has been appointed Vice President, Operations and Chief Financial Officer. Ms. Smeltzer brings to Dynavax more than 20 years of operating, business and financial management experience.

Ms. Smeltzer joins Dynavax from Applied Biosystems where she served most recently as Vice President and General Manager of the company's genetic analysis business. Under Ms. Smeltzer's leadership Applied Biosystems' core business was redirected and a new business strategy was implemented. While at Applied Biosystems, Ms. Smeltzer built the growth strategy and business plan for the genomics applications products business. She previously served as Vice President, Finance for the organization and had responsibility for business development. Prior to Applied Biosystems, Ms. Smeltzer served as Chief Financial Officer and Vice President for Genset SA, a Paris-based global genomics company. Ms. Smeltzer's professional experience also includes venture capital, investment banking, academic research and quality assurance. She holds a BS in biological sciences and a MS in medical microbiology from the University of California, Irvine, and a MBA from Stanford University Graduate School of Business.

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“Deborah joins DVAX at an exciting time in the company’s growth and development, said Dino Dina, MD, President and Chief Executive Officer. “Our clinical programs are entering late stage development, our commercial strategies are taking shape, and the company is executing on its long-term business objectives. Over the last year we have added significant depth and breadth to the Dynavax management team. With her broad experience in operational management and corporate finance Deborah brings complementary skills to the group. We believe that 2005 has the potential to be a significant year of maturation and achievement for the company, as we advance our portfolio of novel therapies for treating immune system disorders.”

#### **About Dynavax**

Dynavax Technologies Corporation discovers, develops, and intends to commercialize innovative products to treat and prevent allergies, infectious diseases, and chronic inflammatory diseases using versatile, proprietary approaches that alter immune system responses in highly specific ways. Our clinical development programs are based on immunostimulatory sequences, or ISS, which are short DNA sequences that enhance the ability of the immune system to fight disease and control chronic inflammation. ISS are being developed in three initial indications: ragweed allergy immunotherapeutic, currently in a Phase 2/3 clinical trial; a Hepatitis B vaccine, currently in a Phase 2/3 clinical trial; and an asthma immunotherapeutic that has completed a Phase 2 exploratory trial.

Dynavax cautions you that statements included in this press release that are not a description of historical facts are forward-looking statements, including without limitation all statements related to plans to advance its clinical programs in ragweed allergy, Hepatitis B and asthma, and demonstrate the potential of its ISS technology. Words such as “believes,” “anticipates,” “plans,” “expects,” “intend,” “will,” “slated,” “goal” and similar expressions are intended to identify forward-looking statements. The inclusion of forward-looking statements should not be regarded as a representation by Dynavax that any of its plans will be achieved. Actual results may differ materially from those set forth in this release due to the risks and uncertainties inherent in Dynavax’s business including, without limitation, risks relating to: the progress and timing of its anticipated Phase 3 clinical trials in ragweed allergy and Hepatitis B; difficulties or delays in developing, testing, obtaining regulatory approval of, producing and marketing its products; the scope and validity of patent protection for its products; competition from other pharmaceutical or biotechnology companies; its ability to obtain additional financing to support its operations; its ability to maintain effective financial planning and internal controls; and other risks detailed in the “Risk Factors” section of Dynavax’s Annual Report on Form 10-K filed on March 30, 2004, and in the section titled “Additional Factors That May Affect Future Results” within Dynavax’s quarterly report on Form 10-Q filed on November 8, 2004. You are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof. All forward-looking statements are qualified in their entirety by this cautionary statement and Dynavax undertakes no obligation to revise or update this news release to reflect events or circumstances after the date hereof.

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