Reimbursable Research and Technical Assistance for the Department of Defense (DOD) by Oak Ridge National Laboratory (ORNL) of the Department of Energy (DOE)

by
David W. Bradford
Administrator of External Research
Work For Others Program Office
Oak Ridge National Laboratory
Phone: (865) 574-9798
Email: bradforddw@ornl.gov
URL: http://www.ornl.gov/wfo/exthome.htm

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Statutory Authorities for the Conduct of Reimbursable Work

Department of Defense

10 USC 2358. Research and development projects

10 USC 129b. Authority to procure experts and consultants

10 USC 2373. Procurement for Experimental Purposes

Department of Energy

The Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.)

The Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5901 et seq.)

All Federal Agencies

Section 636 of Economy Act of 1932 (31 USC 1535 et seq.)

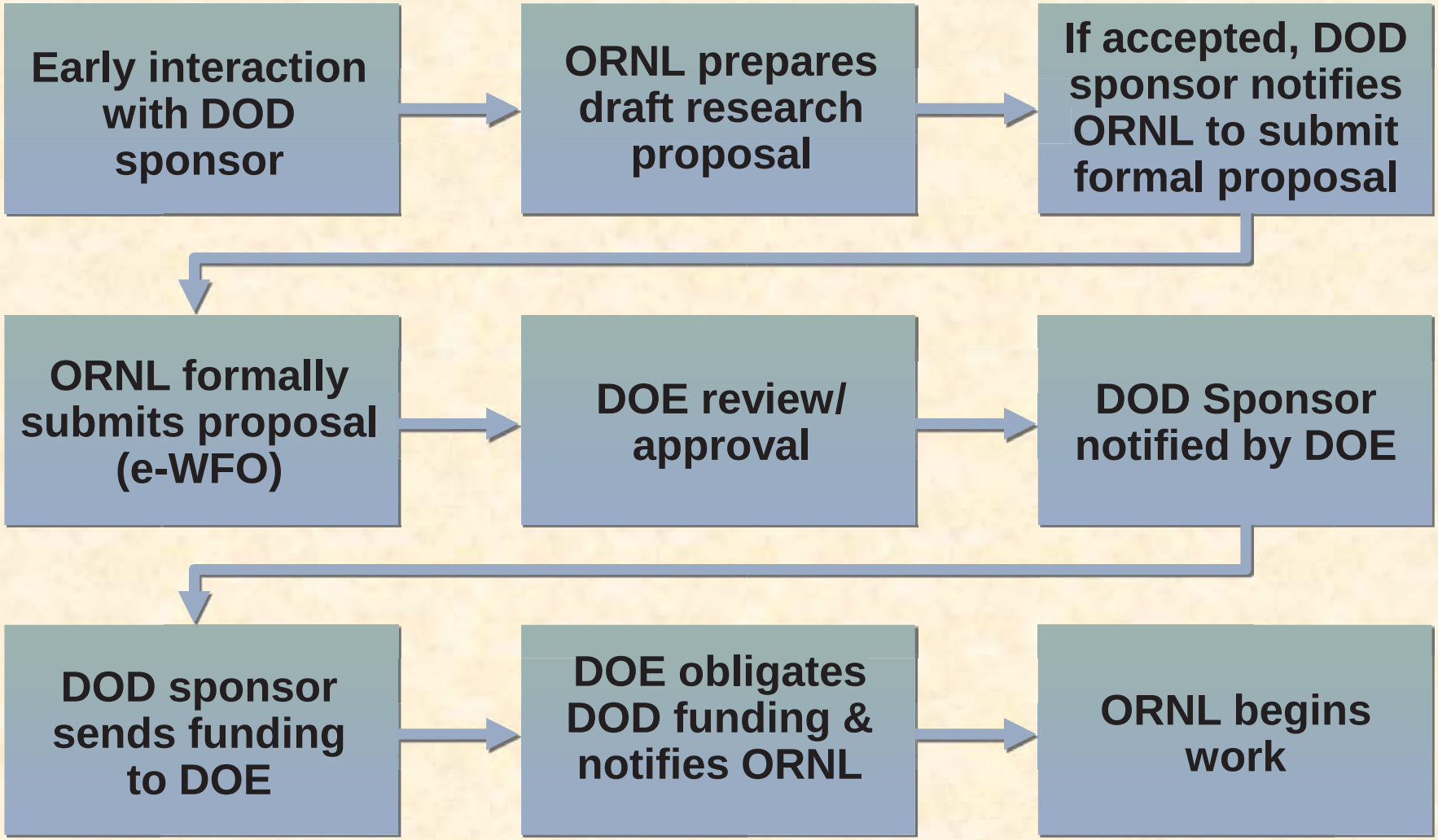
Joint DOD & DOE Regulatory Reimbursable Work Process

- **Federal Acquisition Regulation (FAR) Subpart 17.500, "Interagency Acquisitions"**
- **DOD Subpart 217.5, "Interagency Acquisitions"**
- **OMB Memorandum, dated June 6, 2008, "Improving the Management and Use of Interagency Acquisitions"**
- **DoD Instruction 4000.19, "Interservice and Intragovernmental Support"**
- **DOD USD, ATL Memorandum, dated December 12, 2010, "Standard Interagency Agreement Part A for DOD Components and all DOE Activities for FY 2011"**
- **Memorandum of Agreement (MOA) Between the Department of Defense and the Department of Energy Governing Department of Defense Funded Work Performed at the Department of Energy Laboratories and Facilities**

Agency Level Implementation Process

- **OMB Memorandum requires two phase procedure for federal agencies to conduct reimbursable interagency acquisitions**
- **Part A phase is joint MOA outlining procedures between Agencies. For DOD and DOE, this is in place.**
- **Part B is the funding phase where DOD requests reimbursable research or technical assistance consistent with Part A procedures.**
- **Each Part B transaction has to be separately approved by both DOD and DOE.**
- **DOE assigns approved DOD Part B work to Oak Ridge National Laboratory (ORNL) for project execution.**

Interagency Acquisition (IA) Part B Overview



How DOD Agencies Do Reimbursable Work With DOE

- **An Interagency Acquisition (IA) is the normal vehicle for reimbursable specialized research or technical services from DOE by Oak Ridge National Laboratory (ORNL).**
- **In DOE, this action comes under the Work For Others (WFO) Program.**
- **In DOD generally, this action is an Economy Act Order or Inter Service Support Agreement (ISSA).**
- **In DTRA, this action is called an Interagency Cost Reimbursement Order (IACRO).**

The IA Approval Process

- **DOE will accept IA from DOD agencies for reimbursable specialized research and technical services.**
- **Normal statutory authority for all federal agencies is the Economy Act of 1932 (31 USC 1535, as amended).**
- **Other DOD statutes or regulatory authorities can be used if Economy Act is not appropriate (e.g., 10 USC 2358 for DARPA).**
- **IA process is shown in Federal Acquisition Regulation (FAR) Subpart 17.500.**

The IA Approval Process (cont.)

- **Requesting DOD agencies must have a bona fide need (31 USC 1502) and obtain internal agency approval to do a Part B IA.**
- **An IA is <u>NOT</u> a contract.**
- **DOE authorizes ORNL researchers to work with the DOD agency to define science or technical requirement at no cost to requesting DOD agency.**
- **DOE must approve internal request from ORNL to do work for a DOD agency.**
- **DOE will accept/negotiate IA done under OMB policy guidance.**

The IA Approval Process (cont.)

- **DOE Contracting Officer certification indicates the reimbursable work is consistent with the U.S. laws, DOE legislative authority and complies with DOE policy.**
- **An IA does not need to be announced in Federal Business Opportunities (U.S. Comptroller General ruling, Protest of Liebert Corporation, B-232234.5, April 29, 1991).**
- **To initiate action, the DOD agency will**
  - **Send a funding document giving a reimbursable appropriation citation to DOE-ORO for obligation.**
  - **Include copy of the executed DOD determination and findings required by FAR 17.502-2 to be furnished to DOE as an attachment to the Economy Act Order.**
  - **Cite required Economy Act information from Part A of the WFO Agreement between DOD and DOE.**
- **The Congressional restrictions or parameters on the DOD agency's appropriation still apply as a reimbursable fund cite.**

The IA Approval Process (cont.)

- **DOE will obligate entirely the appropriation citation and return a signed certification to the DOD agency. This meets the criteria in 31 U.S.C. 1501(a) for a recordable obligation.**
- **Reimbursable funds are concurrently obligated to the ORNL monthly financial plan as the DOE Management & Operating contractor charged with executing the task assignment.**
- **If the DOD agency uses an Economy Act Order as the authority for sending the reimbursable funds to DOE, then the DOD Agency incurs valid obligations under the IA and meets USC Title 31 requirements (see 39 Comptroller General 317 (1959); 34 Comptroller General 418, 421-422 (1955)).**

The IA Approval Process (cont.)

- **Under 31 USC 1535, when DOE incurs a valid obligation during the period of availability of the appropriation and work performed or service rendered covers more than one fiscal year, then the DOD ordering agency's obligation remains available to pay DOE from the annual appropriation for the particular fiscal year in which the work was performed or services were rendered (B-301561, June 14, 2004; 55 Comp. Gen. 1497, 1499 (1976)).**
- **DOE is not changing the obligational life of the DOD appropriation nor changing the five year expiration date of the obligation for expenditure (31 USC 1552).**

Project Execution Process

- **The DOD agency determines the research or technical priority of their reimbursable funds.**
- **The DOD agency performs technical oversight of the project and establishes deliverables, project reporting criteria, etc.**
- **ORNL responds to the DOD PM for technical guidance and meets DOD research requirements.**
- **All work is done on a full cost recovery basis to meet fiscal law requirements (31 USC 1301(a), et seq.).**
- **After 30 days, costs incurred by ORNL will be collected and a normal billing cycle will begin.**

Project Execution Process (cont.)

- **A periodic report will be prepared by the ORNL researcher and forwarded to the DOD agency program manager who has technical oversight of this project. This report will address programmatic, technical, and financial issues.**
- **DOE will begin the process of "*earning the reimbursement*" by having ORNL invoice the DOD agency for the federal administrative charge and ORNL costs.**
- **Billing to the DOD agency designated paying agent will be done via the U.S. government's Intergovernmental Payment and Collection (IPAC) System or other designated government system (e.g., WAWF).**
- **The DOD agency is responsible for timely payment of the invoices.**

Project Closeout Process

- **When the DOD agency determines that the project is complete, project closeout activities for each task will commence. Normal project reviews, equipment transfers or relocations, and validation of efforts will take place.**
- **These activities will include final billings, reconciliations, data and technology transfer, and task certifications.**
- **If there are DOD agency funds held by DOE that still remain available (not committed nor costed), these funds will be de-obligated and returned to the DOD agency.**
- **Routine audits of ORNL are done by DOE or DOE-designated auditors.**
- **Defense Contract Audit Agency reviews ORNL subcontractors.**

Summary

- DOE has the legal authority to furnish reimbursable research to help DOD agencies.
- Both agencies are leveraging the nation's significant investment in ORNL science and research for each other.
- DOD agencies can obtain first class or world class ORNL research or technical expertise.
- Reimbursable financial process is legal and appropriate.
- Proper control mechanisms exist.
- A reimbursable interagency acquisition is a flexible, efficient and legal manner to obtain necessary services.