

# Oak Ridge National Laboratory Work for Others (WFO) Program

*"Providing a decisive edge in technology innovation and  
research solutions for the 21st century and beyond."*

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**COMPARISON OF  
GOVERNMENT-OWNED CONTRACTOR-OPERATED (GOCO) FACILITIES AND  
MANAGEMENT AND OPERATING (M&O) CONTRACTORS<sup>1</sup>**

**DEFINITION**

**GOCO<sup>2</sup>:** (Government-Owned, Contractor Operated) facility is a manufacturing plant that is owned by the Government and operated under contract by a non-government, private firm. Operation and maintenance of facilities when done by contract with the private sector.<sup>3</sup>

**M&O<sup>4</sup>:** (Management and operating contract) means an agreement under which the Government contracts for the operation, maintenance, or support, on its behalf, of a Government-owned or -controlled research, development, special production, or testing establishment wholly or principally devoted to one or more major programs of the contracting Federal agency.<sup>5</sup>

**Key Difference:** The Federal Agency uses an M&O contractor “to carry out the actual performance of the agency’s mission; that is, these contractors were to perform the agency’s mission as opposed to the agency’s using civil servants.”<sup>6</sup>

**COMPARISONS**

<u>GOCO</u>	<u>M&amp;O</u>	<u>Reference</u>	<u>Functions</u>
X		FAR 16.101	1. <i>Type of U.S. Government Contract</i>
	X	FAR 16.300	a. Fixed price b. Cost reimbursable

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1 Information updated June 7, 2013. For further information, contact Mr. David W. Bradford, Oak Ridge National Laboratory, at (865) 574-9798 or [fdb@ornl.gov](mailto:fdb@ornl.gov)

2 Source: Department of Defense Joint Publication (JP) 1-02, dated April 15, 2013

3 Source: OMB Circular A-11, August 2012

4 Source: FAR 17.600, current as of September 29, 2010

5 See Supreme Court Decision, United States v. New Mexico, 455 U.S. 720, 723(1982) where the Supreme Court opined that management and operating contracts are a unique type of contract, in that they have a special identity with DOE and indicia of agency without actually causing the contractors to be agents of the Department. The Court stated: [I]n several ways DOE agreements are a unique species of contract, designed to facilitate long-term private management of Government-owned research and development facilities. As the parties to this case acknowledge, the complex and intricate contractual provisions make it virtually impossible to describe the contractual relationship in standard agency terms. . . . While subject to the general direction of the Government, the contractors are vested with substantial autonomy in their operations and procurement practices. . . .

AEC management contracts were developed in an attempt to secure Government control over the production of fissionable materials, while making use of private industry's expertise and resources. . . .

6 DOE Acquisition Guide, Chapter 17.6, dated October 2007.

			2.	<i>Relationship with Sponsoring Federal Agency</i>
X		CICA (PL 98-369)	a.	Organizationally separate from contracting federal agency operations
	X	FAR 17.604	b.	Fully integrated with contracting federal agency financial operations
	X	FAR 17.601/17.604	c.	Performs major function or program of contracting federal agency.
			3.	<i>Normal Type of Work</i>
X			a.	Performs routine production (All categories minus nuclear related)
	X	FAR 17.601	b.	Conducts Research and Development (R&D)
	X	Atomic Energy Act	c.	Performs Special Production (Nuclear)
	X	Stevenson-Wydler Tech. Act	d.	Performs Special Production (non-Nuclear technology invention or application)
	X	FAR 17.601	e.	Operates a Testing Establishment
	X	FAR 35.017	f.	Operates a Federally Funded Research and Development Center (FFRDC)
	X	FAR 35.005/35.006	g.	Does work on Level of Effort (LOE) status
X	X	FAR 35.005/35.006	h.	Designs firmly established so that risks are reduced.
X	X	FAR 35.005.35.006	I.	Uses production tooling, equipment, and processes that are developed and proven.
			4.	<i>Organizational Conflicts of Interest (OCI)</i>
	X	FAR 35.001/35.017	a.	Has special access to Government and supplier data, employees, and facilities beyond that which is common in a normal contractual relationship.
X			b.	Has operations that are commingled with commercial operations.
X			c.	Can compete in the U.S. private, commercial sector.
	X	FAR 35.017/17.504(e)	d.	Accept cost-reimbursable work from other federal agencies through federal sponsor.
	X	FAR 35.017	e.	Has Special OCI restrictions on communicating with parent company.
			5.	<i>Contractor Changeover after New Contract Award</i>
X			a.	Wholesale replacement of personnel; may hire some previous contractor personnel.
	X	FAR 17.604(d)	b.	Retain en masse the trained scientific and technical staff; may replace senior management
			6.	<i>Use by Federal Agencies (Sample only)</i>
X			a.	Department of Defense (DOD)
	X		b.	Department of Energy (DOE)
X			c.	Internal Revenue Service (IRS)
X			d.	General Services Agency (GSA)
X	X		e.	National Aeronautics and Space Administration (NASA) <sup>7</sup>

<sup>7</sup> NASA contractors work under "National Aeronautics and Space Act of 1958," Public Law #85-568, 72 Stat., 426 as a variation of the M&O contract.

## APPENDIX A: SUBPART 17.6—MANAGEMENT AND OPERATING CONTRACTS

As of FAC 2005–46, September 29, 2010

### **17.600 Scope of subpart.**

This subpart prescribes policies and procedures for management and operating contracts for the Department of Energy and any other agency having requisite statutory authority.

### **17.601 Definition.**

“Management and operating contract” means an agreement under which the Government contracts for the operation, maintenance, or support, on its behalf, of a Government-owned or -controlled research, development, special production, or testing establishment wholly or principally devoted to one or more major programs of the contracting Federal agency.

### **17.602 Policy.**

- (a) Heads of agencies, with requisite statutory authority, may determine in writing to authorize contracting officers to enter into or renew any management and operating contract in accordance with the agency’s statutory authority, or the Competition in Contracting Act of 1984, and the agency’s regulations governing such contracts. This authority shall not be delegated. Every contract so authorized shall show its authorization upon its face.
- (b) Agencies may authorize management and operating contracts only in a manner consistent with the guidance of this subpart and only if they are consistent with the situations described in [17.604](#).
- (c) Within 2 years of the effective date of this regulation, agencies shall review their current contractual arrangements in the light of the guidance of this subpart, in order to—
- (1) Identify, modify as necessary, and authorize management and operating contracts; and
  - (2) Modify as necessary or terminate contracts not so identified and authorized, except that any contract with less than 4 years remaining as of the effective date of this regulation need not be terminated, nor need it be identified, modified, or authorized unless it is renewed or its terms are substantially renegotiated.

### **17.603 Limitations.**

(a) Management and operating contracts shall not be authorized for—

- (1) Functions involving the direction, supervision, or control of Government personnel, except for supervision incidental to training;
- (2) Functions involving the exercise of police or regulatory powers in the name of the Government, other than guard or plant protection services;
- (3) Functions of determining basic Government policies;
- (4) Day-to-day staff or management functions of the agency or of any of its elements; or
- (5) Functions that can more properly be accomplished in accordance with [Subpart 45.3](#), Authorizing the Use and Rental of Government Property.

(b) Since issuance of an authorization under [17.602\(a\)](#) is deemed sufficient proof of compliance with paragraph (a) immediately above, nothing in paragraph (a) immediately above shall affect the validity or legality of such an authorization.

(c) For use of project labor agreements, see subpart [22.5](#).

### **17.604 Identifying management and operating contracts.**

A management and operating contract is characterized both by its purpose (see [17.601](#)) and by the special relationship it creates between Government and contractor. The following criteria can generally be applied in identifying management and operating contracts:

(a) Government-owned or -controlled facilities must be utilized; for instance—

- (1) In the interest of national defense or mobilization readiness;
- (2) To perform the agency's mission adequately; or
- (3) Because private enterprise is unable or unwilling to use its own facilities for the work.

(b) Because of the nature of the work, or because it is to be performed in Government facilities, the Government must maintain a special, close relationship with the contractor and the contractor's personnel in various important areas (*e.g.*, safety, security, cost control, site conditions).

(c) The conduct of the work is wholly or at least substantially separate from the contractor's other business, if any.

(d) The work is closely related to the agency's mission and is of a long-term or continuing nature, and there is a need—

(1) To ensure its continuity; and

(2) For special protection covering the orderly transition of personnel and work in the event of a change in contractors.

**17.605 Award, renewal, and extension.**

(a) Effective work performance under management and operating contracts usually involves high levels of expertise and continuity of operations and personnel. Because of program requirements and the unusual (sometimes unique) nature of the work performed under management and operating contracts, the Government is often limited in its ability to effect competition or to replace a contractor. Therefore contracting officers should take extraordinary steps before award to assure themselves that the prospective contractor's technical and managerial capacity are sufficient, that organizational conflicts of interest are adequately covered, and that the contract will grant the Government broad and continuing rights to involve itself, if necessary, in technical and managerial decisionmaking concerning performance.

(b) The contracting officer shall review each management and operating contract, following agency procedures, at appropriate intervals and at least once every 5 years. The review should determine whether meaningful improvement in performance or cost might reasonably be achieved. Any extension or renewal of an operating and management contract must be authorized at a level within the agency no lower than the level at which the original contract was authorized in accordance with [17.602\(a\)](#).

(c) Replacement of an incumbent contractor is usually based largely upon expectation of meaningful improvement in performance or cost.

Therefore, when reviewing contractor performance, contracting officers should consider—

(1) The incumbent contractor's overall performance, including, specifically, technical, administrative, and cost performance;

(2) The potential impact of a change in contractors on program needs, including safety, national defense, and mobilization considerations; and

(3) Whether it is likely that qualified offerors will compete for the contract.

## **APPENDIX B: SPECIAL CONTRACTUAL FEATURES OF DOE'S M&O CONTRACTS**

Under a DOE M&O contract, the terms of the contract differentiate it from typical contracts awarded by other agencies under the FAR. These terms are indicators of a “special relationship,” the M&O contractors share with DOE:

1. DOE's involvement in M&O contractor labor relations, e.g., DOE's stewardship of M&O contractor pension and post-retirement medical systems, review of contractor executive compensation,
2. Laws governing contractor wages and working conditions affect DOE's M&O contractors differently than they affect other Federal contractors. For example, M&Os are not subject to the Service Contract Act (41 USC § 351 et seq.); however, the M&O contractors must flow down the Act to service subcontracts they award. Generally, DOE prohibits its M&O contractors from performing construction with their own workforces but requires them to apply the Davis-Bacon Act to M&O subcontracts for construction.
3. DOE's significant involvement in M&O contractor management controls.
4. DOE's involvement with the M&O contractor's purchasing process.
5. DOE's application of specific DOE directives to the operations of the M&O contractor.
6. DOE's authorizing the M&O contractor to finance contract performance by use of Special Financial Institution Accounts, under which checks written by the contractor one day are covered by the Department of Treasury overnight.
7. DOE's requiring the M&O contractor to maintain integrated accounting systems, under which the contractors budgeting and accounting follow DOE's Accounting Handbook.
8. DOE's relying on the DOE Inspector General for auditing its M&O contractors. DOE requires the M&O contractor to maintain an internal audit function, which performs critical audit functions under DOE's Cooperative Audit Strategy.
9. The M&O contractor's reconciling its accounts annually by use of DOE's Statement of Costs Incurred and Claimed.
10. The M&O contractor's accepting no work from entities other than DOE, except as specifically allowed by its contract with DOE. DOE assigns program work to the M&O by means of DOE's work authorization system.
11. The M&O contractor's operating under certain cost principles designed by DOE for use in its M&O contracts.

## RESEARCH AND TECHNICAL ASSISTANCE PROGRAM FOR FOREIGN ENTITIES<sup>1</sup> AT OAK RIDGE NATIONAL LABORATORY (ORNL)

### **The Department of Energy (DOE) Mission is to Research Science Areas and to Furnish Novel Technologies**

The DOE sponsors a research and technical assistance program for foreign entities. Within DOE, this research and technical assistance is called the Work for Others (WFO) program. For foreign entities, DOE is authorized to provide specialized technical assistance and to make arrangements (including contracts and agreements) for conducting research and development activities. This work activity includes participating in joint or cooperative research, developmental, or experimental projects. The U.S. legal authority for such activity comes from statutes such as the Atomic Energy Act of 1954 (as amended), the Energy Reorganization Act of 1974 (Section 107a of Public Law 93-438) and the DOE Organization Act (Public Law 95-91). The DOE utilizes Oak Ridge National Laboratory (ORNL) to supply the requisite expert research talent and unique facilities to meet these technological needs.

### **Foreign Entity**

A foreign entity is (1) a non-U.S. organization based external to the United States; and/or (2) is not principally under the laws and regulations of the United States (even though a subsidiary may be); and/or (3) means any partnership, corporation, association, or institution where 75 percent or more of the voting interest is owned by non-U.S. citizens. A foreign entity falls into one or more of these categories:

1. International Organizations (e.g., International Red Cross)
2. United Nations Organizations (e.g., International Atomic Energy Agency)
3. Foreign Governments (e.g., Canada, Germany, Japan, Brazil, Egypt)
4. Foreign Companies (e.g., Siemens AG in Germany, Phillips Electronics in the Netherlands, Matsushita in Japan)
5. Foreign Government Corporations (e.g., British Petroleum of Great Britain, Thompson-CSF of France, or Korean Atomic Energy Research Institute)
6. Non-Governmental Organizations (i.e., NGO which normally are a voluntary, non-profit type of organization and which have a social service, medical, humanitarian, or environmental objective to accomplish, e.g., “*Doctors Without Borders*” or “*Green Peace*”)
7. Foreign Persons (i.e., the term foreign person means any person who is not a citizen or national of the United States or lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act and includes foreign corporations, international organizations, and foreign governments.) (22 USC Sec. 2778(9) (C))

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<sup>1</sup> As of June 17, 2013. Prepared by David W. Bradford, ORNL, at [bradforddw@ornl.gov](mailto:bradforddw@ornl.gov) or (865) 574-9798.

## **Research or Technical Assistance Categories Provided by ORNL for DOE**

DOE can furnish specialized help in three domains of expertise. These are:

1. Non-nuclear research or technology assistance.
2. Limited nuclear research or nuclear-related technology assistance. (See 10 Code of Federal Regulation (CFR) 810 for policy and approval requirements.)
3. Visits or assignments of foreign nationals to DOE facilities.

### **What Does ORNL Bring to the Table?**

- Access to DOE's most diverse multi-program research and technical facilities at ORNL for:
  - ◆ Basic Research
  - ◆ Applied Research
  - ◆ Applied Development
- World-class energy research capability
- The world leader in neutron science
- Incredible Biotechnology and Bioengineering expertise
- Environmental security
- World-class materials science research and facilities
- World-class supercomputer computational & network capability
- Specialized consulting in multiple scientific fields
- Access to rest of DOE National Laboratory System
- Access to University Research through University of Tennessee (UT)
- Access to National Transportation Research Center, Inc. (NTRC)
- Access to Battelle Corporation and Affiliates expertise

### **Legal Parameters**

For those activities involving nuclear-related activities, a review will be done for compliance with the Price Anderson Act, as amended and Nuclear Non-Proliferation concerns. This requirement is based on the liability considerations of the Price Anderson Act and Amendments (PAAA - 42 U.S.C. 2282a).

All DOE activities involving foreign entities must also comply with U.S. Export Compliance laws and regulations. Employees and subcontractors who send or personally carry outside the United States any equipment, commodities, information, or computer hardware and software must follow requirements in accordance with U.S. export control<sup>2</sup> laws and regulations.

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<sup>2</sup> Export Control at ORNL is governed by the U.S. laws and regulations. Contact the Export Compliance Manager, Rolf Migun, at ([migunrp@ornl.gov](mailto:migunrp@ornl.gov) or (865) 576-7230 to determine if any export/import licenses are required. Recognize early any need to export and plan ahead. A license from either the Department of State or Department of Commerce can take several months to process.

Contacts with foreign entities are also covered under the Foreign Corrupt Practices Act (FCPA). Both DOE and ORNL mandate that all professional or business contacts will scrupulously adhere to the letter and spirit of the FCPA. The FCPA prohibits giving any thing of value to a foreign official for the purpose of influencing a foreign government. All transactions involving foreign officials must be coordinated with ORNL and DOE legal departments.

### **Why should a Foreign Sponsor come to ORNL for research and development or for technical assistance?**

The U.S. government's interest in furthering industrial competitiveness and scientific advances encourages innovative approaches and solutions to technical problems facing a foreign sponsor. As such, ORNL furnishes various options in solving issues early in a product or systems developmental life cycle. The U.S. government's considerable investments in basic technology research and development have provided a substantive scientific foundation of knowledge at ORNL.

A foreign sponsor may be trying to develop increased research or technological capabilities to meet their technical shortfalls or to satisfy requirements in their Business Plan. As such, the use of ORNL may be suitable for these initial research efforts and prototype tests where product or scientific feasibility is being established. ORNL can establish the scientific parameters of achievement during this early research phase where subjective evaluations are the rule rather than the objective evaluation of criteria against business strategies. At this research stage, general performance specifications only cover the minimum essential requirements. A foreign sponsor might have only the initial performance specifications available. ORNL can address the sponsor's technical requirements to determine output, function, or operation of items or equipment. This allows an unbiased technical approach in the details of design, fabrication, formulation, and initial pilot or prototype by the ORNL research team.

To reach the stage where design specifications are available for maximum commercial development, a model is developed. To assure adequacy of the performance specifications, the prototype is tested and deficiencies are corrected at minimal cost. Since performance specifications are not restrictive to any particular method or process, this approach permits an objective approach when the sponsor prototypes are finished, conserves sponsoring company's funds, and expedites the system or product when it is ready for final development, manufacturing, and/or marketing.

### **DOE Administrative Processing**

DOE accepts taskings from a foreign sponsor to meet a research or technological requirement. DOE performs work that is consistent with its overall scientific mission, is relevant to the DOE unique capabilities or special competencies, is consistent with U.S. foreign policy objectives, and is in consonance with U.S. laws. Prior to work beginning, ORNL will prepare for DOE approval

a research proposal describing the work to be performed. Upon approval, DOE will formally notify ORNL to begin agreement negotiations with the foreign sponsor so that work can begin.

Some tasks require an approval by DOE-Headquarters in Washington, D.C. Examples of these transactions are:

1. Work directly funded by a foreign sponsor and performed at a DOE facility requires the review and concurrence of the Office of International Science and Technology Cooperation.
2. General Counsel establishes policy on patent and technical data, advises on patent and technical data clauses of contracts, and approves waiver of patent rights for foreign entities.
3. Work for Others activities involving human subjects, including research that is classified and proprietary, whether performed domestically or in an international environment, can begin only if it is conducted in compliance with Federal regulations and DOE requirements for human subject protection.
4. Work that involves a space nuclear reactor or non-commercial power reactor and radioisotope power source projects at DOE facilities requires the concurrence of the Director, Office of Space and Defense Power Systems.
5. DOE Program Secretarial Officers review and concur in foreign-sponsored WFO agreements that use program developed technologies.
6. The DOE Office of Science must initially approve each individual WFO arrangement with a foreign sponsor.

### **WFO Partnership Agreements**

Research or technical assistance efforts at ORNL are performed under one of two agreement mechanisms, either a Material Services Order Form (MSOF) or a DOE WFO Agreement with intellectual property provisions.

The MSOF uses a one page abbreviated agreement format between the requesting foreign sponsor and UT-Battelle, LLC (the DOE performance-based contractor managing and operating the ORNL facility) if there are no intellectual property concerns involved. If the foreign entity has special requirements for proprietary information protection, ORNL will attach a Proprietary Information Agreement to the MSOF. *The sponsor's proprietary information associated with the research or technical development will be protected and safeguarded from inappropriate disclosure.*

Where there items on intellectual information or patent rights involved or that need to be addressed, a DOE WFO standard agreement will be initiated as the preferred form of agreement. If the foreign sponsor cannot accept the DOE agreement language as is, a negotiated agreement is the next step and will be conducted among the foreign sponsor, the local DOE ORNL Site Office (OSO), and ORNL. If the foreign sponsor's concerns cannot be satisfied within the authorized discretionary approval areas of the DOE OSO, all future negotiations will then be conducted by DOE Headquarters in Washington, D.C., and assisted by the U.S. Department of State.

Periodically, there may be minor language sensitivities in abbreviations, form titles, or acronyms used within either a MSOF or a WFO agreement. Where there will be no substantive difference in the meaning of the proposed WFO agreement, DOE may agree to modify language to meet the concerns of the foreign sponsor. However, the English language version of the signed WFO agreement will always take precedence.

### **Administrative Recovery of DOE Program Costs**

Based on U.S. Public Law 105-261, DOE is authorized to levy a flat 3% surcharge to cover DOE administrative processing and overhead costs. This surcharge is called the Federal Administrative Charge (FAC) and the FAC is charged on all non-DOE-funded work.

Foreign sponsors will provide an advance payment in U.S. dollars equal to three months of estimated effort prior to work commencing. This advance funding provision is mandated by U.S. Federal Law and is included in the basic DOE WFO agreement. During the conduct of the project, ORNL will invoice monthly for accumulated expenses (that is, funds spent) plus FAC against the project. It is the responsibility of the foreign sponsor to pay the invoices or work may be stopped.

As an exception to the 90-day advance payment option, DOE may agree to a 30-day advance payment option given the following written assurances or guarantees:

1. No DOE appropriated funds will be used to cover any foreign sponsor's work requirements (unless specifically approved in writing by DOE Chief Financial Officer as part of an U.S. Government or DOE International Voluntary Agreement).
2. The foreign sponsor must provide full funding in advance for all projects with estimated costs up to \$25,000.
3. For project costs exceeding \$25,000 and will take longer than 90 days to complete, a pre-determined partial cash advance<sup>3</sup> will be provided by the foreign sponsor by a specific monthly date agreed to in the WFO agreement. This monthly advance payment will be prior to, or in lieu of, receiving an invoice for payment for prior expenditures.
4. During the life of the project, invoice adjustments will be made to reflect actual expenditures versus advance payments<sup>4</sup>. At the end of the project, any surplus funding will be returned to the foreign sponsor.

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<sup>3</sup> The initial partial cash advance requirement for a project is the sum of the following: (1) estimated total cost for the current business month; (2) estimated in-house cost for the next business month; and (3) estimated outstanding commitments at the end of the current business month.

<sup>4</sup> Second and subsequent partial advances will represent the sum of the next business month estimated in-house costs plus the change in outstanding commitments for the current business month.

## **DOE Relationships with its Performance-based Contractors**

DOE competitively awards management and operating (M&O) contracts to manage and operate DOE facilities. These M&O contractors are financially integrated with DOE and operate under strict DOE controls and guidelines. The DOE M&O performance-based contractor that operates ORNL is UT-Battelle, LLC, which is a distinct "arms-length" subsidiary of its parent organizations (the University of Tennessee and Battelle Memorial Institute). UT-Battelle, LLC is established exclusively to perform work assigned by DOE, including work which DOE accepts from private companies. A DOE M&O contractor is a financially-integrated contractor of DOE and is vital to understanding the role that DOE plays in technology research and applied development for the potential foreign sponsors by utilizing its network of national laboratories, such as ORNL.

DOE establishes the programmatic controls, oversight functions, customary reporting information, and general categories and procedures for the overhead cost structure for UT-Battelle, LLC. DOE approves all overhead rate categories.

**THE DEPARTMENT OF ENERGY (DOE)**  
**RESEARCH AND TECHNICAL ASSISTANCE PROGRAM**  
**FOR OTHER FEDERAL AGENCIES (OFA)**  
**AT OAK RIDGE NATIONAL LABORATORY<sup>1</sup>**

**Legal Authority**

DOE sponsors a research and technical assistance program, called the Work For Others (WFO) program. This program furnishes reimbursable support to other federal agencies (OFA) as part of the services rendered to-and-for US government activities under various laws and regulations, principally, the Economy Act and the Atomic Energy Act of 1954. The Economy Act (31 USC 1535) authorizes a federal agency to place orders with any other federal agency for supplies or services that the servicing agency may be in a position or equipped to supply, render, or obtain by contract if it is determined by the head of the requesting agency, or designee, that it is in the government's interest to do so (Federal Acquisition Regulation [FAR] Section 17.502 General). Definition: Servicing agency = sponsor agency; requesting agency = non-sponsor agency).

When DOE sends a Statement of Work (SOW) or Research Proposal (RP) to another federal agency, DOE considers this action as DOE programmatic authorization to conduct reimbursable work for another federal agency. The DOE intent is to leverage existing unique research and specialized technical capabilities of Oak Ridge National Laboratory (ORNL) to help fulfill U.S. government mission requirements. This DOE approach is consistent with the emphasis from both the Presidential Administration and U.S. Congress to streamline activities, share technologies, and reduce costs.

**Why come to DOE early in the research and development cycle?**

The FAR provides options in solving issues early in a product or systems life cycle. A contract may not be suitable for these initial research efforts and prototype tests where mission feasibility is being established. The measures of achievement during this phase are subjective evaluations rather than the objective evaluation of criteria. At this research stage in the project life cycle, general performance specifications are the rule and cover the minimum essential requirements. The sponsor's performance specifications express the technical requirements in the form of output, function, or operation of items or equipment. This strategic research concept helps to consider alternative concepts before plunging ahead with a detailed implementation program, sets clear performance goals for a new system, and analyzes interactions between technologies. Using this type of strategy resolves technical issues with the performance specifications and **promotes competition in the long run.**

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<sup>1</sup> Information current as of June 11, 2013. Prepared by Mr. David Bradford, ORNL WFO Program Office and can be reached at (865) 574-9798 or by [bradforddw@ornl.gov](mailto:bradforddw@ornl.gov).

ORNL has extensive unique research and testing capabilities, unparalleled technology assets, and world class computational expertise that are available to assist other federal agencies. An interagency acquisition between the federal agency and DOE to use ORNL may be more appropriate for prototype creation and initial developmental efforts. This permits an unbiased technical approach to the design, fabrication, formulation, and production of the project prototypes.

Using this strategy involving ORNL can rapidly resolve technical issues with the performance specifications. This gives the federal agency the detailed specifications for a workable prototype that ultimately shortens the acquisition life cycle and conserves funds. The proposed approach is consistent with U.S. Congressional direction and can effectively promote competition within the private section by providing workable specifications. Furthermore, mission risk to the federal agency is reduced during the critical and sensitive mission feasibility phase.

### **DOE Administrative Processing**

DOE and the requesting federal agency will create a Part A Interagency Acquisition consistent with the Office of Management and Budget guidance of June 2008.

DOE accepts reimbursable taskings (Part B) from other federal agencies to meet a research or technological requirement. DOE assumes that the requesting agency has fulfilled all its own internal administrative review and approval processes when the tasking is forwarded to DOE for acceptance. This tasking is considered an interagency agreement between two federal agencies and is not to be confused with awarding a contract to a federal agency. With the exception of the special statutory relationship between DOE and the U.S. Navy Nuclear Propulsion Program, DOE does not do, and will not normally accept, routine contract acquisition actions for other federal agencies. That is, DOE does not normally perform any "Contract Offloading" for any other federal agency but performs work that is consistent with its overall mission and is relevant to the DOE unique capabilities, specialized expertise, singular facilities, or derived competencies.

When a federal agency forwards a tasking (i.e., Interagency Acquisition with a reimbursable appropriation fund cite) to DOE ORNL Site Office (DOE-OSO), then DOE-OSO will review the proposed tasking to ensure that the SOW or RP is consistent with the DOE mission or special competencies. When DOE-OSO accepts a research or applied technology development request from an OFA, the DOE-OSO contracting officer certifies and assigns the particular task to ORNL to accomplish under DOE rules and procedures. DOE establishes the programmatic controls, oversight functions, general reporting information, and general categories and procedures for the overhead cost structure for the M&O contractors. DOE approves all overhead rate categories. The requesting federal agency may not direct DOE to give the tasking to any particular DOE M&O contractor. Because of the very nature of the M&O contract as an integrated contract between DOE and the M&O contractor, there is by definition no "pass-through" to a sponsor-selected contractor.

## **DOE Relationships with its Performance-Based Contractors**

Under FAR Section 17.6 dealing with Management and Operating (M&O) contractors, DOE competitively awards M&O contracts to manage and operate DOE facilities. These M&O contractors are financially integrated with DOE and operate under strict DOE controls and guidelines. A DOE M&O contractor, UT-Battelle, LLC, manages and operates the scientific and research facilities of ORNL. UT-Battelle, LLC, is a distinct "arms-length" subsidiary of its parent organizations (the University of Tennessee and Battelle Memorial Institute) and is established exclusively to perform work assigned by DOE, including work which DOE accepts from other federal agencies. A DOE M&O contractor performs a completely different role as a financially-integrated, performance-based, research and development contractor of DOE versus a contractor who fulfills a Government-Owned-Contractor-Operated (GOCO) function within the Department of Defense and other federal agencies. This distinction is vital to understanding the role that DOE plays in technology research and applied development versus a GOCO contractor who provides a routine production-type of service.

## **Administrative Recovery of DOE Program Costs**

All federal agencies doing interagency acquisitions are required to recover their administrative costs in managing Economy Act transactions as required under 31 USC 9701. Based on Section 3137 of the Strom Thurmond National Defense Authorization Act of 1999 (Public Law 105-261), DOE is authorized to charge a maximum 3% surcharge to cover DOE administrative processing and overhead costs. This surcharge is called the Federal Administrative Charge (FAC) and the FAC is charged on all non-DOE funded work. A limited set of FAC specific waivers exist, principally in the areas of national security or homeland security. Other than the U.S. Congress-established criteria for administrative costs recovery (i.e., FAC), there is no other DOE surcharge for WFO research and technical work performance.

The "committed" reimbursable funds from the federal agency become "obligated" reimbursable funds when an authorized DOE contracting official signs the particular agency's funding document. Note that this is not a contract. DOE-OSO will obligate entirely the appropriation citation and return a signed certification to the other federal agency. *This meets the criteria in 31 U.S.C. 1501(a) for a recordable obligation.* DOE then assigns ORNL to perform the research or technical tasking for completion. Funds will be then assigned on the monthly financial plan to ORNL as the DOE M&O contractor executing the task assignment. *Note that there is no separate contracting action involved.*

As the technical project proceeds, DOE-OSO will invoice the requesting federal agency by showing the amount of "reimbursable funds earned" (that is, spent) plus FAC (if applicable) against the project on the requesting agency's appropriation. It is the responsibility of the requesting federal agency to pay that invoice.

## **DOE Guidance on Subcontracting**

Based on DOE policy and acquisition regulations, UT-Battelle, LLC, in its operation of ORNL, may subcontract a portion of a project that is incidental to the overall performance of the project. UT-Battelle, LLC will retain the management and technical components which are judged to enhance DOE's mission and which reflects UT-Battelle, LLC special capabilities. The company may subcontract portions of the tasking to:

- (1) provide flexibility in workload management;
- (2) acquire special areas of expertise not immediately available within the DOE site;
- (3) have cross-fertilization of ideas and technical approaches to solve problems;
- (4) support small business and/or minority enterprises based on DOE guidance and direction as part of the U.S. government's socioeconomic policies;
- (5) show positive community involvement; and,
- (6) transfer technology and management expertise to other firms.

The subcontractors work specifically for UT-Battelle, LLC and the DOE contracting office reviews and approves the awarded subcontracts regardless if awarded as competitively or sole source awards. The other federal agency can not specify or direct the award to any particular subcontractor and may not operationally direct the subcontractor.

**THE DEPARTMENT OF ENERGY (DOE)  
RESEARCH AND TECHNICAL  
ASSISTANCE PROGRAM  
FOR THE U.S. COMMERCIAL SECTOR  
AT OAK RIDGE, TENNESSEE<sup>1</sup>**

**DOE is directed to help the U.S. Commercial Sector!**

DOE sponsors a research and technical assistance program, called the Work For Others (WFO) program, for U.S. commercial companies and U.S. research institutions. For these entities, DOE is authorized and encouraged to provide technical assistance and to make arrangements (including contracts, agreements, and loans) for conducting research and development activities with private or public institutions or persons. This work activity includes participating in joint or cooperative research, developmental, or experimental projects. The authority for such activity comes from statutes such as the Energy Reorganization Act of 1974 (Public Law 93-438) and the Department of Energy Organization Act (Public Law 95-91).

**Why come to DOE early in the research and development cycle?**

The U.S. government's interest in furthering industrial competitiveness and scientific advances encourages innovative approaches and solutions to technical problems facing U.S. industry and universities. This U.S. governmental concern furnishes various options in solving issues early in a product or systems developmental life cycle. The U.S. government's considerable investments in basic technology research and development have provided a substantive scientific foundation of knowledge in the National Laboratory system.

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<sup>1</sup> As of June 11, 2013. Prepared by David. W. Bradford, ORNL, at [bradforddw@ornl.gov](mailto:bradforddw@ornl.gov) or (865) 574-9798.

A company may be trying to develop increased research or technological capabilities to meet their technical shortfalls or to satisfy requirements in their Business Plan. As such the use of DOE's Oak Ridge National Laboratory (ORNL) may be suitable for these initial research efforts and prototype tests where product or scientific feasibility is being established. ORNL can establish the scientific parameters of achievement during this early research phase where subjective evaluations are the rule rather than the objective evaluation of criteria against business strategies. At this research stage, general performance specifications only cover the minimum essential requirements. A commercial company might have only the initial performance specifications available. ORNL can address the sponsor's technical requirements to determine output, function, or operation of items or equipment. This allows an unbiased technical approach in the details of design, fabrication, formulation, and initial pilot or prototype by the ORNL research team.

To reach the stage where design specifications are available for maximum commercial development, a model is developed. To assure adequacy of the performance specifications, the prototype is tested and deficiencies are corrected at minimal cost. Since performance specifications are not restrictive to any particular method or process, this approach permits an objective approach when the sponsor prototypes are finished, conserves sponsoring company's funds, and expedites the system or product when it is ready for final development, manufacturing, and/or marketing.

**What Does ORNL Bring to the Table?**

1. ORNL is DOE's most diverse multi-program research and technical facilities for:
  - a. Basic Research
  - b. Applied Research
  - c. Applied Development
  - d. Ability to do National Security Classified Work
  - e. Extensive Knowledge of National

## Security or Homeland Security Technology Needs

- f. World leader in Neutron Science
  - g. Most diverse and powerful high performance computing complex in the world.
2. Access to rest of DOE National Laboratory System
  3. Access to the DOE Y-12 National Security Complex's National Prototype Center with its Manufacturing Technology Expertise
  4. Access to the National Transportation Research Center, Inc. (NTRC)
  5. Access to other University Research Centers

## DOE Administrative Processing

The DOE accepts taskings from the US commercial sector to meet a research or technological requirement. DOE executes this work through ORNL by using its unique capabilities, specialized expertise, singular facilities, or derived competencies. Prior to work beginning, ORNL researchers will coordinate with the company's representatives the proposed research or technical assistance and obtain a DOE approval. After a DOE authorization, agreement negotiations can begin.

Research or technical efforts on a project can be done under a Material and Services Order Form (MSOF) which is a one page abbreviated agreement between the requesting U.S. commercial entity and UT-Battelle, LLC (the DOE contractor that manages ORNL) if there are no intellectual property (patents, trademarks, copyrights) concerns involved. If the U.S. commercial sponsor has proprietary information involved that needs to be protected, then a Proprietary Information Agreement disclaimer can be signed and attached to the MSOF. The sponsor's proprietary information associated with the research or technical development will be protected and safeguarded from disclosure.

If there are special requirements for intellectual property information that need to be addressed, a Work For Others standard agreement will normally be used. This is a DOE previously-agreed-to set of uniform contractual clauses for research and development agreements that will expedite arranging the legal commitment between the US commercial company and UT-Battelle, LLC. However, if the DOE standard language is not acceptable to the US commercial company, a negotiated agreement might be considered.

## Payment of Costs

The US commercial company must make an advance payment for ORNL services. This limited advance funding of a project is mandated by Federal Law (for example, the Anti-Deficiency Act) and is included in the basic DOE contract between the DOE ORNL Site Office and UT-Battelle, LLC. The U.S. Congress has directed that a federal agency will not cover a private company's cost obligations for research and development with U.S. appropriated funds. This means that a private sector company must pay for their work in advance increments. All projects costing \$25,000 or under must be completely paid for in advance.

For small businesses and non-profit organizations, DOE uses several flexible advance payment arrangements so that only the monthly-required funds are paid in advance. This minimizes the impact of the DOE costs to the private organization's cash flow. Additionally, DOE by statute, waives the DOE federal administrative charge (FAC) for these organizations along with universities of higher learning in the United States.

Medium or large-scale commercial sector sponsors will provide an advance payment equal to three months of estimated effort prior to work commencing. This allows a routine billing cycle to be established to cover all actual and estimated monthly charges.

Based on Public Law 105-261, DOE is authorized to levy a flat 3% surcharge to cover DOE administrative processing and overhead costs. This surcharge is the Federal Administrative Charge (FAC) and is charged on almost all non-DOE-funded work.

During the conduct of the project, UT-Battelle, LLC will invoice monthly for accumulated expenses (that is, funds spent) plus FAC, if applicable, against the project. It is the responsibility of the requesting commercial sponsor to pay that invoice.

### **DOE Relationships with its Performance-Based Contractors**

DOE competitively awards management and operating (M&O) contracts to manage and operate DOE facilities. These M&O contractors are financially integrated with DOE and operate under strict DOE controls and guidelines. The DOE M&O performance-based contractor that operates ORNL is UT-Battelle, LLC, which is a distinct "arms-length" subsidiary of its parent organizations (the University of Tennessee and Battelle Memorial Institute). UT-Battelle, LLC is established exclusively to perform work assigned by DOE, including work which DOE accepts from private companies. A DOE M&O contractor is a financially-integrated contractor of DOE and is vital to understanding the role that DOE plays in technology research and applied development for the U.S. government and the domestic commercial sector by utilizing its network of national laboratories, such as ORNL.

DOE establishes the programmatic controls, oversight functions, customary reporting information, and general categories and procedures for the overhead cost structure for UT-Battelle, LLC. DOE approves all overhead rate categories.

### **DOE Guidance on Subcontracting**

Based on DOE policy and acquisition regulations, UT-Battelle, LLC, in its operation of ORNL, may subcontract a portion of a project that is incidental to the overall performance of the project. UT-Battelle, LLC will retain the management and technical components which are judged to enhance DOE's mission and which reflects UT-Battelle, LLC's special capabilities.

The company may subcontract portions of the tasking to:

- (1) provide flexibility in workload management;
- (2) acquire special areas of expertise not immediately available within the DOE site;
- (3) have cross-fertilization of ideas and technical approaches to solve problems;
- (4) support small business and/or minority enterprises based on DOE guidance and direction as part of the U.S. government's socioeconomic policies;
- (5) show positive community involvement; and,
- (6) transfer technology and management expertise to other firms.

The subcontractors work specifically for UT-Battelle, LLC and the DOE contracting office reviews and approve the awarded subcontracts regardless if awarded as competitively or a sole source award. The commercial entity sponsor can not specify or direct the award to any particular subcontractor and may not operationally direct the subcontractor.

**DEPARTMENT OF ENERGY (DOE)  
RESEARCH AND TECHNICAL ASSISTANCE PROGRAM  
AT OAK RIDGE NATIONAL LABORATORY (ORNL)  
FOR U.S. STATE AND LOCAL GOVERNMENT ENTITIES<sup>1</sup>**

**The Department of Energy (DOE) Mission is to Research Science Areas and to Furnish Novel Technologies**

The DOE sponsors a research and technical assistance program, called the Work For Others (WFO) program, for U.S. State and local government entities. DOE is authorized to supply technical assistance and to make arrangements for conducting research and development activities with States and their political subdivisions. This work activity includes participating in joint or cooperative research, developmental, or experimental projects. The authority for this activity is in statutes such as the Atomic Energy Act of 1954 and the Intergovernmental Cooperation Act of 1968 (P.L. 90-577). DOE also uses the general parameters of the Office of Management and Budget (OMB) Circular A-97 in executing this assistance. The DOE utilizes its Oak Ridge National Laboratory (ORNL) to supply the requisite expert research talent and unique facilities to meet these technological needs.

**Why come to DOE?**

The U.S. government's interest in furthering industrial competitiveness and scientific advances encourages innovative approaches and solutions to technical, infrastructure, educational, and social problems facing U.S. States. This U.S. governmental concern translates into having scientific and technology resources available on a reimbursable basis to furnish various options in solving issues. The U.S. government's considerable investments in basic technology research and development have produced a substantive scientific foundation of knowledge in the National Laboratory system, specifically at ORNL. For DOE, their intent is to:

- (1) encourage intergovernmental cooperation in the conduct of specialized or technical services and provisions of facilities essential to the administration of State or local governmental activities; and,
- (2) enable State and local governments to avoid unnecessary duplication of special service functions.
- (3) capitalize on previous U.S. government funded work which can materially assist a State or local Government in its responsibilities in such diverse areas as homeland security, counter-terrorism, energy planning and analysis, or transportation systems assistance for an Intelligent Transportation System.

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<sup>1</sup> As of June 18, 2013. Prepared by David W. Bradford, ORNL Work For Others (WFO) Program Office at (865) 574-9798 or by [bradforddw@ornl.gov](mailto:bradforddw@ornl.gov)

## **Available DOE Research and Technical Services**

As a general rule, DOE will furnish "specialized or technical services" to a State government or to a local government based on the variety of statutes and also OMB A-97 circular criteria. These "specialized or technical services" are services such as "... statistical and other studies and compilations, development projects, technical tests and evaluations, technical information, training activities, surveys, reports, documents, and any other similar service functions" which DOE is especially equipped and authorized by law to perform. These services are divided into the following components:

- (1) Any existing statistical or other studies and compilations, results of technical tests and evaluations, technical information, surveys, reports, and documents, and any such materials which may be developed or prepared in the future to meet the needs of the Federal Government or to carry out the normal program responsibilities of the Federal agencies involved.
- (2) Preparation of statistical and other studies and compilations, technical tests and evaluations, technical information, surveys, reports, and documents, and assistance in the conduct of such activities and in the preparation of such materials, provided they are of a type similar to those which the Federal agency is authorized by law to conduct or prepare.
- (3) Training of the type which the Federal agency is authorized by law to conduct for Federal personnel and others or which is similar to such training.
- (4) Technical aid in the preparation of proposals for development and other projects, for which the Federal agency provides grants-in-aid or other assistance, provided such aid primarily strengthens the ability of the recipient in developing its own capacity to prepare proposals.

Technical information, data processing, communications and personnel management systems services which the Federal agency normally provides for itself or others under existing authorities.

Additionally, upon request, DOE will furnish reimbursable services in the following areas:

- Basic Research
- Applied Research
- Applied Development
- Technical Analyses or Specialized Scientific Studies
- Data Sampling/Confirmation
- Prototype Development
- Objective Consultation
- Essential Engineering Design and Development
- Model Fabrication
- Manufacturing of Specialized Materials or Components
- Specialized Technical Services or Analytical Assessments of complex data sets

DOE determines the decision criteria on what work can be done and if it is within the special scientific and technical capabilities of ORNL.

### **DOE Relationships with its Performance-Based Contractors**

DOE competitively awards M&O contracts under the authority of 48 CFR Subpart 17.6 to manage and operate DOE facilities. These performance-based M&O contractors are financially integrated with DOE and operate under strict DOE controls and guidelines. A DOE M&O contractor, UT-Battelle, LLC, manages and operates the scientific and research facilities of ORNL under the control of the DOE ORNL Site Office (DOE-OSO). UT-Battelle, LLC, is a distinct "arms-length" subsidiary of its parent organizations (the University of Tennessee and Battelle Memorial Institute) and is established exclusively to perform work assigned by DOE-OSO, including work which DOE-OSO accepts from State and local governments. A DOE M&O contractor performs a completely different role as a financially-integrated contractor of DOE versus a contractor who fulfills a Government-Owned-Contractor-Operated (GOCO) function within other federal agencies. This distinction is vital to understanding the critical role that DOE plays in technology research and applied development for the U.S. government, U.S. States and local U.S. governments.

DOE-OSO establishes the programmatic controls, oversight functions, customary reporting information, and general categories and procedures for the overhead cost structure for UT-Battelle, LLC, the M&O contractor. DOE approves all overhead rate categories.

### **DOE Administrative Processing**

DOE-OSO accepts taskings from the State or local governmental sector to meet research or technological requirements. These activities are authorized by DOE-OSO where the proposed assistance is consistent with DOE overall science missions and is relevant to the ORNL unique capabilities, specialized expertise, singular facilities, or derived competencies. For the State or local government agency seeking help and prior to work beginning, ORNL researchers will prepare a draft research proposal or statement of work to meet the specific needs of the State or local governmental entity. This mutually acceptable research package will be sent to DOE OSO for their formal approval. Upon authorization, DOE-OSO will formally notify ORNL that WFO agreement negotiations with a State or local governmental entity can begin.

Research or technical efforts on a project can be done under a Material or Services Order Form (MSOF) which is a one page abbreviated contract between UT-Battelle, LLC (as the DOE M&O Contractor) and the requesting State agency or local governmental entity if there are no intellectual property (e.g., patents, trademarks, copyrights) being generated or modified. When the State or local governmental unit has proprietary information involved that must be protected, a Proprietary Information Agreement disclaimer can be signed and attached to the MSOF. *The State or local governmental entity's proprietary information associated with the research or technical development will be protected and safeguarded from disclosure at all times.*

If there are special requirements for intellectual property information that must be addressed, a Work For Others agreement will normally be used. There is a standard DOE version applicable to U.S. State governments. This is a DOE previously-agreed-to set of uniform contractual clauses for research and development agreements which will expedite arranging the legal commitment between the State or the local governmental unit and UT-Battelle, LLC. However, if the DOE standard language is not acceptable to the State or local governmental unit, a negotiated contract may be done in certain incidents.

### **Administrative Recovery of DOE Program Costs**

Based on Public Law 105-261, DOE is authorized to levy a flat 3% surcharge to cover DOE administrative processing and overhead costs. This surcharge is the Federal Administrative Charge (FAC) and the FAC is charged on all non-DOE funded work unless waived. However, state governments and local governmental entities are statutorily excluded from paying the FAC.

The State government or the local entity will then pay the equivalent cost rates as DOE-funded programs at ORNL with the exception of an additional minor overhead charge to cover WFO safeguards and security actions.

Furthermore, as part of the annual DOE Administrative Appropriation from Congress, funds are identified to furnish an advance payment for charges incurred by the State or the local governmental unit for work under the MSOF or a DOE WFO agreement. This provision of advance funding by DOE is contingent upon the State that is requesting assistance to have either a State Constitutional prohibition or a State statutory ban in making advance payments. In essence, DOE will make the advance payment for the funding for the State or local governmental entity until the routine billing cycle is established. The State or local governmental entity is fully responsible for paying all incurred charges for the work or services furnished them by ORNL. During the conduct of the project, ORNL will invoice monthly for accumulated expenses (that is, funds spent) against the project. It is the responsibility of the requesting state governmental agency to pay that invoice.

At the conclusion of the project and after the deliverables are received by the State or local government sponsor, the project will be closed out and any surplus funds returned to the sponsoring governmental entity.

### **DOE Guidance on Subcontracting**

Based on DOE policy and acquisition regulations, UT-Battelle, LLC, in its operation of ORNL, may subcontract a portion of a project that is incidental to the overall performance of the project. UT-Battelle, LLC will retain the management and technical components which are judged to enhance DOE's mission and which reflects UT-Battelle, LLC's special capabilities.

The company may subcontract portions of the tasking to:

- (1) provide flexibility in workload management;
- (2) acquire special areas of expertise not immediately available within the DOE site;
- (3) have cross-fertilization of ideas and technical approaches to solve problems;

- (4) support small business and/or minority enterprises based on DOE guidance and direction as part of the U.S. government's socioeconomic policies;
- (5) show positive community involvement; and,
- (6) transfer technology and management expertise to other firms.

The subcontractors work specifically for UT-Battelle, LLC and the DOE contracting office reviews and approve the awarded subcontracts regardless if awarded as competitively or a sole source award. The State or local governmental sponsor can not specify or direct the award to any particular subcontractor and may not operationally direct the subcontractor.

# Department of Energy (DOE) Policies on Accepting Other Federal Agency Funds For Interagency Acquisitions<sup>1</sup>

As of June 7, 2013

## 1. DOE Requirements

- 1.1 Appropriation funds cite certified by an appropriate agency official with funding document number as part of a reimbursable work order.  
*(Note: DOE is unable to accept direct cite funds.)*
- 1.2 A statement indicating when the funds must be obligated by.
- 1.3 A statement indicating the appropriated funds obligation expiration date.
- 1.4 Sample Statement from a Federal Agency ("legal authority and no direct competition with U.S. private sector").
- 1.5 Statement of Work (SOW) or Research Proposal (RP) indicating what needs to be done.
- 1.6 Name, address, and telephone number of requesting agency financial contact.
- 1.7 Requesting agency billing address.
- 1.8 All billings, collections and payments related to reimbursable interagency acquisition (IA) work performed by DOE for other federal agencies will be recorded through the Intergovernmental Payment and Collection (IPAC) System. As expenditures are incurred against a customer agency's funding authorization, monthly billings will be issued on behalf of DOE by Oak Ridge National Laboratory (ORNL) Accounts Receivable Department through the IPAC System. Chargebacks to DOE should not occur unless the customer agency has agreement with DOE to do so. In addition, sufficient accounting classification or other funding information required by the customer agency to properly identify the charges should be provided.

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<sup>1</sup> For further information, please contact Mr. David W. Bradford, Oak Ridge National Laboratory at phone (865) 574-9798, or by facsimile at (865) 576-7192, or by email at [bradforddw@ornl.gov](mailto:bradforddw@ornl.gov).

- 1.9 The DOE Obligating Number (i.e., the sponsor's agreement number [interagency agreement number], funding document number, MIPR number, etc.) shall serve as the common agreement number required by FMS Bulletin no. 2007-03. The requesting agency IA should specify information including:
  - 1.9.1 Agency Location Code (ALC)
  - 1.9.2 Treasury Account Symbol (TAS)
  - 1.9.3 Business Event Type Code (BETC)
  - 1.9.4 Business Partner Network (BPN) number
  - 1.9.5 Contracting and Accounting Points of Contact, and
  - 1.9.6 DUNS
  
- 1.10 A copy of the Determination and Findings done by the requesting federal agency.

## **2. Funding Documents That DOE Will Accept**

DOE does not impose the use of a specific DOE or a particular standard government form so as not to impede the requesting agency from asking for services. To enhance government efficiency, DOE will accept for obligation purposes any reimbursable funding document that the sponsoring agency may desire to use as long as the information in paragraph 1 above is provided.

Some examples of acceptable funding documents are:<sup>2</sup>

- 2.1 Agency Memorandums on Agency Letterhead
- 2.2 SF 26, Award/Contract (also SF 30, Amendment of Solicitation/Modification of Contract, when used to modify the SF 26)
- 2.3 SF 1034, Public Voucher for Purchase and Service Other than Personal Services
- 2.4 DD 1144, Inter-Service/Interdepartmental Support Agreement
- 2.5 DD 1155, Order for Supplies or Services
- 2.6 AF Form 185, Reimbursable Order
- 2.7 NAVCOMPT 2275, Order for Work and Services
- 2.8 DA 3953, Purchase Request and Commitment Form

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<sup>2</sup> Form definitions are: SF = Standard Form; DD = Department of Defense; AF = Air Force; NAVCOMPT = Navy Comptroller; DA = Department of the Army; DTRA = Defense Threat Reduction Agency; PHS = Public Health Service; DOT = Department of Transportation; NRC = Nuclear Regulatory Commission; NSA = National Security Agency; DARPA = Defense Advanced Research Projects Agency; TDF = Treasury Department Form.

- 2.9 DD 448, Military Interdepartmental Purchase Request (MIPR)
- 2.10 PHS 5152-5, Notice of Grant Award
- 2.11 DOT F 2300.1, Department of Transportation Reimbursable Agreement
- 2.12 NRC 173, Standard Order for DOE Work
- 2.13 DTRA IACRO, Inter-Agency Cost Reimbursement Order
- 2.14 NSA ORM B5549, Universal Order Form
- 2.15 DARPA 26F, Award/Contract
- 2.16 TDF 35, Department of Treasury Form Agreement for Reimbursable Services

### **3. Financial Policy.**

DOE will account for and control funds by individual funding document unless specific written instructions to the contrary are received from a certifying official of the other federal agency. Multiple funding documents for the same scope of work under this agreement will be fully costed on a first-in, first-out basis utilizing cost transfers if authorized.

### **4. References**

- 4.1 Federal Acquisition Regulation Subpart 17.500 (see Appendix A).
- 4.2 DOE Order 481.1C, Non-DOE Funded Work (Work For Others), dated 01/09/2005.
- 4.3 DOE Accounting Handbook, Paragraph 2 (Reimbursable Work) of Chapter 13 (Reimbursable Work, Revenues, And Other Collections).

## **APPENDIX A: FEDERAL ACQUISITION REGULATION SUBPART 17.500**

*Current through FAC 2005–62 NOVEMBER 20, 2012*

### **17.500 Scope of subpart.**

(a) This subpart prescribes policies and procedures applicable to all interagency acquisitions under any authority, except as provided for in paragraph (c) of this section. In addition to complying with the interagency acquisition policy and procedures in this subpart, nondefense agencies acquiring supplies and services on behalf of the Department of Defense shall also comply with the policy and procedures at Subpart 17.7.

(b) This subpart applies to interagency acquisitions, see 2.101 for definition, when—

(1) An agency needing supplies or services obtains them using another agency’s contract; or

(2) An agency uses another agency to provide acquisition assistance, such as awarding and administering a contract, a task order, or delivery order.

(c) This subpart does not apply to—

(1) Interagency reimbursable work performed by Federal employees (other than acquisition assistance), or interagency activities where contracting is incidental to the purpose of the transaction; or

(2) Orders of \$500,000 or less issued against Federal Supply Schedules.

### **17.501 General.**

(a) Interagency acquisitions are commonly conducted through indefinite-delivery contracts, such as task- and delivery-order contracts. The indefinite-delivery contracts used most frequently to support interagency acquisitions are Federal Supply Schedules (FSS), Governmentwide acquisition contracts (GWACs), and multi-agency contracts (MACs).

(b) An agency shall not use an interagency acquisition to circumvent conditions and limitations imposed on the use of funds.

(c) An interagency acquisition is not exempt from the requirements of subpart 7.3, Contractor Versus Government Performance.

(d) An agency shall not use an interagency acquisition to make acquisitions conflicting with any other agency’s authority or responsibility (for example, that of the Administrator of General Services under title 40, United States Code, “Public Buildings, Property and Works” and title III of the Federal Property and Administrative Services Act of 1949.)

## **17.502 Procedures.**

### **17.502-1 General.**

(a) Determination of best procurement approach.

*(1) Assisted acquisitions.* Prior to requesting that another agency conduct an acquisition on its behalf, the requesting agency shall make a determination that the use of an interagency acquisition represents the best procurement approach. As part of the best procurement approach determination, the requesting agency shall obtain the concurrence of the requesting agency's responsible contracting office in accordance with internal agency procedures. At a minimum, the determination shall include an analysis of procurement approaches, including an evaluation by the requesting agency that using the acquisition services of another agency—

(i) Satisfies the requesting agency's schedule, performance, and delivery requirements (taking into account factors such as the servicing agency's authority, experience, and expertise as well as customer satisfaction with the servicing agency's past performance);

(ii) Is cost effective (taking into account the reasonableness of the servicing agency's fees); and

(iii) Will result in the use of funds in accordance with appropriation limitations and compliance with the requesting agency's laws and policies.

*(2) Direct acquisitions.* Prior to placing an order against another agency's indefinite-delivery vehicle, the requesting agency shall make a determination that use of another agency's contract vehicle is the best procurement approach and shall obtain the concurrence of the requesting agency's responsible contracting office. At a minimum, the determination shall include an analysis, including factors such as:

(i) The suitability of the contract vehicle;

(ii) The value of using the contract vehicle, including—

(A) The administrative cost savings from using an existing contract;

(B) Lower prices, greater number of vendors, and reasonable vehicle access fees; and

(iii) The expertise of the requesting agency to place orders and administer them against the selected contract vehicle throughout the acquisition lifecycle.

(b) Written agreement on responsibility for management and administration.

*(1) Assisted acquisitions.*

(i) Prior to the issuance of a solicitation, the servicing agency and the requesting agency shall both sign a written interagency agreement that establishes the general terms and conditions governing the relationship between the parties, including roles and responsibilities for acquisition planning, contract execution, and administration and management of the contract(s) or order(s). The requesting agency shall provide to the servicing agency any unique terms, conditions, and applicable agency-specific statutes, regulations, directives, and other applicable requirements for incorporation into the order or contract. In the event there are no agency unique requirements beyond the FAR, the requesting agency shall so inform the servicing agency contracting officer in writing. For acquisitions on behalf of the Department of Defense, also see Subpart 17.7. for patent rights, see 27.304-2. In preparing interagency agreements to support assisted acquisitions, agencies should review the Office of Federal Procurement Policy guidance, Interagency Acquisitions, available at [http://www.whitehouse.gov/omb/assets/procurement/iac\\_revised.pdf](http://www.whitehouse.gov/omb/assets/procurement/iac_revised.pdf).

(ii) Each agency's file shall include the interagency agreement between the requesting and servicing agency, and shall include sufficient documentation to ensure an adequate audit consistent with 4.801(b).

(2) *Direct acquisitions.* The requesting agency administers the order; therefore, no written agreement with the servicing agency is required.

(c) Business-case analysis requirements for multi-agency contracts and governmentwide acquisition contracts. In order to establish a multi-agency or governmentwide acquisition contract, a business-case analysis must be prepared by the servicing agency and approved in accordance with the Office of Federal Procurement Policy (OFPP) business case guidance, available at <http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/development-review-and-approval-of-business-cases-for-certain-interagency-and-agency-specific-acquisitions-memo.pdf>. The business-case analysis shall—

(1) Consider strategies for the effective participation of small businesses during acquisition planning (see 7.103(u));

(2) Detail the administration of such contract, including an analysis of all direct and indirect costs to the Government of awarding and administering such contract;

(3) Describe the impact such contract will have on the ability of the Government to leverage its purchasing power, e.g., will it have a negative effect because it dilutes other existing contracts;

(4) Include an analysis concluding that there is a need for establishing the multi-agency contract; and

(5) Document roles and responsibilities in the administration of the contract.

## **17.502-2 The Economy Act.**

(a) The Economy Act (31 U.S.C. 1535) authorizes agencies to enter into agreements to obtain supplies or services from another agency. The FAR applies when one agency uses another agency's contract to obtain supplies or services. If the interagency business transaction does not result in a contract or an order, then the FAR does not apply. The Economy Act also provides authority for placement of orders between major organizational units within an agency; procedures for such intra-agency transactions are addressed in agency regulations.

(b) The Economy Act applies when more specific statutory authority does not exist. Examples of more specific authority are 40 U.S.C. 501 for the Federal Supply Schedules (subpart 8.4), and 40 U.S.C. 11302(e) for Governmentwide acquisition contracts (GWACs).

(c) Requirements for determinations and findings.

(1) Each Economy Act order to obtain supplies or services by interagency acquisition shall be supported by a determination and findings (D&F). The D&F shall—

(i) State that use of an interagency acquisition is in the best interest of the Government;

(ii) State that the supplies or services cannot be obtained as conveniently or economically by contracting directly with a private source; and

(iii) Include a statement that at least one of the following circumstances applies:

(A) The acquisition will appropriately be made under an existing contract of the servicing agency, entered into before placement of the order, to meet the requirements of the servicing agency for the same or similar supplies or services.

(B) The servicing agency has the capability or expertise to enter into a contract for such supplies or services that is not available within the requesting agency.

(C) The servicing agency is specifically authorized by law or regulation to purchase such supplies or services on behalf of other agencies.

(2) The D&F shall be approved by a contracting officer of the requesting agency with authority to contract for the supplies or services to be ordered, or by another official designated by the agency head, except that, if the servicing agency is not covered by the FAR, approval of the D&F may not be delegated below the senior procurement executive of the requesting agency.

(3) The requesting agency shall furnish a copy of the D&F to the servicing agency with the request for order.

(d) Payment.

(1) The servicing agency may ask the requesting agency, in writing, for advance payment for all or part of the estimated cost of furnishing the supplies or services. Adjustment on the basis of actual costs shall be made as agreed to by the agencies.

(2) If approved by the servicing agency, payment for actual costs may be made by the requesting agency after the supplies or services have been furnished.

(3) Bills rendered or requests for advance payment shall not be subject to audit or certification in advance of payment.

(4) In no event shall the servicing agency require, or the requesting agency pay, any fee or charge in excess of the actual cost (or estimated cost if the actual cost is not known) of entering into and administering the contract or other agreement under which the order is filled.

Note: Section 3136 of Public Law 105-196 requires DOE to charge a 3% surcharge, called the Federal Administrative Charge (FAC), on all reimbursable work. There are a limited set of both statutory and regulatory waivers available to waive the FAC surcharge.)

#### **17.503 -- Determinations and Findings Requirements.**

(a) Before placing an order for supplies or services with another Government agency, the requesting agency shall follow the procedures in 17.502-1 and, if under the Economy Act, also 17.502-2.

(b) The order may be placed on any form or document that is acceptable to both agencies. The order should include—

(1) A description of the supplies or services required;

(2) Delivery requirements;

(3) A funds citation;

(4) A payment provision (see 17.502-2(d) for Economy Act orders); and

(5) Acquisition authority as may be appropriate (see 17.503(d)).

(c) The requesting and servicing agencies should agree to procedures for the resolution of disagreements that may arise under interagency acquisitions, including, in appropriate circumstances, the use of a third-party forum. If a third party is proposed, consent of the third party should be obtained in writing.

(d) When an interagency acquisition requires the servicing agency to award a contract, the following procedures also apply:

(1) If a justification and approval or a D&F (other than the requesting agency's D&F required in 17.502-2(c)) is required by law or regulation, the servicing agency shall execute and issue the justification and approval or D&F. The requesting agency shall furnish the servicing agency any information needed to make the justification and approval or D&F.

*(Note: This FAR 17.503(d)(1) provision is used when an interagency acquisition requires the servicing agency [i.e., sponsor agency, DOE] to award a contract.)*

(2) The requesting agency shall also be responsible for furnishing other assistance that may be necessary, such as providing information or special contract terms needed to comply with any condition or limitation applicable to the funds of the requesting agency.

(3) The servicing agency is responsible for compliance with all other legal or regulatory requirements applicable to the contract, including—

(i) Having adequate statutory authority for the contractual action; and

(ii) Complying fully with the competition requirements of part 6 (see 6.002). However, if the servicing agency is not subject to the Federal Acquisition Regulation, the requesting agency shall verify that contracts utilized to meet its requirements contain provisions protecting the Government from inappropriate charges (for example, provisions mandated for FAR agencies by part 31), and that adequate contract administration will be provided.

(e) Nonsponsoring Federal agencies may use a Federally Funded Research and Development Center (FFRDC) only if the terms of the FFRDC's sponsoring agreement permit work from other than a sponsoring agency. Work placed with the FFRDC is subject to the acceptance by the sponsor and must fall within the purpose, mission, general scope of effort, or special competency of the FFRDC. (See 35.017; see also 6.302 for procedures to follow where using other than full and open competition.) The nonsponsoring agency shall provide to the sponsoring agency necessary documentation that the requested work would not place the FFRDC in direct competition with domestic private industry.

*(Note: DOE contract # DE-AC05-00OR22725 for management and operation of the Oak Ridge National Laboratory has this authorization in Section C (Statement of Work), subsection 2e(3) Other Services.)*

#### **17.504 Reporting requirements.**

The senior procurement executive for each executive agency shall submit to the Director of OMB an annual report on interagency acquisitions, as directed by OMB.

## **FREQUENTLY ASKED QUESTIONS ABOUT WORK FOR OTHERS (WFO) FROM OTHER FEDERAL AGENCIES**

Current as of April 3, 2013

### **What is WFO?**

The Department of Energy (DOE) sponsors a full-cost reimbursable research and technical assistance program, called the Work For Others (WFO) program. This DOE program provides assistance to other federal agencies (OFA) as part of the services rendered to-and-for U.S. government activities under various laws and regulations, principally, the Economy Act, the Atomic Energy Act of 1954, and the Energy Reorganization Act of 1977.

### **What does this mean in plain English?**

The Department of Energy (DOE) can furnish cost reimbursable scientific services in:

- Basic Research
- Applied Research
- Applied Development
- Technical Analyses or Specialized Scientific Studies
- Data Sampling/confirmation
- Prototype Development
- Objective Consultation
- Essential Engineering Design and Development
- Model Fabrication
- Manufacturing of Specialized Materials or Components
- Engineering and Technical Services

The decision criteria on what work can be done is determined by DOE if it is within the special scientific and technical capabilities of the DOE performance-based contractor.

### **Does DOE do the WFO Work?**

Under reimbursable work requirements, Department of Energy (DOE) furnishes administrative oversight for the requesting federal agency on the reimbursable project but does not do the detailed scientific or technical work. A DOE performance-based management and operating contractor is assigned to perform the scientific or technical work. A management and operating Contractor is a special type of contractor entity created under the authority of Federal Acquisition Regulation 17.6 to do DOE-assigned work only.

## **What is a DOE Management and Operating Contractor?**

Under Subpart 17.6 of the Federal Acquisition Regulation (FAR) dealing with Management and Operating (M&O) Contractors, DOE uses M&O contractors to perform its scientific research and technical assistance work. Department of Energy (DOE) competitively awards M&O performance-based contracts to manage and operate DOE facilities. These M&O contractors are financially integrated with DOE and operate under strict DOE controls and guidelines. The DOE M&O contractors, including UT-Battelle, LLC, at Oak Ridge, Tennessee, are distinct "arms-length" subsidiaries of their parent corporations and are established exclusively to perform work assigned by DOE, including work which DOE accepts from other federal agencies

A DOE M&O contractor performs a completely different role as a financially-integrated contractor of DOE versus a contractor who fulfills a Government-Owned-Contractor-Operated (GOCO) function within other federal agencies. This distinction is vital to understanding the role that DOE plays in technology research and applied development for the U.S. government.

DOE establishes the programmatic controls, oversight functions, customary reporting information, and general categories and procedures for the overhead cost structure for the M&O contractors. DOE approves all overhead rate categories.

## **What Does DOE Charge to Do this Research or Technical Work?**

Consistent with U.S. government guidelines, DOE operates on a full cost recovery basis. Costs are based on identical charges levied to DOE programs, except for:

- Federal agencies that do not have a DOE waiver in place must pay a Federal Administrative Charge of 3% as a surcharge based on Section 3137 of the Strom Thurmond National Defense Authorization Act of 1999 (Public Law 105-261).
- US Small businesses, US non-profit organizations, and U.S. institutes of higher learning are statutorily exempt from the 3% surcharge.
- US State and local governments are statutorily exempt from the 3% surcharge.
- Private sector commercial companies (excluding small businesses and non-profit organizations) and foreign entities are subject to the 3% surcharge.
- Work performed for a DOE (Cost-type) contractor is exempt from the 3% surcharge.

The 3% surcharge is levied to cover DOE administrative and oversight costs.

## **When are my funds obligated by DOE?**

Consistent with U.S. fiscal law requirements in Title 31 United States Code, various U.S. Comptroller General Rulings, and the U.S. Treasury Manual, DOE obligates a requesting agency's funds when it counter-signs the reimbursable work order. DOE does not accept direct fund cite work requests.

An Economy Act order placed by the requesting agency fully obligates an appropriation of the requesting agency.

Military funding documents (e.g., a Military Interdepartmental Purchase Request) coming from a DOD requesting agency are obligated upon written acceptance by DOE (the servicing agency).

Reimbursable orders are obligated when accepted in writing if acceptance indicates order will be financed on a reimbursable basis.

Amount obligated by the requesting agency is deobligated if DOE (as the servicing agency) has not incurred an obligation before the end of the period of availability for the funds.

Upon accepting the reimbursable work order, DOE immediately obligates the funds to the performance-based contract of the particular DOE management and operating contractor assigned the research or technical assistance task.

As determined by the U.S. Comptroller General, the obligational treatment of Economy Act transactions is addressed in 31 U.S.C. § 1535(d). Section 1535(d) establishes that an Economy Act agreement is sufficient to obligate the ordering agency's appropriations. Under section 1501(a) (1), an obligation is recordable when supported by documentary evidence of:

“(1) a binding agreement between an agency and another person (including an agency) that is—  
“(A) in writing, in a way and form, and for a purpose authorized by law; and  
“(B) executed before the end of the period of availability for obligation of the appropriation or fund used for specific goods to be delivered, real property to be bought or leased, or work or service to be provided.” Thus, an Economy Act agreement is recordable as an obligation under 31 U.S.C. § 1501(a) (1) if it meets the requirements specified in that section. See 34 Comp. Gen. 418, 421 (1955); 39 Comp. Gen. 317, 318-19 (1959).

## **What is the Lab Directed Research and Development Program (LDRD) Charge?**

Based on Congressional direction in 42 USC 7257a, DOE established a laboratory directed research and development (LDRD) program. The term "laboratory directed research and development" means research and development (R&D) work of a creative and innovative nature which, under the regulations prescribed by the Secretary of Energy, is selected by the director of a laboratory for the purpose of maintaining the vitality of the laboratory in defense-related scientific disciplines.

The LDRD charge is applied equally to all funds received by DOE, whether directly appropriated by Congress to DOE or by reimbursable appropriations received from another federal agency. *The LDRD charge is a normal overhead cost applied equally to all DOE-approved projects. It is not a new cost.*

The objectives of the LDRD program are to:

- Maintain scientific and technical vitality of the laboratories
- Enhance the laboratories' ability to address future U.S. government missions
- Foster creativity and stimulate exploration of forefront science and technology
- Serve as a proving ground for new research; and
- Support high-risk, potentially high-value R&D.

Congress directed DOE in the FY 2002 Energy and Water Development Appropriations Conference Report (107-258) to notify each federal sponsor of the amount of reimbursable funds being applied to LDRD. The Secretary of Energy issues implementation guidance throughout the DOE research complex to use this standard notification language:

*“Consistent with the DOE’s full cost recovery policy, DOE collects, as part of its standard indirect cost rate, a LDRD cost levied on all monies received at the laboratory. The estimated amount of LDRD costs is identified in the proposal cost estimate section. The Department of Energy believes that LDRD efforts provide opportunities in research that are instrumental in maintaining cutting edge science capabilities that benefit all customers of the laboratory. The Department will conclude that by approving and providing funds to DOE to perform work under this proposal, you acknowledge that such activities are beneficial to your organization and consistent with appropriation acts that provide funds to you.”*

The LDRD notice will be placed in all DOE letters to other federal agencies requesting reimbursable research and technical assistance. All DOE research proposals will identify the LDRD estimated charges in the budget section. Furthermore, all reimbursable funds obligated by DOE from another federal agency will show a breakout of the expected LDRD charges applied to the project.

The Congress has not statutorily prohibited the LDRD from being levied as a normal indirect rate charge to any appropriation of any federal agency.

### **Can DOE Oak Ridge National Laboratory Site Office (DOE-OSO) do Classified Work?**

Absolutely. The DOE-OSO assigns the classified work to Oak Ridge National Laboratory (ORNL) to perform. ORNL has access to, and operates, a local DOE Sensitive Compartmented Information Facility (SCIF) that has the capability to handle information up to Top Secret, Special Compartmented Information (SCI), and Restricted Data. The SCIF meets the

requirements of Director of Central Intelligence Directive 1/21, Manual for Physical Security Standards for SCIF, effective 30 January 1994.

ORNL is dual certified by both the DOE and the Department of Defense to handle information at Top Secret, SCI, and Restricted Data levels.

**Do you have a Commercial and Government Entity (CAGE) Code?**

Yes. The CAGE code for the Oak Ridge National Laboratory (managed and operated by UT-Battelle, LLC.) is 1PW69.

**Are you registered in the System for Award Management (SAM)?**

Yes. UT-Battelle, LLC is registered in the SAM database as the operator of Oak Ridge National Laboratory.

**What is Oak Ridge National Laboratory (ORNL)?**

ORNL is the largest multi-program DOE national laboratory and a Federally Funded Research and Development Center (FFRDC) established in accordance with the Federal Acquisition Regulation Subpart 35. The Laboratory performs work for all DOE programs including Science, Energy Efficiency and Renewable Energy, Nuclear Energy Science and Technology, Nonproliferation and National Security, Fossil Energy, Environmental Management, and Defense Programs.

The Laboratory mission is to conduct basic and applied research and development (R&D) to advance scientific knowledge, the nation's energy resources, and environmental quality and to strengthen educational foundations and national economic competitiveness. DOE programs are carried out in partnership with academia, the private sector, other DOE national laboratories, the international scientific community, and other government agencies. The Laboratory also performs work consistent with the DOE mission for entities other than DOE when authorized by DOE. The DOE Contractor will advance the frontiers of science and technology through broad interdisciplinary research and development programs that answer fundamental questions, solve technical problems (locally, regionally, nationally, and internationally), and develop and apply technologies to address societal needs.

ORNL is a DOE National Laboratory, a DOE Federally Funded Research and Development Center, and a Federal Laboratory.

## What is a National Laboratory?

The United States Government has established a national laboratory system with the national laboratories under the control of agencies such as the Department of Defense, DOE, Nuclear Regulatory Commission, and the National Aeronautics and Space Administration. DOE manages a major part of the nation's federally funded civilian science, technology development, and engineering resources through 9 major multi-program laboratories, 10 single-purpose laboratories, 11 smaller special-mission laboratories, and a wide range of special technology centers critical to U.S. industry's global competitiveness.

For DOE under 42 USC 15801 (Energy Policy Act of 2005), Section 2, Definitions

*(3) NATIONAL LABORATORY.—The term “National Laboratory” means any of the following laboratories owned by the Department:*

- (A) Ames Laboratory.*
- (B) Argonne National Laboratory.*
- (C) Brookhaven National Laboratory.*
- (D) Fermi National Accelerator Laboratory.*
- (E) Idaho National Laboratory.*
- (F) Lawrence Berkeley National Laboratory.*
- (G) Lawrence Livermore National Laboratory.*
- (H) Los Alamos National Laboratory.*
- (I) National Energy Technology Laboratory.*
- (J) National Renewable Energy Laboratory.*
- (K) Oak Ridge National Laboratory.***
- (L) Pacific Northwest National Laboratory.*
- (M) Princeton Plasma Physics Laboratory.*
- (N) Sandia National Laboratories.*
- (O) Savannah River National Laboratory.*
- (P) Stanford Linear Accelerator Center.*
- (Q) Thomas Jefferson National Accelerator Facility.*

*(4) SECRETARY.—The term “Secretary” means the Secretary of Energy.*

## What is a Federal Laboratory?

Under federal statute, "the terms 'Federal laboratory' and 'laboratory' have the meaning given the term 'laboratory' in section 12 (d) (2) of the Stevenson-Wydler Technology Innovation Act of 1980 [15 U.S.C. 3710a(d)(2)], except that such terms include a federally funded research and development center (FFRDC) sponsored by a Federal agency" (Source: 10 USC 2491(5)).

As extracted from 15 USC 3710a (d) (2), the term "laboratory" means -

1. a facility or group of facilities owned, leased, or otherwise used by a federal agency, a substantial purpose of which is the performance of research, development, or engineering by employees of the Federal government;
2. a group of Government-owned, contractor-operated facilities (including a weapon production facility of the Department of Energy) under a common contract, when a substantial purpose of the contract is the performance of research and development, or the production, maintenance, testing, or dismantlement of a nuclear weapon or its components, for the Federal Government; and
3. a Government-owned, contractor-operated facility (including a weapon production facility of the Department of Energy) that is not under a common contract described in paragraph 2, and the primary purpose of which is the performance of research and development, or the production, maintenance, testing, or dismantlement of a nuclear weapon or its components, for the Federal Government, but such term does not include any facility covered by Executive Order No. 12344, dated February 1, 1982, pertaining to the naval nuclear propulsion program.

The term "*weapon production facility of the Department of Energy*" means a facility under the control or jurisdiction of the Secretary of Energy that is operated for national security purposes and is engaged in the production, maintenance, testing, or dismantlement of a nuclear weapon or its components.

The National Competitiveness Technology Transfer Act of 1989 (NCTTA) (Pub. L. 101-189) established technology transfer as a mission for Government-owned, contractor-operated laboratories, including weapons production facilities. Within the Oak Ridge Reservation, the Oak Ridge National Laboratory (ORNL) qualifies as a FFRDC and is listed as such under the national list maintained by the National Science Foundation.

### **What is a Federally Funded Research and Development Center (FFRDC)?**

FFRDCs were first established during World War II to meet specialized or unique research and development needs that could not be readily satisfied by government personnel, due to limits on federal salaries and hiring, or by normal commercial contractors.

From the Federal Acquisition Regulation Subpart 35.017:

An FFRDC meets some special long-term research or development need which cannot be met as effectively by existing in-house or contractor resources. FFRDCs enable agencies to use private sector resources to accomplish tasks that are integral to the mission and operation of the sponsoring agency. An FFRDC, in order to discharge its responsibilities to the sponsoring agency, has access, beyond that which is common to the normal contractual relationship, to Government and supplier data, including sensitive and proprietary data, and to employees and facilities. The FFRDC is required to conduct its

business in a manner befitting its special relationship with the Government, to operate in the public interest with objectivity and independence, to be free from organizational conflicts of interest, and to have full disclosure of its affairs to the sponsoring agency. It is not the Government's intent that an FFRDC use its privileged information or access to facilities to compete with the private sector. However, an FFRDC may perform work for other than the sponsoring agency under the Economy Act, or other applicable legislation, when the work is not otherwise available from the private sector.

Long-term relationships between the Government and FFRDCs are encouraged in order to provide the continuity that will attract high-quality personnel to the FFRDC. This relationship should be of a type to encourage the FFRDC to maintain currency in its field(s) of expertise, maintain its objectivity and independence, preserve its familiarity with the needs of its sponsor(s), and provide a quick response capability.

### **Is there a Mechanism for DOD to Request Reimbursable Work to be done?**

On September 16, 2010, the Department of Energy (DOE) and the DOD mutually signed a Memorandum of Agreement on the DOE Work For Others (WFO) program. This MOU significantly changed the relations between the two agencies on identifying, processing, and conducting DOD WFO projects being performed by DOE National Laboratories using DOD reimbursable funding. All future DOD WFO efforts will come under this joint MOA and be guided by the provisions of the MOA.

DOD implemented its own internal procedures through a DOD Memorandum from the Office of the Under Secretary of Defense for Acquisitions, Logistics, and Technology, dated September 24, 2010, subject: DOD-Wide Policy for Using the DOE's Work for Others Program (WFO) to Access DoE-Owned Research, Development, and Production Facilities through Interagency Agreements (IAs) in Fiscal Year 2011.

The DOD and DOE Interagency Agreement (IA) Part A (General Terms & Conditions) dated December 15, 2010, will serve as Part A for Interagency Agreements between the DOD and the DOE in accordance with and in support of the guidance issued by the Office of Federal Procurement Policy (OFPP) (June 2008) as endorsed by the DOD in October 2008. DOD and DOE have concluded that by using this Part A for individual WFO agreements OFPP Part A guidance requirements have been satisfied. Using this Part A ensures DOD and DOE have established the necessary framework for entering into Interagency Agreements under DOE's WFO program. DOE requires that this executed Interagency Agreement Part A document be referenced in each Part B or alternative funding document.

The Part B funding document is a DOD Military Interdepartmental Purchase Request (MIPR). All DOD agency reimbursable funding documents should be sent to the DOE Work For Others (WFO) Contracting Officer for Reimbursable Work at DOE OSO for acceptance.

**If I use DOE resources to meet a DOD mission requirement, is this considered "Contract Offloading?"**

No. Part of the answer is an exercise in semantics. Within DOD, when a requesting official goes to another agency for assistance, this is considered "Contract Offloading." However, DOE accepts taskings from DOD agencies to meet a research or technological requirement that is generally pre-competitive research and development or post-competitive technical assistance in nature. The requesting DOD agency must fulfill its own internal administrative review and approval processes before the tasking is forwarded to DOE for acceptance. This tasking is considered an interagency agreement between DOD and DOE, not a contract. With the exception of the special statutory relationship between DOE and the U.S. Navy Nuclear Propulsion Program, DOE does not do, and will not normally accept routine contract acquisition actions for other federal agencies. That is, DOE does not perform any "Contract Offloading" for any other federal agency but performs work that is consistent with its overall mission and is relevant to the DOE unique capabilities or special competencies.

**If DOE assigns this DOD work to a DOE Contractor, why is this not considered a "pass-through procurement?"**

This reimbursable work accepted by DOE is not a "pass-through procurement." DOE is covered by Title III of the Federal Property and Administrative Services Act and is required to follow the Federal Acquisition Regulation (FAR) in its contracting operations. DOE facilities and resources are, for the most part, managed and operated under a special provision, FAR Subpart 17.6. Management and Operating Contracts. This method of contracting is limited to the DOE and any other agency having requisite statutory authority and DOD is not one of these. These management and operating (M&O) contracts are distinctly different from Government Owned - Contractor Operated (GOCO) contracts, and provide a much closer relationship between the M&O contractor and DOE as the sponsoring government agency.

DOE competitively awarded an M&O contract to UT-Battelle, LLC to manage and operate Oak Ridge National Laboratory. UT-Battelle, LLC is financially integrated and has reciprocal financial accounts with DOE and operates under strict DOE controls and guidelines. As a DOE M&O contractor, UT-Battelle, LLC is a distinct "arms-length" subsidiary of its parent organizations (Battelle Corporation and the University of Tennessee) and is established exclusively to perform work assigned or authorized by DOE, including work which DOE accepts from DOD and other federal agencies.

Thus, in terms of accomplishing its scientific research and technical assistance missions, DOE considers ORNL to be an organic resource of DOE and does not consider work assigned by DOE to UT-Battelle, LLC to be "contract offloading" or a "pass-through" procurement.

## **Can someone explain the management of the DOE government facilities located in Oak Ridge and the role of the Contractors?**

The DOE Oak Ridge Reservation (ORR) complex contains DOE technology centers and research facilities. These elements are divided into several categories. The DOE Oak Ridge National Laboratory Site Office (DOE-OSO) has authority and responsibility over the Oak Ridge National Laboratory (ORNL). The DOE Oak Ridge Office (ORO) has oversight on the East Tennessee Technology Park within Oak Ridge and various other facilities outside the state. The Y-12 National Security Complex comes under the jurisdiction of the DOE National Nuclear Security Administration.

DOE-OSO has awarded contract # DE-AC05-00OR22725 to UT-Battelle, LLC, as a managing and operating (M&O) contractor which is defined in FAR Subpart 17.6. UT-Battelle, LLC is charged with running the Oak Ridge National Laboratory (ORNL). ORNL is a Federal Laboratory as defined in 15 USC 3710a(d)(2) and is also a federally funded research and development center (FFRDC) as specified in FAR 35.017. UT-Battelle, LLC, is a performance-based contractor to DOE and operates as a stand-alone non-profit corporation that does not engage in any normal commercial business.

The sole purpose of an M&O contractor is to perform work assigned by DOE. The DOE includes clauses in its M&O contract that allow DOE to assign to the M&O contractor work from outside agencies. The UT-Battelle contract has such clauses. DOE also assures in its M&O contract that UT-Battelle, LLC will meet all of the provisions of the FAR and DOE Acquisition Regulation (DEAR) particularly with regards to organizational conflicts of interest (OCI).

The facilities that UT-Battelle, LLC manages and operates under its contract are DOE facilities with some private facilities being leased under DOE authorization. All of the buildings, land, equipment, supplies, etc., are DOE owned (or leased) and controlled with the exception that some non-DOE equipment may be in those facilities on a limited basis but under DOE approval and control. As the facilities involved are DOE's, this arrangement mandates a closer relationship between DOE and UT-Battelle, LLC, as the supporting M&O contractor.

Thus, in terms of accomplishing its research and technical assistance missions, DOE considers the UT-Battelle, LLC, contractor to be an organic resource of DOE and does not consider work assigned by DOE to be "contract offloading" or a "pass-through" procurement.

## **Does DOE require a Memorandum of Understanding or Agreement between Agencies before Doing Work?**

No. However, all federal agencies must comply with the guidance issued by the Office of Federal Procurement Policy (OFPP) (June 2008), subject: Improving the Management and Use of Interagency Acquisitions. Interagency acquisition is the term used to describe the process by which one agency (requesting agency), uses the contracts and/or contracting services of other agencies (servicing agencies) to obtain supplies and services.

DOE will work with a requesting federal agency to establish a Part A: General terms and conditions. The purpose of describing products and services in Part A is to establish a general understanding between the agencies, where there will be an ongoing relationship, of the types of services and products that management in the requesting agency is authorizing its personnel to acquire (e.g., information technology but not construction) and the types of needs the servicing agency is prepared to acquire on behalf of the requesting agency.

The description of products and services in Part A is not intended to establish a bona fide need and therefore may be as general or specific as the parties deem appropriate.

Reimbursable funding is done through Part B. Requirements and funding information document. The Part B serves multiple purposes. It is a requirements document to demonstrate a bona fide need. It is also an obligating document. Its execution authorizes the transfer and acceptance of funds for an assisted acquisition.

### **How do I send reimbursable funds to DOE?**

Reimbursable funding documents from federal agencies for Oak Ridge National Laboratory (ORNL) research and technical assistance need to be sent to DOE:

Ms. Teresa R. Hope  
Contracting Officer  
Department of Energy  
Oak Ridge National Laboratory Site Office  
Building 4500N, MS-6269  
Post Office Box 2008  
Oak Ridge, Tennessee 37831-6269  
Phone: (865) 576-0646  
Fax: (865) 574-9275  
Email: [hopetr@ornl.gov](mailto:hopetr@ornl.gov)

As part of the federal agency's reimbursable funding document, there needs to be the following

- a certified fund cite (i.e., signed by an authorized official)
- a technical point of contact
- where the bill needs to be sent to
- an appropriation obligation expiration date
- a statement of work

The federal agency must include its agency location code (ALC) on all funding authorizations forwarded to DOE.

DOE furnishes detailed administrative instructions for interagency acquisitions as one component of the DOE proposal package sent to the federal sponsor. The DOE package consists of a DOE transmittal letter, the DOE-approved SOW, and the Administrative Instructions. Normally this package answers most of the sponsor's questions or concerns. Additionally, this statement or equivalent needs to come from the federal sponsor. It can be on a cover letter or as part of the funding document itself.

**Sample Statement from a Federal Agency  
(Not Department of Homeland Security)**

*This agreement is entered into pursuant to the authority of the Economy Act of 1932, as amended (31 U.S.C. 1535) [or other statutory authority references], and adheres to Federal Acquisition Regulation (FAR) 6.002. To the best of our knowledge, the work requested will not place the DOE and its contractor in direct competition with the domestic private sector. The (enter name of requesting federal agency) recognizes that this work will be performed in accordance with the Work for Others Administrative Instructions attached to DOE Proposal Number # (cite proposal number).*

For the "[or other statutory references]", the requesting federal agency may enter one of their statutory citations to do the reimbursable work instead of 31 USC 1535. Every federal agency has specific reimbursable statutory authority granted to it by the US Congress either in the agency's originating statutory language or subsequent statutes. The requesting federal agency will have appropriate citations also. All federal agencies can use the Economy Act.

**Sample Statement from a Department of Homeland Security (DHS) Agency**

*This agreement is entered into pursuant to the authority of Section 309 of the Homeland Security Act of 2002, Public Law 107-296 (6 USC 189). The (enter name of requesting DHS agency) recognizes that this work will be performed in accordance with the Work for Others Administrative Instructions attached to DOE Proposal Number # (cite proposal number).*

If a requesting federal agency funding document arrives without an existing corresponding DOE-OSO internal programmatic approval and mutually-agreeable statement of work (SOW), then DOE-OSO will hold the funds (not obligate them) until there is a DOE programmatic approval and SOW in place. At that point, DOE-OSO will obligate the funds. Amendments to the DOE approval and SOW can be done quickly and efficiently to meet the requesting federal agency's new or revised priorities.

All billings, collections and payments related to reimbursable interagency acquisition (IA) work performed by DOE for federal agencies will be recorded through the Intergovernmental Payment and Collection (IPAC) System. As expenditures are incurred against a customer agency's funding authorization, monthly billings will be issued on behalf of DOE by the M&O Contractor's Accounts Receivable Department through the IPAC System. Chargebacks to DOE

should not occur unless the customer agency has agreement with DOE to do so. In addition, sufficient accounting classification or other funding information required by the customer agency to properly identify the charges should be provided.

The DOE Obligating Number (i.e., the sponsor's agreement number [interagency agreement number], funding document number, MIPR number, etc.) shall serve as the common agreement number required by FMS Bulletin no. 2007-03.

### **What Is Your Taxpayer Identification Number (TIN)?**

The TIN/EIN for UT-Battelle, LLC. (which runs the Oak Ridge National Laboratory) is 62-1788235.

A Taxpayer Identification Number (TIN) code is also known as Federal Identification Number, or more commonly, Employer Identification Number (EIN). An EIN is a nine-digit number (for example, 12-3456789) assigned by the Internal Revenue Service to sole proprietors, corporations, partnerships, estates, trusts, and other entities for tax filing and reporting purposes.

### **Do You Do Research on Human Subjects?**

Yes, under very strict review and guideline procedures approved by DOE and consistent with the U.S. government's overall most stringent standards.

While many people typically view human subject research as biomedical and clinical studies that involve humans, the definitions for human subject research is much broader than this. Areas that must be considered include:

1. Use of humans to test a device or product developed through research;
2. Use of data collected through interaction with people via a variety of communication styles (e.g., written or oral surveys) or intervention activities such as collection of bodily fluid samples or manipulation of the individual's environment;
3. Use of private information readily associated with individuals (even when the information was not collected for a specific study);
4. Use of bodily materials even if collected by someone other than the researcher; and,
5. Use of humans to evaluate an environmental alteration such as weatherization options.

It is DOE's policy that all research that falls under the above categories must be reviewed and approved by both the researcher's institution and the Institutional Review Board (IRB).

### **Which Rules do you follow on Human Subjects Research?**

The Federal policy for protection of human subjects is called the Common Rule. In order to ensure uniform policies, this common rule was promulgated. Signatory agencies have codified the Common Rule under their own regulations. The 45 Code of Federal Regulation (CFR) 46 is where the Rule is found for the Department of Health and Human Services (DHHS) while 10 CFR 745 is where the Rule is found for the Department of Energy. Subparts under the DHHS regulations, which are also recognized by the DOE Order 443.1, Protection of Human Subjects, include protections for vulnerable populations, pregnant women, fetuses, prisoners, and children. The ORNL Institutional Review Board (IRB) is authorized under a Multiple Protection Assurance from DHHS (M.1334). It adheres to 45 CFR 46 and 10 CFR 745 in situations in which they are more stringent.

### **Do you have an U.S. Government Activity Address Code (AAC) or DOD Activity Address Code (DODAAC)?**

Yes. The AAC or DODAAC is a six-position code that uniquely identifies a unit, activity or organization that has the authority to requisition and/or receive U.S. government materiel. Effective April 1, 2000, the DOE-approved Oak Ridge National Laboratory (ORNL) Agency Activity Code is A894777.

### **Can You Do Independent Certifications and Representations for Government Contracts, Grants, etc?**

Generally, "Yes." Certification is subject the condition imposed in the DOE management and operating contracts under Federal Acquisition Regulation Subpart 17.6. The M&O contractors may do stand alone representations and certifications to other federal agencies after reviewing the FAR or federal agency provisions being requested. Based on the DOE M&O contract, there may be some FAR provisions that can not be certified to.

UT-Battelle, LLC is a DOE M&O contractor and is precluded from entering into any other U.S. government contracts or doing any independent commercial work. All work must be approved, authorized, and funded through DOE. To obtain the initial M&O contract, UT-Battelle, LLC made the requisite certification of compliance with all applicable U.S. government rules and standards.

If there are any questions on the actual Certifications and Representations made to the federal government, contact the respective DOE contracting official or the UT-Battelle, LLC Prime Contract Administrator.

DOE: (865) 576-6367  
UT-Battelle, LLC: (865) 576-3650

**Are You Authorized to Receive Military Critical Technical Data (DD Form 2345)?**

Yes. "Militarily Critical Technical Data" means unclassified technical data as governed by the U.S. Department of Defense Directive (DODD) 5230.25, "Withholding of Unclassified Technical Data from Public Disclosure." The authority for this action is 10 USC 140c (Public Law 98-94, Section 1217, September 24, 1983) for the U.S. government.

Oak Ridge National Laboratory (ORNL)

The joint certification number for the ORNL is 0031217. The ORNL certification was assigned March 2, 2000, by the Defense Logistics Information Service. Mr. David R. Hamrin, ORNL Information Officer, is the designated data custodian and is the official responsible for all actions involving DD 2345 certifications. He can be reached at:

Mr. David R. Hamrin  
Office of Technical Information and Classification  
Oak Ridge National Laboratory  
P.O. Box 2008, Mail Stop 6254  
Oak Ridge, Tennessee 37831-6254  
Phone: (865) 574-6752  
Facsimile: (865) 241-8033  
Email: [hamrindr@ornl.gov](mailto:hamrindr@ornl.gov)

**FREQUENTLY ASKED QUESTIONS ABOUT WORK FOR OTHERS (WFO)  
FROM U. S. COMMERCIAL COMPANIES, NON-PROFIT ORGANIZATIONS,  
UNIVERSITIES, AND STATE & LOCAL GOVERNMENTS**

As of June 7, 2013

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## **What is WFO?**

The Department of Energy (DOE) sponsors a research and technical assistance program, called the Work For Others (WFO) program. This DOE program furnishes research and specialized technical assistance for activities that are not associated with the U.S. federal government. These organizations typically include U.S. private sector companies, both commercial and non-profit; U.S. institutes of higher learning; U.S. state and local governments; foreign companies, foreign governments; international agencies; and non-governmental organizations. This work activity includes participating in joint or cooperative research, developmental, or experimental projects. The authority for such activity comes from statutes such as the Atomic Energy Act of 1954, Energy Reorganization Act of 1974 (Public Law 93-438) and the Department of Energy Organization Act (Public Law 95-91).

## **What Does This Mean in Plain English?**

The Department of Energy can furnish cost reimbursable scientific services in:

- Basic Research
- Applied Research
- Applied Development
- Technical Analyses or Specialized Scientific Studies
- Data Sampling/confirmation
- Prototype Development
- Objective Consultation
- Essential Engineering Design and Development
- Model Fabrication
- Manufacturing of Specialized Materials or Components
- Engineering Assessments and Technical Services

The decision criteria on what work can be done is determined by DOE if it is within the special scientific and technical capabilities of the DOE Prime Contractor that is managing and operating the DOE research facility, that is, Oak Ridge National Laboratory (ORNL).

## **Does DOE Do the WFO Work?**

Under reimbursable work requirements, Department of Energy (DOE) furnishes administrative oversight for the requesting federal agency on the reimbursable project but does not do the detailed scientific or technical work. A DOE performance-based management and operating contractor is assigned to perform the scientific or technical work. A management and operating Contractor is a special type of contractor entity created under the authority of Federal Acquisition Regulation (FAR) 17.6 to do DOE-assigned work only.

## **Can I Request Information About Your Research Capabilities or Areas of Expertise?**

Absolutely. We can furnish to you publicly available information, subject to the provisions in the Freedom of Information Act, the Privacy Act, and the Atomic Energy Act of 1954.

Generally speaking, we can supply your organization with White Papers, Statements of Capabilities, Scientific Abstracts, or other similar types of documents. These papers can discuss our in-depth research, scientific background, unique facilities, or specialized scientific expertise in a particular discipline or subfield.

However, in any requested document supplied to a sponsor, we can not make any formal commitment to do work for the sponsor nor furnish detailed cost information without specific DOE approval.

## **Do I Have to Pay for this Information?**

Generally speaking, "No." Subject to internal ORNL cost limitations on time and effort, the White papers, et alia, normally are supplied free-of-charge.

If there is an existing WFO Agreement already in place, the sponsor may authorize the creation of these White papers or other documents at their cost.

If there is no WFO Agreement in place, and the proposed information needed is of particular value to the sponsor, the sponsor may agree to enter into an agreement to pay for the work

For information maintained at the DOE Office of Science and Technical Information (OSTI), there may be a charge for these documents maintained by them for public review and dissemination. Contact OSTI at <http://www.osti.gov/> or

Mailing address:

P.O. Box 62  
Oak Ridge, TN 37831

Shipping address:

175 Oak Ridge Turnpike  
Oak Ridge, TN 37830

### ***OSTI Information:***

Telephone: 865-576-1188 (general information)

Telephone: 865-576-8401 (documents)

Fax: 865-576-2865

## **What is a DOE Management and Operating Contractor?**

Under Subpart 17.6 of the Federal Acquisition Regulation (FAR) dealing with Management and Operating (M&O) Contractors, DOE uses M&O contractors to perform the research or technical work. DOE competitively awards M&O contracts to manage and operate DOE facilities. These M&O contractors are financially integrated with DOE and operate under strict DOE controls and guidelines. The DOE M&O contractors, including UT-Battelle, LLC, at Oak Ridge, Tennessee, are distinct “arms-length” subsidiaries of their parent corporations and are established exclusively to perform work assigned by DOE, including work which DOE accepts from other non federal entities (e.g., private companies or a U.S. University).

A DOE M&O contractor performs a completely different role as a financially-integrated contractor of DOE. This distinction is vital to understanding the role that DOE plays in technology research and applied development for both the U.S. government and the domestic commercial sector.

DOE establishes the programmatic controls, oversight functions, customary reporting information, and general categories and procedures for the overhead cost structure for the M&O contractors. DOE approves all overhead rate categories.

## **What Does DOE Charge to Do this Research or Technical Work?**

Consistent with U.S. government guidelines, DOE operates on a full cost recovery basis. Costs are based on identical charges levied to DOE programs, except for:

- Federal agencies that do not have a DOE waiver in place must pay a Federal Administrative Charge of 3% as a surcharge based on Section 3137 of the Strom Thurmond National Defense Authorization Act of 1999 (Public Law 105-261).
- US Small businesses, US non-profit organizations, and U.S. institutes of higher learning are statutorily exempt from the 3% surcharge.
- US State and local governments are statutorily exempt from the 3% surcharge.
- Private sector commercial companies (excluding small businesses and non-profit organizations) and foreign entities are subject to the 3% surcharge.
- Work performed for a DOE (Cost-type) contractor is exempt from the 3% surcharge.

The 3% surcharge is levied to cover DOE administrative and oversight costs.

## Can You Team or Partner with Me on Responding to Competitive Solicitations?

The answer is both “Yes” and “No!” It depends on the situation and type of solicitation. Contact the Work For Others (WFO) Program Office at (865) 574-9798 for help in determining if we can partner together.

Some general restrictions for Oak Ridge National Laboratory (ORNL):

We can not participate in responding to any U.S. federal agency request for proposals (RFP) that are governed by the Competition in Contracting Act (CICA) of 1984.

We can not be in direct competition with the U.S. private sector.

We can not compete on a fixed statement of work.

We can not compete where the solicitation specifically indicates only one award will be made.

We must obtain a specific DOE approval for every partnership or teaming arrangement.

In the “Yes” category, we can be a partner (subcontractor arrangement) to:

Federal Agency *Broad Agency Announcements* (BAA or BAA type, such as NASA Research Announcements) where the federal sponsor permits this type of arrangement and where there is no fixed statement of work to compete against;

Federal Agency research, development or specialized technical services type of *grant or cooperative agreements* where the federal sponsor permits this type of arrangement and where there is no fixed statement of work to compete against;

Federal Agency *Small Business Innovation Research (SBIR)* where the federal sponsor permits this type of arrangement.

Federal Agency *Small Business Technology Transfer Research (STTR)* where the federal sponsor permits this type of arrangement.

U.S. commercial company, university, or non-profit organization that places out a private research and development or scientific assistance announcement for competitive solicitation. *The private sector announcement is similar in nature to a federal agency BAA, is open to federal agencies or federal laboratories, and has some type of peer-review process associated with the review and award process.* These private solicitations may be labeled as a “Request for Proposals” but are intrinsically different because they are not governed by CICA.

Foreign countries or foreign commercial solicitations of a research and development or scientific assistance nature. The foreign entity must be open to U.S. participation and must be willing to accept DOE intellectual property provisions and a DOE WFO arrangement for the DOE facility participating in the response. DOE Headquarters must also approve each case individually.

An U.S. State Government (or a State Government legal entity) solicitations of a research and development or scientific assistance nature. *The State Government announcement is similar in nature to a federal agency BAA, is open to federal agencies or federal laboratories, and has some type of peer-review process associated with the review and award process.* These State Government solicitations may be labeled as a “Request for Proposals” but are intrinsically different because they are not governed by CICA.

In the “No” category, these partnering arrangements will not be authorized:

U.S. federal agency Request For Proposals (RFP) or Request for Quotations (RFQ) that are governed by the Competition in Contracting Act (CICA) of 1984.

State Government or a private sector solicitation with a fixed statement of work for routine type of services, production, or services.

Foreign Government or a foreign private sector solicitation with a fixed statement of work for routine type of services, production, or services

Any DOE solicitation that does not specifically include DOE national laboratories or DOE FFRDCs.

## **Can You do Classified National Security Information Work?**

Absolutely. If an U.S. private sector entity has work under a federal contract that is classified, then Oak Ridge National Laboratory (ORNL) can also participate in the work under a DOE-approved WFO relationship.

ORNL is dual certified by both the DOE and the Department of Defense to handle National Security Information up to Top Secret. There is available to ORNL a DOE approved Sensitive Compartmented Information Facility (SCIF). The SCIF meets the requirements of Director of Central Intelligence Directive 1/21, Manual for Physical Security Standards for SCIF, effective 30 January 1994.

The Department of Energy Oak Ridge Office (DOE-ORO) located in the Oak Ridge Federal Office Building also has the capability to handle information up to Top Secret and Restricted Data.

## **Do you have Commercial and Government Entity (CAGE) Codes?**

Yes. The CAGE code for the Oak Ridge National Laboratory (managed and operated by UT-Battelle, LLC.) is 1PW69.

CAGE codes were known in the past as federal supply codes for manufacturers (FSCM) and federal supply codes for nonmanufacturers (FSCNM). CAGE code numbers are assigned or maintained by the Defense Logistics Information Service (DLIS) to identify commercial and government activities.

## **Are you Registered in the System for Award Management (SAM) Database?**

Yes. UT-Battelle, LLC. (the manager and operator of Oak Ridge National Laboratory) is registered in the SAM database.

## **Are you Registered in the U.S. Government's Online Representations and Certifications (ORCA) Database?**

Yes. UT-Battelle, LLC. (the manager and operator of Oak Ridge National Laboratory) is registered in ORCA.

## **What is Oak Ridge National Laboratory (ORNL)?**

ORNL is the largest multi-program DOE national laboratory and a Federally Funded Research and Development Center (FFRDC) established in accordance with the Federal Acquisition Regulation Subpart 35. The Laboratory performs work for all DOE programs including Science, Energy Efficiency and Renewable Energy, Nuclear Energy Science and Technology, Nonproliferation and National Security, Fossil Energy, Environmental Management, and Defense Programs.

The Laboratory mission is to conduct basic and applied research and development (R&D) to advance scientific knowledge, the nation's energy resources, and environmental quality and to strengthen educational foundations and national economic competitiveness. DOE programs are carried out in partnership with academia, the private sector, other DOE national laboratories, the international scientific community, and other government agencies. The Laboratory also performs work consistent with the DOE mission for entities other than DOE when authorized by DOE. The DOE Contractor will advance the frontiers of science and technology through broad interdisciplinary research and development programs that answer fundamental questions, solve technical problems (locally, regionally, nationally, and internationally), and develop and apply technologies to address societal needs.

ORNL is a DOE National Laboratory, a DOE Federally Funded Research and Development Center, and a Federal Laboratory.

## **What is a National Laboratory?**

The United States Government has established a national laboratory system with the national laboratories under the control of agencies such as the Department of Defense, DOE, Nuclear Regulatory Commission, and the National Aeronautics and Space Administration. DOE manages a major part of the nation's federally funded civilian science, technology development,

and engineering resources through 9 major multi-program laboratories, 10 single-purpose laboratories, 11 smaller special-mission laboratories, and a wide range of special technology centers critical to U.S. industry's global competitiveness.

For DOE under 42 USC 15801 (Energy Policy Act of 2005), Section 2, Definitions

*(3) NATIONAL LABORATORY.—The term “National Laboratory” means any of the following laboratories owned by the Department:*

- (A) Ames Laboratory.*
- (B) Argonne National Laboratory.*
- (C) Brookhaven National Laboratory.*
- (D) Fermi National Accelerator Laboratory.*
- (E) Idaho National Laboratory.*
- (F) Lawrence Berkeley National Laboratory.*
- (G) Lawrence Livermore National Laboratory.*
- (H) Los Alamos National Laboratory.*
- (I) National Energy Technology Laboratory.*
- (J) National Renewable Energy Laboratory.*
- (K) Oak Ridge National Laboratory.***
- (L) Pacific Northwest National Laboratory.*
- (M) Princeton Plasma Physics Laboratory.*
- (N) Sandia National Laboratories.*
- (O) Savannah River National Laboratory.*
- (P) Stanford Linear Accelerator Center.*
- (Q) Thomas Jefferson National Accelerator Facility.*

*(4) SECRETARY.—The term “Secretary” means the Secretary of Energy.*

## **What is a Federal Laboratory?**

Under federal statute, "the terms 'Federal laboratory' and 'laboratory' have the meaning given the term 'laboratory' in section 12 (d) (2) of the Stevenson-Wydler Technology Innovation Act of 1980 [15 U.S.C. 3710a(d)(2)], except that such terms include a federally funded research and development center (FFRDC) sponsored by a Federal agency" (Source: 10 USC 2491(5)).

As extracted from 15 USC 3710a (d) (2), the term "laboratory" means -

1. a facility or group of facilities owned, leased, or otherwise used by a federal agency, a substantial purpose of which is the performance of research, development, or engineering by employees of the Federal government;
2. a group of Government-owned, contractor-operated facilities (including a weapon production facility of the Department of Energy) under a common contract, when a

substantial purpose of the contract is the performance of research and development, or the production, maintenance, testing, or dismantlement of a nuclear weapon or its components, for the Federal Government; and

3. a Government-owned, contractor-operated facility (including a weapon production facility of the Department of Energy) that is not under a common contract described in paragraph 2, and the primary purpose of which is the performance of research and development, or the production, maintenance, testing, or dismantlement of a nuclear weapon or its components, for the Federal Government, but such term does not include any facility covered by Executive Order No. 12344, dated February 1, 1982, pertaining to the naval nuclear propulsion program.

The term "*weapon production facility of the Department of Energy*" means a facility under the control or jurisdiction of the Secretary of Energy that is operated for national security purposes and is engaged in the production, maintenance, testing, or dismantlement of a nuclear weapon or its components.

The National Competitiveness Technology Transfer Act of 1989 (NCTTA) (Pub. L. 101-189) established technology transfer as a mission for Government-owned, contractor-operated laboratories, including weapons production facilities. Within the Oak Ridge Reservation, the Oak Ridge National Laboratory (ORNL) qualifies as a FFRDC and is listed as such under the national list maintained by the National Science Foundation.

## **What is a Federally Funded Research and Development Center (FFRDC)?**

FFRDCs were first established during World War II to meet specialized or unique research and development needs that could not be readily satisfied by government personnel, due to limits on federal salaries and hiring, or by commercial contractors. Additional and expanded requirements for specialized services led to increases in the size and number of FFRDCs to a peak of 74 FFRDCs in 1969. In Fiscal Year 2007, nine federal agencies fund thirty-six FFRDCs that are operated by universities, nonprofit organizations, or industrial firms under long-term contracts.

From the Federal Acquisition Regulation Subpart 35.017:

An FFRDC meets some special long-term research or development need which cannot be met as effectively by existing in-house or contractor resources. FFRDCs enable agencies to use private sector resources to accomplish tasks that are integral to the mission and operation of the sponsoring agency. An FFRDC, in order to discharge its responsibilities to the sponsoring agency, has access, beyond that which is common to the normal contractual relationship, to Government and supplier data, including sensitive and proprietary data, and to employees and facilities. The FFRDC is required to conduct its business in a manner befitting its special relationship with the Government, to operate in the public interest with objectivity and

independence, to be free from organizational conflicts of interest, and to have full disclosure of its affairs to the sponsoring agency. It is not the Government's intent that an FFRDC use its privileged information or access to facilities to compete with the private sector. However, an FFRDC may perform work for other than the sponsoring agency under the Economy Act, or other applicable legislation, when the work is not otherwise available from the private sector.

Long-term relationships between the Government and FFRDCs are encouraged in order to provide the continuity that will attract high-quality personnel to the FFRDC. This relationship should be of a type to encourage the FFRDC to maintain currency in its field(s) of expertise, maintain its objectivity and independence, preserve its familiarity with the needs of its sponsor(s), and provide a quick response capability.

## **Can Someone Explain the Management of the DOE Government Facilities Located in Oak Ridge and the Role of the Contractors?**

The DOE Oak Ridge Reservation (ORR) complex contains DOE technology centers and research facilities. These elements are divided into several categories.

The DOE ORNL Site Office (DOE OSO) has authority and responsibility over the Oak Ridge National Laboratory (ORNL) and the Oak Ridge Institute for Science Education (ORISE). Both ORNL and ORISE continue DOE's leadership of fundamental scientific research for energy and the Nation's largest supporter of basic research.

ORNL's scientific programs focus on materials, neutron science, energy, high-performance computing, systems biology and national security to advance the nation's energy resources, environmental quality, scientific knowledge, and contribute to science education and national economic competitiveness. The Laboratory also performs work for non-DOE sponsors when such activities complement DOE missions and address important national or international issues. ORNL is operated by UT-Battelle LLC.

The Oak Ridge Institute for Science and Education (ORISE) is a U.S. Department of Energy (DOE) institute managed by Oak Ridge Associated Universities (ORAU). ORISE addresses national needs by focusing on three core areas in support of DOE including: worker/public health and independent verification of environmental cleanup; weapons of mass destruction, national preparedness and emergency response; and science education, workforce development, and scientific review programs.

The DOE Oak Ridge Office (ORO) has oversight of the East Tennessee Technology Park within Oak Ridge and various other facilities outside the state. The DOE ORO is a diverse office supporting key missions in Science and Technology. To a lesser degree, other DOE missions are also supported in the areas of Environmental Management, Science Education, Nuclear Fuel Supply, National Security, Technology Transfer, and Economic Development. The DOE ORO also manages the Financial Service Center that supports other DOE sites/locations. The DOE ORO helps to ensure mission success by providing support in the areas of acquisition and

financial services, quality assurance, environmental compliance, nuclear safety, operations, maintenance, work planning and control, safety and health, human capital, real property and infrastructure, information management, safeguards and security, emergency management, public affairs, etc.

The DOE National Nuclear Security Administration (NNSA) Y-12 Site Office (YSO) maintains jurisdiction of the Y-12 National Security Complex (NSC). The Y-12 NSC is a premier manufacturing facility dedicated to making our nation and the world a safer place and plays a vital role in the Department of Energy's Nuclear Security Enterprise. Y-12 NSC helps ensure a safe and effective U.S. nuclear weapons deterrent. The facility also retrieves and stores nuclear materials, fuels the nation's naval reactors, and performs complementary work for other government and private-sector entities.

Within Oak Ridge, DOE-OSO has UT-Battelle, LLC under contract as a Managing and Operating (M&O) contractor as defined in FAR 17.6. UT-Battelle is charged with running the Oak Ridge National Laboratory (ORNL) under DOE prime contract # DE-AC05-00OR22725. ORNL is a

1. National Laboratory as authorized by under 42 USC 15801 (Energy Policy Act of 2005), Section 2, Definitions;
2. Federal Laboratory as defined in 15 USC 3710a(d)(2); and is a
3. Federally Funded Research and Development Center (FFRDC) as specified in FAR 35.017.

UT-Battelle, LLC, is a captive contractor to DOE and operates as a stand-alone, non-profit corporation that does not engage in any normal commercial business.

The sole purpose of UT-Battelle, LLC is to perform as an M&O contractor for DOE. The DOE includes clauses in its M&O contracts that allow DOE to assign to the M&O contractor work from outside agencies. The UT-Battelle, LLC contract has such clauses. DOE also assures in its M&O contract that UT-Battelle, LLC meets all of the provisions of the FAR, particularly with regards to organizational conflicts of interest (OCI).

The facilities that UT-Battelle, LLC manages and operates under its contract are DOE owned or leased facilities. All of the buildings, land, equipment, supplies, etc., are DOE owned (or leased) and controlled with the exception that some non-DOE equipment may be in those facilities on a limited basis but under DOE approval and control. As the facilities involved are DOE's, this arrangement mandates a close relationship between DOE and UT-Battelle, LLC as the supporting M&O contractor.

Thus, in terms of accomplishing its research and technical assistance missions, DOE considers UT-Battelle, LLC to be organic resources of DOE and does not consider work assigned by DOE under its M&O to be "contract offloading" or a "pass-through" procurement.

## What Type of Contractual or Legal Arrangement Is Involved If I Want to Do Work with the DOE ORNL Contractor?

Here are some general parameters to set the stage.

Title to invention of WFO sponsor's requirement may go to sponsor under class patent waiver.

- 1 Sponsor's proprietary data will be protected.
- 2 The U.S. government retains a nonexclusive royalty-free license to any WFO invention.

Safeguards are in place to preclude organizational conflicts of interest (e.g., disclosure to WFO sponsor regarding background intellectual property).

Equipment and software funded by the sponsor belong to the sponsor, not DOE nor the DOE contractor, UT-Battelle, LLC.

DOE establishes the contract language and basic contract formats that permits ORNL to work for a non-DOE entity. Generally, our ORNL research and technical assistance to a sponsor falls into two broad agreement categories. These are:

1. Material and Services Order Form (MSOF) for Non-Research and Development (R&D) services
  - (1) There is NO \$ Limit.
  - (2) There is NO research and development intellectual property involved on the ORNL side.
  - (3) If only sponsor's proprietary information is involved, a proprietary information disclaimer can be signed and attached to the MSOF.
  - (4) A non-disclosure agreement (NDA) can be separately negotiated and signed by both parties.
2. WFO Agreement for R&D Services Involving Intellectual Property

There are eight (8) current distinct generic variants of the standard agreement that have been approved by DOE-ORO.

- (1) Standard
- (2) Task Order
- (3) Short form
- (4) State and Educational Institution
- (5) Off site
- (6) Licensee
- (7) Assignment of Intellectual Property (IP) rights by Sponsor [e.g., National Transportation Research Center]
- (8) Partial waiver [incorporates waiver/no waiver of IP, proprietary/non-proprietary rights in data, Federal/non-Federal funding alternatives in a single agreement [e.g., Raytheon].

If you want to know more about the WFO agreement process or other technology transfer mechanisms, please contact the ORNL Partnerships Directorate at 865-241-2475 or 865-574-4180 or see URL: <http://www.ornl.gov/adm/partnerships/>

## **Can I “Borrow” ORNL Employees to Work for My Organization?**

Yes. This agreement is called a General Employee Loan Agreement (GELA).

Assuming that the ORNL employee(s) agrees to the arrangement, ORNL has a formal agreement that authorizes a specific ORNL (UT-Battelle, LLC) employee to work for a non-UT-Battelle, LLC, company or corporation.

The sponsor must agree to the terms and conditions of the GELA and pay all costs on a full cost recovery basis for the ORNL employee. The ORNL employee will work at a sponsor-designated location.

Proprietary information of both parties will be protected. All appropriate conflict of interest rules are applicable for both parties involved in the GELA.

## **Why Must I Pay in Advance For Any Research or Technical Work to Be Done?**

With few exceptions, the Department of Energy (DOE) requires advance payments for work to be performed for sponsors who are not part of the U.S. federal government. This is common U.S. Government policy associated with, and derived from, U.S. appropriations law. Without specific Congressional approval, a federal agency can not subsidize a commercial firm, a non-profit organization, or a University, in their research and development efforts.

When advance payments are required, the following amounts are needed after final DOE approval and BEFORE start of any work.

Full funding if the work is estimated to cost \$25,000 or less.

Full funding if the work will be completed in 60 days or less (regardless of estimated total cost).

Partial monthly cash advance IF the work is estimated to cost over \$25,000 AND will take longer than 90 days to complete. After the initial partial cash advance, the next partial cash advance should be scheduled to be received so as to meet each month’s financial plan schedule.

In order to determine the partial monthly cash advance payment required, first review the following definitions:

1. In-house cost - ORNL costs including labor, services (effort) such as engineering, supplies, and associated overhead costs. These transactions do not involve third parties.

2. Outstanding commitments - Transactions with third-parties to acquire materials and/or services outside ORNL such as purchase requisitions and subcontracts. Funding must be available to cover uncosted (unpaid and unaccrued) commitments.
3. Month - The month as determined by the business calendar associated with the DOE-approved, contractor-implemented financial accounting system.

## **How Do I Calculate a Partial Cash Advance Amount?**

The initial partial cash advance requirement for a project is the sum of the following;

estimated total cost for the current month, and  
estimated in-house cost for the next month, and  
estimated outstanding commitments at the end of the current month.

Second and subsequent partial cash advances will represent the sum of the next month's estimated in-house costs plus the change in outstanding commitments for the current month.

In other words, at the end of each month, there should be:

1. sufficient financial plan funding for costs to date through the current month,
2. the in-house cost estimate for the next month, and
3. the outstanding commitments at the end of the current month. (In cases where commitments will be processed after the first day of the calendar month and before that month's cash advance has been received, it will probably be necessary to budget that commitment amount a month earlier than described above.)

A project's monthly cash advance requirements can be estimated up front and included in the bilateral reimbursable agreement (contract).

## **How Can the ORNL Principal Investigator Help their Customers in this Advance Payment Process?**

In order to avoid overruns, ORNL Principal Investigators must accurately calculate the cash advance requirements and financially manage each project based upon the approved funds in the Financial Plan.

Project work, including subcontracted efforts and any termination costs, must cease when existing Financial Plan funds are exhausted, unless a pending cash advance has been received and approved by DOE-ORO Budget. A statement to this effect should be included in the Terms and Conditions of each reimbursable agreement.

Reducing the cash advance requirement from 90 days to 30 days theoretically would tend to increase the likelihood of a work stoppage; however, current work stoppages are primarily caused by customers paying invoices late. Under this proposal, our WFO customers never receive

invoices based on costs incurred. They are only responsible for providing cash advances on an agreed schedule stipulated in the WFO agreement that will cover actual costs incurred.

## **Can I Get an Invoice for this Advance Payment to Satisfy My Company Finance Officers?**

Yes. If the sponsor agrees to cash advances on a schedule but still needs invoices, the ORNL Office of Sponsored Research can provide an invoice to the sponsor but the sponsor must not wait on that invoice before paying on the agreed schedule.

## **What if I Can't Make Advance Payments on a Scheduled Basis?**

If the sponsor is not agreeable to making cash advance payments on a schedule, then the default is for the sponsor to provide an advance payment equal to the highest 90-day cost and commitment period anticipated in the project.

This advance payment is actually held to cover costs until the last 90 days of the project. The ORNL Accounts Receivable will invoice the sponsor monthly for actual costs. The sponsor **MUST** pay that invoice, even though the cash advance is here, in a timely manner (30 days or less) so that there are always funds available to continue working on the project.

## **Are There Any Exceptions to the DOE Advance Payment Policies?**

Yes. Advance payments are NOT required when:

- the work is for a U.S. state or U.S. local government whose laws prohibit the payment of advances. (Note: this must be a “law” as opposed to a “policy.”)
- the work is provided to the sponsor to fill a verified requirement of work for a DOE-funded cost-type contract; i.e., the sponsor performs work and bills DOE for that work and the sponsor does not receive payments up-front from DOE.
- the DOE management and operating contractor performing the work [e.g., Oak Ridge National Laboratory (ORNL)] provides the funding from their award or management fees, royalties, or other corporate funds. (Note: in practice meeting this requirement is difficult and rarely will ORNL senior management agree to fund someone else’s work from corporate funds.)
- Emergency situations involving the protection of life; federal lands, buildings, or equipment; law enforcement; disaster assistance; and production and maintenance of the power distribution system. [Note: DOE ORNL Site Office (OSO) must still approve in advance this waiver for no advance payment prior to the beginning of any work.]

## How do I send funds to DOE?

Advance and invoice payments should be sent by one of the following methods:

1. Remittance to: UT-Battelle, LLC  
ATTN: Treasury Services  
1060 Commerce Park Drive  
MS-6437  
Oak Ridge, TN 37831-6437
2. Wire transfer to: Treasury - New York City  
ABA 021030004

Please include "Treas NYC (89185369) on the receiver-info-line, and list all invoice numbers being paid on the sender-info-line.

Telephone inquiries should be addressed to Ms. Diane L. Ridge, 865-576-2895 or [ridgedl@ornl.gov](mailto:ridgedl@ornl.gov)

## What is Your Taxpayer Identification Number (TIN)?

The TIN/EIN for UT-Battelle, LLC. (which manages and operates the Oak Ridge National Laboratory) is 62-1788235.

A Taxpayer Identification Number (TIN) code is also known as a Federal Identification Number, or more commonly, Employer Identification Number (EIN). An EIN is a nine-digit number (for example, 12-3456789) assigned by the Internal Revenue Service to sole proprietors, corporations, partnerships, estates, trusts, and other entities for tax filing and reporting purposes.

## Do You Do Research on Human Subjects?

Yes, under very strict review and guideline procedures approved by DOE and consistent with the U.S. government's overall most stringent standards.

While many people typically view human subject research as biomedical and clinical studies that involve humans, the definitions for human subject research is much broader than this. Areas that must be considered include:

1. Use of humans to test a device or product developed through research;
2. Use of data collected through interaction with people via a variety of communication styles (e.g., written or oral surveys) or intervention activities such as collection of bodily fluid samples or manipulation of the individual's environment;
3. Use of private information readily associated with individuals (even when the information was not collected for a specific study);
4. Use of bodily materials even if collected by someone other than the researcher; and,

5. Use of humans to evaluate an environmental alteration such as weatherization options.

It is DOE's policy that all research that falls under the above categories must be reviewed and approved by both the researcher's institution and the Institutional Review Board (IRB).

## **Which Rules do You follow on Human Subjects Research?**

The Federal policy for protection of human subjects is called the Common Rule. In order to ensure uniform policies, this common rule was promulgated. Signatory agencies have codified the Common Rule under their own regulations. The 45 Code of Federal Regulation (CFR) 46 is where the Rule is found for the Department of Health and Human Services (DHHS) while 10 CFR 745 is where the Rule is found for the Department of Energy. Subparts under the DHHS regulations, which are also recognized by the DOE Order 443.1, Protection of Human Subjects, include protections for vulnerable populations, pregnant women, fetuses, prisoners, and children.

The ORNL Institutional Review Board (IRB) is authorized under a Multiple Protection Assurance from DHHS (M.1334). It adheres to 45 CFR 46 and 10 CFR 745 in situations in which they are more stringent.

## **Do You Have an U.S. Government Activity Address Code (AAC) or DOD Activity Address Code (DODAAC)?**

Yes. The AAC or DODAAC is a six-position code that uniquely identifies a unit, activity or organization that has the authority to requisition and/or receive U.S. government materiel. Effective April 1, 2000, the DOE-approved Oak Ridge National Laboratory (ORNL) Agency Activity Code is 894777. For questions or assistance, please contact:

Oak Ridge National Laboratory

Ms. Cheri Cross  
Group Leader, Property Management  
ORNL Business Services Directorate  
Phone: 865-574-6046  
Fax: 865-241-4040  
Email: [crosscl@ornl.gov](mailto:crosscl@ornl.gov)

## **Can You Do Independent Certifications and Representations for Government Contracts, Grants, etc?**

Generally, “Yes.” Certification is subject to the conditions imposed in the DOE management and operating contract under Federal Acquisition Regulation Subpart 17.6. UT-Battelle, LLC may do stand alone representations and certifications to WFO sponsors responding to other federal agencies after reviewing the FAR or federal agency provisions being requested. Based on the DOE M&O contract, there may be some FAR provisions that can not be certified to.

UT-Battelle, is an M&O contractor dedicated DOE and is precluded from entering into any other U.S. government contracts or doing any independent commercial work. All work must be approved, authorized, and funded through DOE. To obtain the initial M&O contract, the contractor made the certification of compliance with all applicable U.S. government rules and standards.

If there are any questions on the actual Certifications and Representations made to the federal government, contact the respective DOE contracting official or the ORNL Prime Contract Administrator, Mr. Michael Fietze, at 865-576-3650 or [frietzemj@ornl.gov](mailto:frietzemj@ornl.gov).

## **Are You Authorized to Receive Military Critical Technical Data (DD Form 2345)?**

Yes. The certification number for the ORNL is 0031217. The ORNL certification was assigned March 2, 2000, by the Defense Logistics Information Service. Mr. David R. Hamrin, ORNL Classification Officer, is the designated data custodian and is the official responsible for all actions involving DD 2345 certifications. He can be reached at:

Mr. David R. Hamrin  
Office of Technical Information and Classification  
Oak Ridge National Laboratory  
P.O. Box 2008, Mail Stop 6254  
Oak Ridge, Tennessee 37831-6254  
Phone: (865) 574-6752  
Facsimile: (865) 241-8033  
Email: [hamrindr@ornl.gov](mailto:hamrindr@ornl.gov)



# Building Research Partnerships with Oak Ridge National Laboratory (ORNL)

by

David W. Bradford

Administrator of External Research

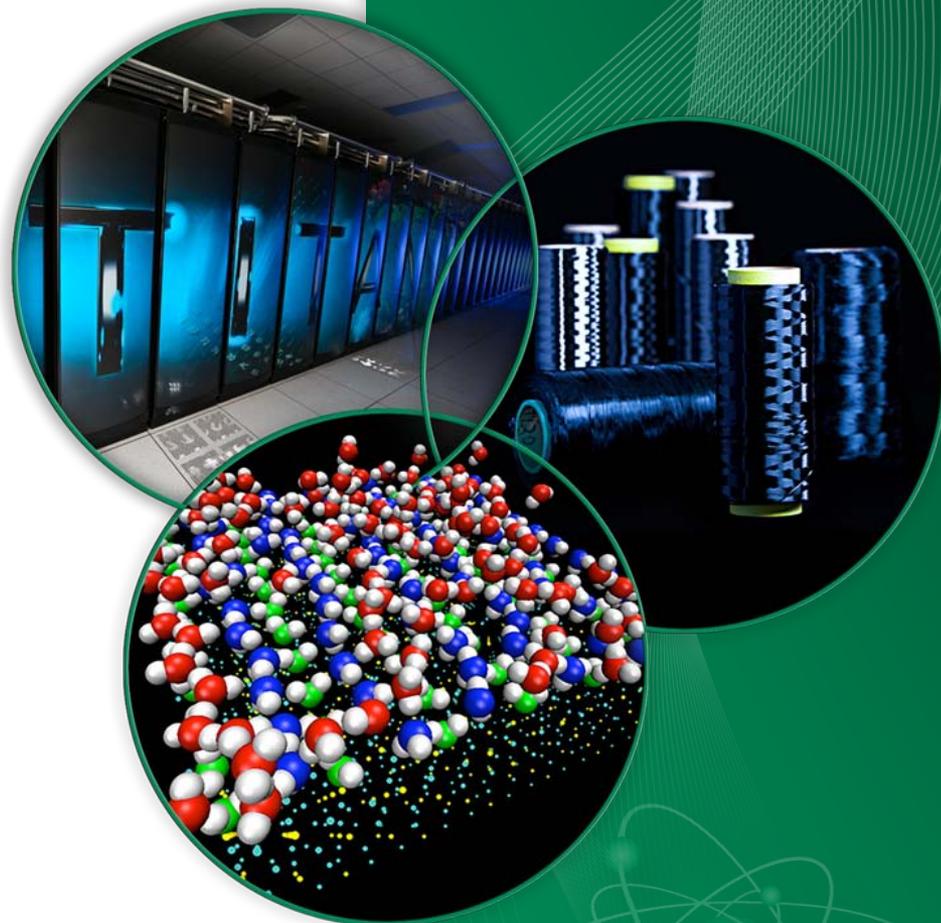
Work For Others Program Office

Phone: (865) 574-9798

Email: [bradforddw@ornl.gov](mailto:bradforddw@ornl.gov)

URL: <http://www.ornl.gov/wfo/exthome.htm>

July 15, 2013



# BRIEFING OUTLINE

- What is ORNL?
- Our Knowledge & Technology Assets
- How We Work
- Partner Oversees Problem Identification & Validation Cycle
- A Partner's Persistent Stress Questions
- Our Partnership Objectives
- What does ORNL bring to the Table?
- How We Can Help Partners
- Summary

# What is Oak Ridge National Laboratory (ORNL)?

- ORNL is a Department of Energy (DOE)
  - National Laboratory
  - Federally Funded Research and Development Center (FFRDC)
  - U.S. Government-owned and leased research facility
  - Managed and operated by UT-Battelle, LLC(\*) under a DOE performance-based prime contract
  - Authorized by DOE to furnish reimbursable research or technical services with a separate DOE approval for each activity
  - Source for effective and cost beneficial science-based solutions
  - Operates in the public interest, with objectivity and independence
  - Operates free from conflicts of interest

(\*) An equal non-profit partnership between University of Tennessee and Battelle Memorial Institute

# Our Knowledge & Technology Assets

- The U.S. government investment at ORNL yields
  - Knowledge and know-how base (staff expertise, data, tools, unique insights)
  - Extensive Intellectual property (patents, copyrights)
  - Multidisciplinary synergy across science areas
  - Different approaches to getting the job done
  - Wide-ranging unique science facilities (e.g., User Facilities) and special capabilities

# How We Work

- Informal Information sharing (no commitments)
- “Work for Others” (WFO) Agreements
- Cooperative Research and Development Agreements
- Licenses
- Subcontracts
- User Facility Agreements – proprietary & non-proprietary
- General Employee Loan Agreements (GELA)
- Agreements for Commercializing Technology (ACT)

# A Partner's Persistent Stress Questions

- “What business problem keeps me awake at night?”
- “What are my top research or technology challenges for which I do not have real solutions?”
- “How does this affect my bottom line?”

***Capitalize on ORNL's research & technical creativity to generate new approaches for an initial market solution !***

# Our Partnership Objectives

- Bring research results & technology enhancements to market
- Use scientific findings to enhance U.S. business competitiveness in the global market
- Enhance knowledge management and transfer it to the U.S. private sector
- Leverage U.S. government technology investments to make our Partners more technology-competitive in the U.S. and global markets

# Partner Oversees Problem Identification & Validation Cycle

- The Partner identifies the research or technology challenges that must be addressed or assessed
- ORNL research staff works informally with the partner, at no cost initially, to identify potential solutions
- ORNL determines & recommends
  - Can we solve the research or technical challenge?
  - What is the probability of success?
  - What is the cost for a prototype or an initial solution?
- The Partner decides whether to proceed and on what time and funding agenda
- Flexibility exists throughout the process as needed

# What does ORNL bring to the Table?

- DOE'S most diverse multi-program research laboratory:
  - Basic Research
  - Applied Research
  - Applied Development
  - World-class energy research capability
  - The world leader in neutron science
  - Incredible Biotechnology and Bioengineering expertise
  - State of the art national/homeland security classified facilities
  - Extensive knowledge of national/homeland security technology needs
  - Environmental security
  - World-class materials science research and facilities
  - World-class Supercomputer computational & network capability
  - Specialized consulting in multiple scientific fields

# What does ORNL bring to the Table?

- Research access to:
  - Rest of the DOE National Laboratory System
  - University research through University of Tennessee (UT) component of UT-Battelle, LLC
  - Seven Research Universities ([Duke University](#), [Florida State University](#), [Georgia Institute of Technology](#), [North Carolina State University](#), [University of Virginia](#), [Vanderbilt University](#), [Virginia Polytechnic Institute and State University](#)) with special core relationships to ORNL
  - National Transportation Research Center (NTRC)
  - Battelle Corporation and Affiliates expertise through Battelle Component of UT-Battelle, LLC
  - Universities U.S.-wide through Oak Ridge Institute of Science (ORISE)
  - User Facilities

# How We Can Help Partners

- By Supporting Mentoring or Research:

Establish WFO Agreement - set up as a Basic Ordering Agreement, where ORNL is a subcontractor to your organization

Use General Employee Loan Agreement – GELA

Establish a Cooperative Research and Development Agreement (CRADA)

Set up Licensing Arrangements

Consider an ACT Arrangement

# How We Can Help Partners

- By Supporting Program Development:
  - Furnish White Papers/Statement of Capabilities
  - Use GELA for Bid/Proposal Preparation
  - Can be a direct-cited partner in Broad Agency Announcement (BAA) type or research grant solicitations
  - Can be cited as potential government-furnished services on an RFP if previous subcontract is already in place and if the soliciting federal contracting officer does not object. ORNL has no active role in input to RFP response.
  - Can also set up agreements where your organization is a subcontractor to ORNL (true Funds-in, Funds-out arrangement)
  - Can support your Federal sponsor by being your subcontractor

# How We Can Help Partners

- By Supporting Testing and Experimentation:
  - Conduct fundamental or applied research at ORNL
  - Develop prototypes at state-of-the-art or state-of-knowledge
  - Access special user facilities
  - Bring on board more research agents or scientific capabilities (e.g., other National Laboratories)

# Summary

- ORNL wants to work with market-oriented partners
- ORNL has extensive specialized scientific and unique research capabilities available
- Partners can tap into the ORNL knowledge base
- Partners can use flexible agreement mechanisms to meet their business needs

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

by

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**June 14, 2012**

# Briefing Outline

- **Statutory Authorities for the Conduct of Reimbursable Work**
- **Joint DOD & DOE Regulatory Reimbursable Work Process**
- **How DOD Agencies Do Reimbursable Work With DOE**
- **Interagency Acquisition (IA) Overview**
- **The IA Approval Process**
- **Project Execution Process**
- **Project Closeout Process**
- **Summary**

# 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.)

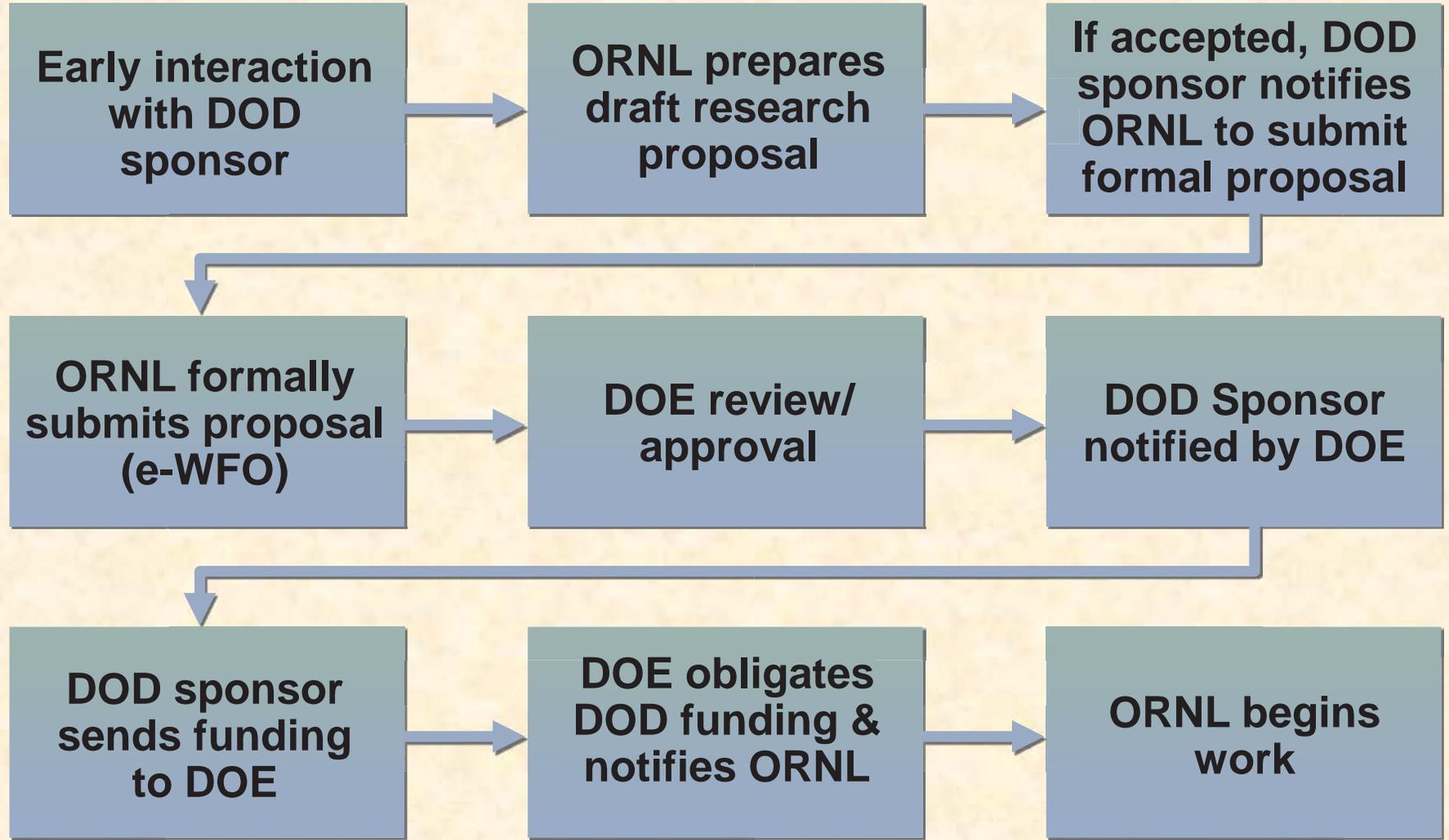
# Joint DOD & DOE Regulatory Reimbursable Work Process

- **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 NOT 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.**

# Reimbursable Research and Technical Assistance for the Department of Defense (DOD)

By Oak Ridge National Laboratory  
(ORNL) of the Department of  
Energy (DOE)

by

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**June 6, 2013**

# Briefing Outline

- **Statutory Authorities for the Conduct of Reimbursable Work**
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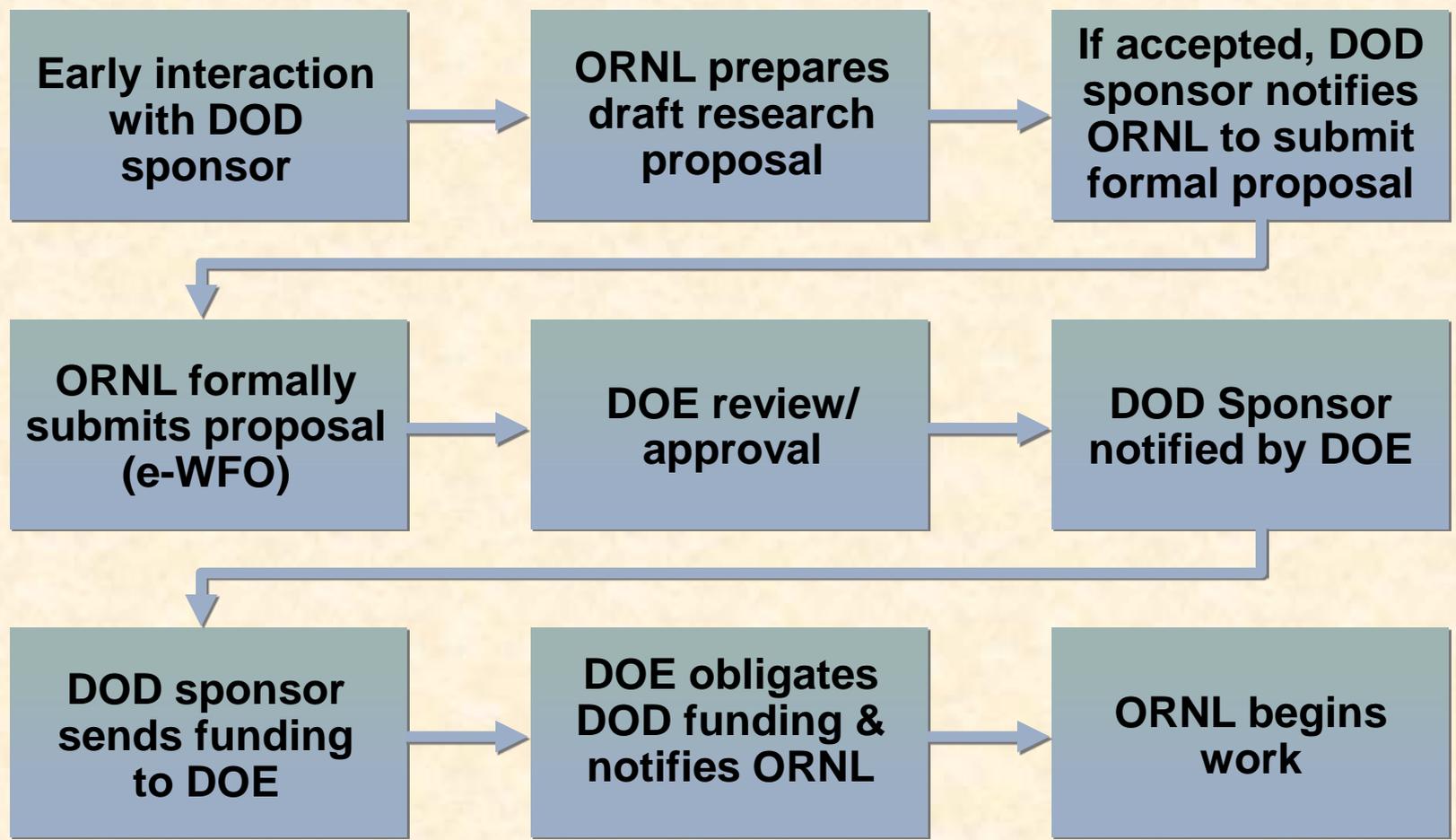
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- **DODI 4000.19, “Interservice and Intragovernmental Support”**
- **DOE Order 481.1C, “Non-DOE Funded Work”**
- **DOD Memorandum, dated May 1, 2013, “Department of Defense-Wide Policy for using the Department of Energy’s Work for Others Program to Access DOE-owned Research, Development, and Production Facilities through Interagency Agreements”**
- **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, dated May 1, 2013**

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- **DOE OSO 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-OSO 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 OSO 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 OSO, 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 OSO 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 OSO 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 OSO 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 OSO 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 OSO 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 OSO 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.**



## Department of Energy

Oak Ridge Office  
P.O. Box 2001  
Oak Ridge, Tennessee 37831

Contracting Officers  
Department of Defense

### **OBTAINING SPECIALIZED RESEARCH AND TECHNICAL ASSISTANCE FROM THE DEPARTMENT OF ENERGY**

Please reference the Office of the Under Secretary of Defense Memorandum, dated December 16, 2010, subject: Standard Interagency Agreement Part A for DOD Components and All DOE Activities in FY 2011.

The referenced Memorandum (copy attached) implements a standard process between the Department of Defense (DOD) and the Department of Energy (DOE) for reimbursable interagency acquisitions (IA) using the DOE Work For Others (WFO) program. The IA process is administered in accordance with the signed Memorandum of Agreement (MOA) Between DOD and DOE Governing Department of Defense Funded Work Performed at the Department of Energy Laboratories and Facilities, dated 16 September 2010.

DOE sponsors a specialized research and technical assistance program under its WFO program. This program furnishes reimbursable support to DOD as part of the services rendered to-and-for US government activities under various laws and regulations, principally, the Economy Act and the Atomic Energy Act of 1954. All reimbursable DOD work proposed for the WFO program comes under a stringent DOE review and approval process. Approval by a DOE Contracting Officer of a DOD reimbursable IA indicates certification that the DOD reimbursable work is consistent with the DOE legislative authority, complies with DOE policies as required in DOE Orders, is within scope of the DOE performance-based contract through which the work is conducted, and is compliant with the joint DOD and DOE MOA.

UT-Battelle, LLC, manages and operates the government-owned Oak Ridge National Laboratory (ORNL) on behalf of DOE in accordance with the Federal Acquisition Regulation (FAR) Subpart 17.6. ORNL is a Federal Laboratory as defined in 15 USC 3710 a (d) (2) and is also a federally funded research and development center (FFRDC) as specified in FAR 35.017. DOE's management and operating (M&O) contractors are financially integrated with DOE and operate under strict DOE controls and guidelines. DOE M&O contractors are separate corporate entities from their parent company(s) set up solely to perform work assigned by DOE, including DOD reimbursable IA work which DOE accepts under the joint MOA .

The DOE Oak Ridge Office (ORO) believes that the joint DOD and DOE procedures identified in the Memorandum referenced above are implemented at ORO and ORNL and that appropriate procedures are in place for DOD reimbursable IAs. In order to facilitate the DOD approval process, DOE ORO previously authorized ORNL research staff to assist DOD personnel in preparing the necessary justifications on ORNL unique capabilities and special expertise.

If assistance is required in the acquiring of services from ORNL, please contact me at (865) 576-7343, or Mr. Robert Hamilton at (865) 576-7723.

Sincerely,

A handwritten signature in cursive script that reads "Mary Lou Crow". The signature is written in black ink and is positioned above the printed name and title.

Mary Lou Crow  
Contracting Officer

Attachment



OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

DEC 16 2010

ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION AND LOGISTICS MANAGEMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Standard Interagency Agreement Part A for DoD Components and all DoE activities  
in FY 2011

The attached Interagency Agreement Part A has been executed by this office and the Department of Energy to serve as the overarching Part A for all DoD requests going to the Department of Energy from this date forward. Each DoD organization is requested to supplement the Part A with a Part B for each requirement in accordance with the existing policy. The agreement remains in effect until rescinded.

My POC for this is Mr. Michael Canales 703-695-8571 or via e-mail at [michael.canales@osd.mil](mailto:michael.canales@osd.mil).

Shay D. Assad  
Director, Defense Procurement  
and Acquisition Policy

Attachment:  
As stated

## **Department of Defense and Department of Energy**

### **Interagency Agreement (IA)**

#### **PART A – General Terms & Conditions**

##### **General:**

This document will serve as Part A for Interagency Agreements between the Department of Defense (DoD) and the Department of Energy (DOE) in accordance with and in support of the guidance issued by the Office of Federal Procurement Policy (OFPP) (June 2008) as endorsed by the Department of Defense in October 2008. DoD and DOE have concluded that by using this Part A for individual WFO agreements OFPP Part A guidance requirements have been satisfied. Using this Part A ensures DoD and DOE have established the necessary framework for entering into Interagency Agreements under DOE's Work for Others (WFO) program. Any additional clarification shall be included in Part B of this IA or alternate funding document. All work in support of and directly funded by the DoD under the DOE Work for Others (WFO) program, will be administered in accordance with the signed Memorandum of Agreement (MOA), dated 16 September 2010, between the departments (attached hereto).

##### **A.1. Purpose**

This Part of the IA (hereinafter "Part A") describes the terms and conditions that govern the provision of interagency agreements between the Department of Defense, hereinafter "the Requesting Agency" and the Department of Energy, hereinafter "the Servicing Agency."

No fiscal obligations are created through the execution of this Part A. A fiscal obligation arises when the Requesting Agency demonstrates a bona fide need, provides the necessary requirements and funding information to the Servicing Agency and both parties execute a funding document using Part B of this IA or an alternate funding document. The funding document used must be compliant with the signed MOA, dated 16 September 2010, between the departments (attached hereto).

##### **A.2. Authority**

The parties' authority to enter into this interagency agreement are The Economy Act (31 U.S.C. 1535) and Atomic Energy Act of 1954 as amended (42 U.S.C. 2011, et. seq.), and the Federal Acquisition Regulation (FAR) as promulgated in the Department of Energy Acquisition Regulations (DEAR) and further defined in DOE Order 481.1C, WORK FOR OTHERS (NONDEPARTMENT OF ENERGY FUNDED WORK).

Additional authorities may be cited as necessary.

##### **A.3. Part A Identifier**

DE-MA-900000 is the DOE identifier for all Work For Others funded activities

#### A.4. Scope

- a. All Department of Defense organizations are authorized to obtain assistance from the Servicing Agency.
- b. Department of Energy, including the National Nuclear Security Administration, organizations are authorized to provide assistance as the Servicing Agency. The name of the specific facility performing work under this IA will be specified in Part B or an alternate funding document.
- c. Types of products or services that may be acquired include but are not limited to the following:

The Department of Energy (DOE) has major national programs in fundamental scientific research; energy research and development (R&D); and nuclear weapons research, development, and production. Much of the work in these programs is conducted through an extensive network of Government-owned, Contractor-operated (GOCO) laboratories and facilities under performance-based contracts. Through the Work for Others (WFO) Program, DOE can make the highly specialized or unique expertise and capabilities of this network available to support the missions of other Federal agencies and non-Federal customer needs on a fully reimbursable basis.

The following types of services or products may be acquired through reimbursable work projects pursuant to this IA and are not all inclusive of the expertise resident in DOE and its laboratories/facilities:

- Highly specialized scientific, technical, analytical, operational, and engineering services, including prototype design, development, training and test/evaluation;
- Research in the physical, biomedical, and environmental sciences, as well as in energy technologies; biological and environmental systems; nuclear and energy research;
- Identification and characterization of hazardous and radioactive contaminants, and chemical processing;
- Other specialized services or products as identified by the Requesting Agency in Part B or alternative funding document consistent with or complimentary to the mission of the Servicing Agency.

#### d. Limitations

The following restrictions apply: Restrictions on use of the Servicing Agency resources are contained in the FAR, DEAR and DOE Order 481.1C. The MOA contains further

administrative requirements to be followed by all parties as does the Director, Defense Procurement and Acquisition Policy memorandum, dated 24 September 2010 (attached) and the Section 801 Determination dated September 28, 2010 (attached).

#### **A.5. Period of Agreement**

The terms and conditions described in Part A of an IA become effective when signed by authorized officials of both the requesting agency and the servicing agency and remain effective until amended in accordance with Section A.9 or terminated in accordance with Section A.10 of this agreement.

#### **A.6. Roles & Responsibilities of Servicing Agency & Requesting Agency**

The effective management and use of interagency agreements is a shared responsibility of the Requesting Agency and the Servicing Agency. The over-arching roles and responsibilities are addressed in Part VII of the MOA and the Director, Defense Procurement and Acquisition Policy memorandum, dated 24 September 2010. Further, DoD and DOE agree to the following more procedurally focused roles and responsibilities which are derived from the applicable portions of the Checklist in Appendix 1 of the *Interagency Acquisition* guidance issued by the Office of Federal Procurement Policy (June 2008).

### **1. Determine needs and develop requirements document**

#### **a. Requesting Agency**

- i. Establish that a requirement exists.
- ii. Determine that it is in the best interest of the government to pursue assistance through another agency.
- iii. Prepare a statement of work (SOW), statement of objectives (SOO), or performance work statement (PWS), that includes a specific, definite, and clear description of a bona fide need in the fiscal year that the funds are available for new obligations. The need must be adequately documented, but may be concise. A solution need not be specified in order to establish a bona fide need.

#### **b. Servicing Agency**

- i. Assist the Requesting Agency, as needed, in refining the requirements document package, including the description of key project objectives, project requirements, and performance expectations.

**2. Prepare, or finalize, statement of work (SOW) and/or specifications**

**a. Requesting Agency**

- i. Work with the Servicing Agency to prepare and finalize a mutually acceptable Statement of Work.

**b. Servicing Agency**

- i. Assist the Requesting Agency in the preparation of a mutually acceptable Statement of Work.
- ii. Sample Format for the model cost detail in the SOW is as follows:

<u>DOD WFO Budget Estimate*</u>	<u>FY1</u>	<u>FY2</u>	<u>FY3</u>	<u>FY4</u>
<u>Total Direct Labor Costs:</u> (break-out by position title below)	\$	\$	\$	\$
<u>Labor Category/FY Hours:</u>	<u>FY1</u>	<u>FY2</u>	<u>FY3</u>	<u>FY4</u>
Scientist III [# of hours by FY]				
Technician I [# of hours by FY]				
Engineer II [# of hours by FY]				
Materials Costs <i>(including equipment)</i>				
Subcontract Costs <i>(for services)</i>				
Travel Costs <i>(list trips, # of travelers, etc.)</i>				
Other Direct Costs				
Laboratory Directed Research and Development Costs**				
Overhead Costs <i>(summary level)</i>				
Federal Administrative Charge <i>(if applicable)***</i>				
Total Estimated Project Cost	\$	\$	\$	\$

\* DOE intends to provide assistance to DOD via contracts with its various facilities. All work will be performed in accordance with those contracts, and shall be on a full cost recovery basis. Appropriations law necessitates that DOE or its contractors perform this work on a best effort basis.

\*\* LDRD is the DOE Laboratory Directed Research and Development charge. The LDRD is a normal component of DOE overhead charges to both DOE programs and reimbursable work performed for other federal agencies. It is shown above as a component of the overall subtotal charge to the project. The FY 2002 Energy and Water Development Appropriations Conference Report (HR 107-258) requires DOE to notify federal sponsors that the Department charges LDRD.

\*\*\* FAC is the Federal Administrative Charge that is mandated by Section 3137 of the Strom Thurmond National Defense Authorization Act of 1999 (Public Law 105-261).

### **3. Prepare a funding document**

#### **a. Requesting Agency**

- i. Prepare Part B or alternate funding document and engage with Servicing Agency as needed. Provide: (i) description of the products or services required to be provided by the Servicing Agency that is adequate to demonstrate a bona fide need and can be recorded as an obligation (31 U.S.C. 1501, 1502), (ii) information on performance or delivery requirements along with projected milestones, including period of performance end date, (iii) data required for the proper transfer and obligation of funds, i.e., funds expiration for obligation date, (iv) information on any agency-unique restrictions or limitations applicable to the funding being provided, (v) Agency Locator Code (ALC) for U.S. Treasury Inter-governmental Payment and Collection System (IPAC) billing or printed invoices to be mailed and, (vi) include DOE/NNSA provided unique site-specific WFO project/proposal identifier/number.
- ii. For all funding documents executed under this IA, assign a financial point of contact who is a "certifying official" as that term is used in 31 U.S.C. § 3528. The funds certifying official shall:
  - A. Timely execute all financial documents required for a valid funding request to show funding meets purpose, time and amount; and
  - B. Ensure funds are certified and legally available for the specified assistance.
  - C. Ensure that the requesting agency has executed and provided to the Servicing Agency an Economy Act Determination and Findings.
- iii. Requesting Agency shall provide on Part B or alternate funding document, a written statement confirming that:

- A. the Requesting Agency has determined that entering into an agreement with DOE/NNSA is in compliance with the requirements of the Economy Act of 1932, as amended (31 U.S.C. 1535), or other applicable authorizations [e.g., Executive Order (E.O.) 12333];
- B. the Requesting Agency has determined that entering into an agreement with DOE/NNSA is in compliance with competition requirements in Federal Acquisition Regulation (FAR) Part 6, section 6.002, Limitations; and
- C. to the best of the Requesting Agency's knowledge, the work will not place DOE/NNSA and their contractors in direct competition with the domestic private sector.

**b. Servicing Agency**

- i. Work with the Requesting Agency as needed to prepare a Part B or alternate funding document that will include the DOE/NNSA provided unique, site-specific project/proposal identifier/number.
- ii. Prior to acceptance ensure the Part B or alternate funding document identifies proper funding information, including the type of funds to be used, their period of availability, and a funds citation and identifies the funds certifying official.
- iii. Assist the Requesting Agency in its compliance with the bona fide needs rule by:
  - A. Managing funds according to the Requesting Agency's guidance;
  - B. Recording transactions in a timely fashion; and
  - C. Implementing and exercising controls to ensure compliance with all applicable statutory and regulatory fiscal requirements as specified in the funding document.

**4. Comply with DoD-unique laws, regulation and policies**

**a. Requesting Agency**

- i. Inform the Servicing Agency of any applicable statutes, regulations and directives that are unique to the Requesting Agency (e.g., funding restrictions).

- ii. Provide information on security requirements, e.g. classification guidance, applicable to the work identified in the SOW.
- iii. Notify the Servicing Agency of required data collection and reporting requirements.

**b. Servicing Agency**

- i. Ensure the Requesting Agency-unique laws or restrictions and data collection and reporting requirements that have been identified by the Requesting Agency are considered in the development of Part B or alternate funding document.
- ii. When not in conflict with the Servicing Agency's laws, regulations and contract terms and conditions negotiate with the Requesting Agency to satisfy such requirements and identify any costs associated with said compliance.

**5. Conduct inspection, acceptance, and surveillance**

**a. Requesting Agency**

- i. Ensure deliverables are received and quality is acceptable.
- ii. Perform duties in a timely manner. Advise the Servicing Agency Contracting Official immediately of any circumstances that affect performance, including failures to comply with technical requirements or to show a commitment to customer satisfaction.

**b. Servicing Agency**

- i. Provide support to Requesting Agency personnel who have been appointed to perform oversight responsibilities related to inspection, acceptance, and surveillance and reporting in a timely manner.
- ii. Take appropriate and timely actions to address performance problems.

**6. Determine when modifications are required to Part B or Alternate Funding Document**

**a. Requesting Agency**

- i. Work with the Servicing Agency to determine if a modification to work scope and/or funding is required.
- ii. Modify Part B or alternate funding document to reflect required changes.

**b. Servicing Agency**

- i. Work with Requesting Agency to determine if modification to the work scope and/or funding is required.
- ii. Work with Requesting Agency to modify Part B or alternate funding document to reflect required changes.

**7. Review and approve invoices and make payment**

**a. Requesting Agency**

- i. Review invoices for services.
- ii. Raise identified problems/issues regarding invoices immediately to the Servicing Agency Contracting Official for resolution.

**b. Servicing Agency**

- i. DOE will provide invoices for services
- ii. Resolve identified problems/issues with invoices in a timely manner.

**8. Perform project closeout**

**a. Requesting Agency**

- i. Support project close-out functions, to include providing appropriate funding to satisfy settlement agreements and/or claims.
- ii. Take appropriate actions to retrieve unexpended balances.

**b. Servicing Agency**

- i. Close out the IA upon ensuring that all project requirements and administrative actions have been completed.
- ii. Return unused balance of the funds to the Requesting Agency in a timely manner.

Part B or alternative funding document will include any additional assignment/clarification of roles and responsibilities.

**A.7. Billing & Payment**

The Requesting Agency will pay the Servicing Agency for costs of each WFO project. The Servicing Agency will bill monthly for costs incurred in the performance of work described in the statement of work – preferably via the U.S. Treasury Inter-governmental Payment and Collection System (IPAC) - or with printed invoices. For agreements involving Requesting Agencies who do not utilize IPAC, or who request non-IPAC invoices, monthly invoices will be printed and mailed by the Servicing Agency and paid by the Requesting Agency in a timely manner.

#### **A.8. Review of Part A**

The parties agree to review jointly the terms and conditions in Part A. Appropriate changes will be made by amendment to this agreement executed in accordance with Section A.9.

#### **A.9. Amendments**

Any material changes to the terms and conditions in Part A shall be made in writing and approved by both agencies.

#### **A.10. IA Termination**

An IA may be terminated upon thirty (30) calendar days with written notice by either party. If the IA is terminated, any implementing Part B or alternative funding document may also be cancelled. The agencies shall agree to the terms of the termination. All costs attributable to the close out and the disposition of awarded and pending actions shall be borne by the Requesting Agency.

#### **A.11. Interpretation of IA**

If the Servicing Agency and Requesting Agency are unable to agree about a material aspect of either Part A or Part B or alternative funding document of an IA, the parties agree to engage in an effort to reach mutual agreement in the proper interpretation of an IA, including amendments, as necessary, by escalating the dispute within their respective organizations.

#### **A.12. Contract Disputes and Protests**

If a dispute related to funding remains unresolved for more than sixty (60) calendar days after the parties have engaged in an escalation of the dispute, the parties agree to refer the matter to their respective Agency Senior Procurement Executives for review and resolution.

#### **A.13. System Certification/Approval**

##### **a. Requesting Agency**

The Requesting Agency will accept the system certifications and management systems compliance with US government policies that are done by the Servicing Agency in accordance with US statutes and regulations. The Requesting Agency will not require supplemental certifications.

**b. Servicing Agency**

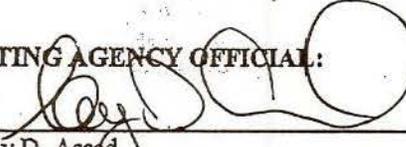
The Servicing Agency has ensured that the contractor maintains acceptable management controls of accounting, cost estimating, and purchasing systems to meet government standards and has approved these systems as required. In addition, the Servicing Agency shall approve the contractor's disclosure statement.

The Servicing Agency has established requirements in the DOE facility that meet standard FAR and DEAR dictates. DOE implements these requirements in these contracts and manages execution by the DOE performance-based contractor. DOE validates and performs rigorous oversight through its management system of contractor performance. DOE, through its management structure, ensures that the performance-based contractor meets or exceeds defined standards and has installed:

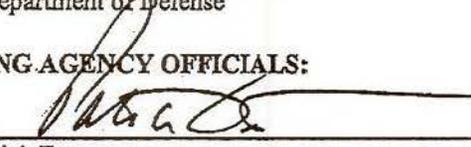
1. DOE-approved reimbursable work policies and procedures;
2. An Accounting system that is consistent with US government accounting criteria;
3. A validated cost estimating system;
4. A government-approved procurement system;
5. A disclosure notice consistent with the Cost Accounting Standards Board requirements

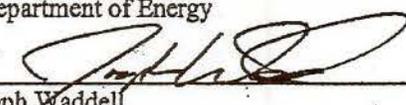
**A.14. Signatures**

**REQUESTING AGENCY OFFICIAL:**

Signature:  Date: 12/15/2010  
Name: Shay D. Assad  
Title: Director, Defense Procurement and Acquisition Policy  
Agency: Department of Defense

**SERVICING AGENCY OFFICIALS:**

Signature:  Date: 12/8/10  
Name: Patrick Ferraro  
Title: Acting Director, Office of Procurement and Assistance Management  
Agency: Department of Energy

Signature:  Date: 12-8-2010  
Name: Joseph Waddell  
Title: Director, Office of Acquisition and Supply Management  
Agency: Department of Energy, National Nuclear Security Administration

# How Federal Agencies Obtain Technical Resources and Skills from the U.S. Department of Energy

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Published by the U. S. Department of Energy, Assistant Secretary for Human Resources and Administration, January 1996; current as of June 2004

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### U.S. DEPARTMENT OF ENERGY LABORATORIES AND TECHNOLOGY CENTERS

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## INTRODUCTION

Expanding technological requirements and decreasing federal budgets demand the reduction of duplication and more efficient use of federal resources. As evidenced by past successes, the U.S. Department of Energy's network of laboratories and/or technology centers is uniquely qualified to provide immediate scientific support to other federal agencies as they seek to advance their knowledge.

The DOE laboratories and technology centers operate under a special arrangement known as a Management and Operating (M&O) Contract. Through an M&O, the government contracts for the operation, maintenance, or support of a government-owned-or-controlled research, development, special production, or testing establishment (FAR 17.6).

DOE laboratories and technology centers have a long history of excellence in a range of fields, including the basic sciences, applied energy research, and weapons-related technologies. In carrying out its mission, DOE has developed world-class core competencies in technologies that include energy, pollution control and remediation, advanced materials, advanced instrumentation, biotechnology, advanced prototype development, information and communication software, aerospace and transportation, high-performance computing, modeling and simulation, and advanced weapons technologies and sensors.

Congress, through the Economy Act of 1932, recognized the benefit to a federal agency of placing orders for goods and services with another federal agency. Similarly, the Atomic Energy Act of 1954 recognized the benefits of making the laboratories and technology centers available to other federal entities for training and for research and development (R&D) provided private facilities are inadequate for that purpose.

The DOE laboratories and technology centers can apply their resources and skills to the specific needs of other federal agencies through DOE's Work for Others (WFO) program. This brochure briefly outlines the DOE guidelines that govern the WFO program for federal agencies; however, it does not present all relevant laws, regulations, and procedures. There are also other mechanisms available for working with DOE laboratories. Details may vary with the type of work requested.

Further information on the WFO program or other mechanisms can be obtained from any of the DOE offices listed in this brochure.

Generally, U.S. intelligence work follows the same procedures described in this brochure. More specific requirements for support of U.S. intelligence activities are contained in the supplemental brochure, Intelligence-Related Work for Others. To obtain brochures, contact the DOE Office of Energy

Intelligence (NN-30) Work for Others Coordinators at (202) 586-8297 or (202) 586-8718.

Information on the WFO program for non-federal agencies and private customers is included in the brochure, How Private Customers and Non-Federal Governments Obtain Technical Resources and Skills from the Department of Energy. To obtain brochures, contact the DOE Office of Organization and Management (HR-6) Work for Others Program Coordinator at (202) 586-6802 or (202) 586-3299.

## **PROGRAM DESCRIPTION**

The DOE laboratories and technology centers are available to conduct work for other federal agencies on a full cost-recovery basis. Such projects must support the missions of DOE and the laboratory or technology center and may not compete directly with capabilities that are available in the U.S. domestic private sector. Appropriate standards for humane treatment of human and animal subjects are maintained.

## **PROGRAM OBJECTIVES**

- Accomplish research or technology goals that may otherwise be unattainable, and avoid unnecessary duplication of effort.
- Access highly specialized or unique facilities, services, or technical expertise.
- Transfer technologies from DOE laboratories and technology centers to the marketplace for further development or commercialization.
- Maintain core competencies and enhance the science and technology base at DOE facilities.

## **OBTAINING ASSISTANCE FROM THE DEPARTMENT OF ENERGY**

U.S. government agencies can build relationships with DOE laboratories and technology centers to strengthen U.S. technology expertise. DOE manages a major part of the nation's federally- funded civilian science, technology development, and engineering resources through nine major multi program laboratories, 11 single-program laboratories, and a wide range of special technology centers and smaller special-mission laboratories critical to U.S. industry's global competitiveness.

DOE is the leading federal agency in patent applications with more than 2,000 from 1990 to 1994. It is the leading agency in licenses granted, with more than 400 during the same period. In 1995, when the federal government won 42 R&D 100 Awards, 32 of these went to DOE. (R&D 100 Awards are bestowed annually in recognition of the nation's most important inventions.)

DOE has tremendous scientific and technological resources 30,000 scientists and engineers, including 58 Nobel Prize winners, at facilities with a capital value of \$30 billion. These resources help U.S. industry compete in the global economy.

## **RESEARCH AND DEVELOPMENT BENEFITS TO U.S. TAXPAYERS AND THE FEDERAL GOVERNMENT**

Over the past half century, DOE's laboratories and technology centers have developed a vast amount of technology expertise that enhances the security and prosperity of the United States. Their capabilities may be fully accessed by federal customers. Government agencies may share technology and can avoid

"reinventing the wheel," resulting in significant savings to taxpayers. Access to these technologies can add to the overall U.S. technology base and enhance the U.S. posture in the competitive global marketplace.

The DOE Work for Others program serves as a bridge connecting all of the country's research communities universities, industries, and federal, state, and local governmental agencies. By linking these organizations, the laboratories and technology centers contribute to the cross-fertilization of ideas and R&D approaches among the nation's researchers.

The program enables federal customers to:

- employ top-level scientific and engineering capabilities,
- advance critical technologies,
- realize cost savings by using existing technologies and facilities, and
- obtain solutions to difficult problems.

The country benefits by enabling DOE to:

- share technologies and expand access to unique technologies, facilities, services, and technical expertise,
- make R&D technology that originates in DOE facilities available for further development or commercialization,
- apply technological advances to DOE programs, and
- enhance skills, expertise, and technologies for ongoing and future DOE programs.

## **HOW TO ACCESS THE DEPARTMENT OF ENERGY**

### **EARLY INTERACTION**

DOE encourages its laboratories and technology centers to present scientific and technical information to federal customers. This collaborative policy maximizes the synergistic benefits of sharing technology and research findings throughout the U.S. government to solve national problems while conserving technical and financial resources.

DOE authorizes its laboratories to represent DOE when conducting discussions on research and technical assistance with federal customers. DOE also permits its laboratories to respond to Broad Agency Announcements (BAAs), but they may not respond to U.S. Government Requests for Proposals (RFPs).

Federal customers may receive information on DOE research and technical capabilities through some of the following methods:

- peer-reviewed publications, such as refereed scientific, technical, or engineering journals,

- routine publicity announcements,
- technical brochures and/or technical presentations,
- technical capability statements or White Papers covering DOE's unique expertise and specialized facilities,
- Internet-style electronic announcements,
- annual or periodic formal publications, such as the R&D 100 Awards list, and
- distribution of federal customers' literature, reports, and analyses.

## **PROPOSAL DEVELOPMENT**

### **Forming the Relationship**

After the initial dialogues, the federal customer may perceive benefits in a joint problem-solving venture. This informal conceptual agreement is created to serve as the foundation for developing a relationship to meet the federal customer's technological needs.

### **DOE Involvement**

After reviewing and understanding the preliminary technology requirements of the federal customer, the DOE laboratory or technology center prepares a draft Statement of Work or Research Proposal with estimated costs.

DOE is required by policy to determine that the work for a federal partner is compatible with DOE missions, will not adversely impact current DOE programs, will not place a detrimental future burden on DOE resources, and is not in direct competition with the U.S. domestic private sector. The formal technical proposal sent to the federal customer will include the DOE administrative requirements.

### **Federal Customer Involvement**

Once the federal customer receives the DOE technical proposal, the federal customer may choose to fund the project, fund parts of the project, defer the activity to a later date (e.g., to obtain further funds or to receive a higher agency approval), or stop all activity.

When the federal customer determines there is a need for DOE laboratory or technology center assistance to meet agency mission requirements, the customer will forward a funding document to DOE. The funding document references the technical proposal, establishes the work performance period, and must be consistent with DOE administrative requirements.

### **DOE Project Acceptance**

Upon receipt of the federal customer's funding document, the proposed work is reviewed to ensure it is compatible with the technical proposal, consistent with the appropriate legal authority, and can be executed in the requested time frame. DOE accepts the customer's funding document by co-signing the document and thereby "obligating" the customer's funds.

DOE then assigns the technical task to the DOE laboratory or technology center, commits the funds, and

authorizes the laboratory or technology center to start work.

## **RESPONSIBILITIES**

### **Federal Customer**

- Cites appropriate legislative authority for the work to be done (usually the Economy Act),
- Certifies to the best of their knowledge that the work will not place DOE and its contractor in direct competition with the domestic private sector,
- Monitors the technical performance of the DOE laboratory or technology center to ensure it meets project scope, technical requirements, schedule commitments, and cost performance,
- Informs DOE of any potential areas of concern,
- Reimburses DOE when invoiced,
- Reviews and accepts technical deliverables, and
- Cooperates in project closeout procedures.

### **Department of Energy**

- Accepts funding from the federal customer covering the approved project,
- Ensures compliance with DOE policies and procedures,
- Resolve issues between the customer and the laboratory if problems arise, and
- Monitors the laboratory or technology center's performance.

### **DOE Laboratory or Technology Center**

- Performs the project authorized by DOE according to the terms of its M&O contract and DOE administrative procedures,
- Defines the best approach to technical challenges to achieve best value,
- Ensures federal customer's milestones and deliverables are met,
- Provides periodic program status reports and financial cost information to the customer,
- Informs the customer of any technical or programmatic difficulties that may delay a project,
- Informs the customer and DOE of any potential areas of concern, and
- Cooperates in project closeout procedures.

## **PROJECT FINANCING**

Based on statutory requirements, DOE will recover all direct and indirect costs associated with project performance.

Generally, reimbursable agreements will provide for full funding of projects to be completed in the current fiscal year. For projects that cross fiscal years, full funding for the current fiscal year plus the first three months of the subsequent fiscal year is needed to ensure continuity.

DOE and/or its laboratory or technology center will provide timely reports including reports on funding receipts and expenditures.

## **INTELLECTUAL PROPERTY RIGHTS**

Unless otherwise negotiated, patent rights and copyrights are determined by the individual laboratory or technology center's M&O contract.

## **OTHER CONSIDERATIONS**

### **PROPERTY/EQUIPMENT**

For permanent construction at DOE facilities, title passes to DOE upon completion of construction and its acceptance by DOE. Equipment acquired for the project is accounted for and maintained during the term of the agreement in a manner similar to that used for DOE property. When the agreement terminates, equipment will be disposed of as previously agreed or as instructed by the customer. This equipment may be delivered to the customer's location, transferred to DOE, or declared excess in accordance with federal government property regulations.

### **ENVIRONMENT, SAFETY, AND HEALTH**

Each project is conducted in compliance with applicable environment, safety, and health statutes, regulations, and standards. DOE has the authority to stop work if applicable requirements are not met.

### **SUBCONTRACTING**

DOE laboratories or technology centers may subcontract selected portions of the work. In these cases, selection of the subcontractor and the work to be subcontracted is made by the laboratory or technology center. The subcontracted work must be in direct support of the laboratory or technology center, not the federal customer. The customer may not designate either the subcontractor to be used or the portions of the work to be subcontracted.

### **SECURITY CLASSIFICATION GUIDANCE**

For work involving classified information, DOE and its laboratory or technology center classification staff will act with the customer to develop appropriate classification guidance. Classified work may not commence until the appropriate classification guidance is available and considered adequate for the project.

## **REFERENCES**

The following federal policies are applicable to all federal agencies. DOE will accept other statutory authority references as applicable.

## STATUTORY

1. Atomic Energy Act of 1954, as amended (42 USC 2011), authorizes the conduct of R&D and training activities for non DOE entities, provided private facilities or laboratories are inadequate for that purpose. It authorizes such charges as may be appropriate for the conduct of those activities.
2. Economy Act of 1932, as amended (31 USC 1535), authorizes an agency to place orders for goods and services with another government agency when the head of the ordering agency determines that it is in the best interest of the government and decides ordered goods or services cannot be provided as conveniently or cheaply by contract with a commercial enterprise.

## FEDERAL ACQUISITION REGULATION AUTHORITY

1. FAR 6.002, Limitations, mandates that no agency shall contract for supplies or services from another agency for the purpose of avoiding the requirements of competition.
2. FAR 17.504(e), Interagency Acquisitions Under the Economy Act, establishes procedures for a federal agency to place work with another federal agency for supplies or services that the servicing agency may be in a position or equipped to supply, render, or obtain by contract if it is determined by the head of the requesting agency, or designee, that it is in the government's interest to do so.
3. FAR 17.6, Management and Operating (M&O) Contractors, prescribes policies and procedures for M&O contracts for the Department of Energy and any other agency having requisite authority. The business firm that performs under an M&O contract is established to perform tasks assigned by DOE and does not perform any commercial work.
4. FAR 35.017, Federally Funded Research and Development Centers (FFRDCs), establishes government-wide policies for the establishment, use, review, and termination of federally funded research and development centers. An FFRDC may perform for other than the sponsoring agency under the Economy Act, or other applicable legislation, when the work is not otherwise available from the private sector.

## U.S. DEPARTMENT OF ENERGY LABORATORIES AND TECHNOLOGY CENTERS

<i>Multi Program Laboratories</i>	<i>Major Single-Program Laboratories</i>
Argonne National Laboratory Brookhaven National Laboratory Idaho National Engineering and Environmental Laboratory Lawrence Berkeley National Laboratory Lawrence Livermore National Laboratory Los Alamos National Laboratory <a href="#">Oak Ridge National Laboratory</a> Pacific Northwest National Laboratory Sandia National Laboratories	Ames Laboratory Continuous Electron Beam Accelerator Facility Fermi National Accelerator Laboratory Morgantown Energy Technology Center National Renewable Energy Laboratory Oak Ridge Institute of Science and Education Pittsburgh Energy Technology Center Princeton Plasma Physics Laboratory Savannah River Technology Center Stanford Linear Accelerator Center Westinghouse Hanford Company

***Other Laboratories and Technology Centers***

Bartlesville Project Office  
 Bates Linear Accelerator Center  
 Energy Technology Engineering Center  
 Environmental Measurements Laboratory  
 Inhalation Toxicology Research Institute  
 Kansas City Plant  
 Mound Facility  
 National Institute for Petroleum and Energy Research  
 New Brunswick Laboratory  
 Notre Dame Radiation Laboratory  
[Oak Ridge Center for Manufacturing Technology](#)  
 Pantex Plant  
 Pinellas Plant  
 Rocky Flats Plant  
[Savannah River Ecology Laboratory](#)  
 Stanford Synchrotron Radiation Laboratory  
[Y-12 National Security Complex](#)

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**Note: The Y-12 National Security Complex has been added to the contact list with the approval of the Department of Energy-Oak Ridge Operations Office on May 7, 1996.**

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## Work for Others Contacts

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Upton, NY 11973-5000 516/282-2103 516/282-3729 (fax) @bnl.gov	Golden, CO 80401 303/275-3017 303/275-3040 (fax) ken_algiene@nrel.gov	505/844-3911 505/844-0844 (fax) wclovej@sandia.gov
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Rick Inada <b>Lawrence Berkeley Laboratory</b> Technology Transfer Department One Cyclotron Road, MS-90-1070 Berkeley, CA 94720 510/486-5882 510/486-4386 (fax) rminada@lbl.gov	Edward B. Harris <a href="#">Oak Ridge National Laboratory</a> P. O. Box 2008 Oak Ridge, TN 37831-6396 865/574-9931 865/576-7192 (fax) harriseb@ornl.gov	<a href="#">Y-12 National Security Complex</a> P. O. Box 2009 Oak Ridge, TN 37831-8084 800/356-4USA 865/576-5925 (fax) 4USA@ornl.gov

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The information owner is listed below if you have questions, comments, or suggestions. An e-mail form is provided with the appropriate links for your convenience. Please include title, URL, or other document descriptor in your message.

Contact: David W. Bradford, <mailto:fdb@ornl.gov>

Date posted: June 2004 (sas)

# How Private Customers and Nonfederal Governments Obtain Technical Resources and Skills from the U.S. Department of Energy

Published in January 1996; current as of June 2004

*The U.S. Department of Energy technology transfer mission is to help enhance U.S. competitiveness and national security by expanding and accelerating the transfer of federally funded technologies and knowledge to commercial applications by U.S.-based industry.*

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## Introduction

As the United States approaches the twenty-first century, the U.S. Department of energy (DOE) laboratories and technical centers-in particular, their many talented people-are exploring and expanding the frontiers of scientific understanding and technical knowledge. These people are committed to applying, in service to this country, their collective intellectual curiosity; a wide array of unique, multifaceted facilities and scientific tools; and a vast fund of accumulated professional expertise unmatched by any other nation.

***Laboratory Resources and Skills  
Benefit Private Customers***

*By taking advantage of the resources offered by DOE's network of national laboratories, private customers can*

*Access top-level scientific and engineering capabilities,  
Realize significant cost savings from using existing technologies  
and facilities,*

*Solve difficult problems with solutions that may be unobtainable elsewhere,  
Advance critical technologies, and  
Promote national economic interests.*

The DOE laboratories and technical centers (both hereafter referred to as laboratories or national laboratories) have always applied their resources and skills to the specific needs of nonfederal entities, including private companies, state and local governments, and academic institutions. As evidenced by past successes, DOE's network of laboratories is uniquely qualified to support nonfederal entities (hereafter referred to as private customers) as they seek to advance their knowledge.

The national laboratories have a long history of excellence in a number of areas, including the basic sciences, applied energy research, systems engineering, and weapons-related technologies. As a result of research at the laboratories, important scientific discoveries have been made and more efficient energy sources, new materials, and related technologies have been developed; at the same time, DOE-sponsored education, training, and outreach programs have increased the scientific and engineering capabilities of the nation as a whole.

In carrying out its mission, DOE has developed world-class core competencies in a number of important areas, including energy, pollution control and remediation, advanced materials, advanced instrumentation, biotechnology, advanced manufacturing, information and communication software, and aerospace and transportation technologies.

This brochure briefly describes guidelines for private customers wishing to obtain technical resources and skills from the national laboratories. The brochure does not, however, present all relevant contractual procedures; specific requirements may vary with the work proposed. For further information on working with national laboratories, contact any of the offices listed at this link.

## **Working with the U.S. Department of Energy Laboratories**

The national laboratories are available to conduct work for private customers on a reimbursable basis. This research *is not* directly funded, in whole or in part, by DOE. (Guidelines governing work that *is* partly funded by DOE may differ from those described here.) Work undertaken for private customers

- Uses laboratory personnel,
- Pertains to the mission of the laboratory or facility,
- Does not conflict or interfere with achievement of DOE program requirements,
- Does not compete directly with capabilities available in the domestic private sector,
- Does not create a potential future burden on DOE resources, and
- Complies with established regulations for protecting human and animal subjects.

Historically, the Atomic Energy Act of 1954 recognized the benefits of making national laboratories and technical centers available to nonfederal entities for the conduct of R&D and training, provided that private facilities or laboratories are inadequate for that purpose.

In conducting work for private customers, DOE has the following objectives:

- Assist in accomplishing goals that may otherwise be unattainable.
- Avoid unnecessary duplication of effort.
- Provide access to highly specialized or unique facilities, services, or technical expertise.

- Increase the number of technologies transferred from the national laboratories to the marketplace for further development or commercialization.
- Maintain core competencies and enhance the science and technology base at the laboratories.

## **Benefits of Using U.S. Department of Energy Facilities**

Private customers can benefit greatly by linking up with DOE's national laboratories. No other laboratory system in the world can match that of DOE for its diversity in people and programs; its attention to a spectrum of long-and short-term basic and applied research encompassing all areas of energy and environmental science; its wide variety of complex, multifaceted facilities; or its ability to deal independently and objectively with sensitive research topics.

This unique system serves as a bridge connecting all of the country's research communities-universities; industries; and federal, state, and local governmental agencies. As a vital link among these different organizations, the national laboratories are significant contributors in the cross-fertilization of ideas and approaches among the nation's researchers.

The excellence of R&D work conducted by the national laboratories is indicated by the high standing of their personnel within the scientific and technical community and the awards they receive within this community. For example, since the inception of the national laboratory system, (58 scientists) supported by DOE and its predecessors have won the most prestigious scientific awards in the world, the Nobel prizes. Staff of the DOE laboratories have also received more than (375 R&D 100 awards), awarded each year by *R&D Magazine* to developers of the 100 technologically most innovative products.

## **Forming a Contractual Arrangement with the U.S. Department of Energy**

Private customers can arrange for work to be done at any national laboratory through a relatively simple business arrangement. The key steps in the overall process are:

*Early Interaction between DOE Laboratory and Private Customer.* Discussions are informal. Planning documents, capability statements, and related material are of a preliminary nature. No commitments are made on either side.

*Formal Request.* After a formal request is received from a private customer, the laboratory prepares work statements, budget estimates, and resource requirements.

*Project Review and Approval.* DOE, its laboratory, and the requesting private customer review and approve work statements, budget estimates, and related documents, thereby ensuring that the needs of all parties are met.

*Funding Acceptance and Authorization.* The laboratory begins work when the agreement is executed and funded.

*Project Performance.* The project is performed on a best-effort basis, in compliance with the terms and conditions of each individual agreement.

*Billing and Payment.* Bills are issued monthly, payments are normally due within 30 days of the billing date.

## **Administration of Research Programs**

## **Financial Requirements**

*Financing of Work.* Federal law prohibits the use of DOE funds to finance or supplement a private customer's work. The private customer should have sufficient funding available at all times to cover incurred and expected costs, thereby avoiding work stoppages. The private customer is responsible for termination costs if a project is terminated before its completion. The DOE office responsible for the work may grant exemptions to the full-funding requirement if the laboratory involved requests an exemption.

*Cost Recovery-Rate Structure.* Generally, the private customer is charged all costs associated with the project. Under certain conditions, DOE may waive overhead and other charges.

*Financial Controls.* Work is done according to the individual contract provisions and the following guidelines:

- Work to be performed by national laboratories is reviewed, approved, and accepted by DOE before work can begin.
- Work does not continue and costs are not incurred beyond either the time period agreed upon or the amount of funding provided.

## **Patent Rights**

Patent rights are allocated by contract terms and conditions, applicable international agreements, statutes and regulations, and DOE policies.

## **Ownership of Data**

Unless otherwise agreed to by DOE, the federal government owns all technical data resulting from the work. However, contract terms provide for the protection of any proprietary data furnished by the private customer.

## **Property and Equipment**

Title to permanent construction at DOE laboratories or sites passes to DOE upon completion of construction and acceptance by DOE. If equipment is acquired as part of the project, it is accounted for and maintained during the term of the agreement in the same manner as DOE property. When the agreement terminates, equipment is disposed of under the conditions of the original agreement or as instructed by the private customer. This equipment is delivered to the private customer's location, transferred to DOE, or declared as excess in accordance with federal government property regulations.

## **Environment, Safety, and Health**

Each project is conducted in compliance with applicable environment, safety, and health statutes, regulations, and standards. DOE has the authority to stop work if applicable requirements are not met.

## **Business-Sensitive Information**

If a research project involves confidential, nondisclosure, or proprietary information, the requesting private customer provides relevant guidance before the work begins.

## **Security Classification Guidance**

For work involving classified information, DOE and its laboratory classification staff work with the private customer to develop appropriate security classification guidance.

### Subcontracting

A DOE national laboratory may sometimes elect to subcontract selected portions of a project. In these cases, the DOE laboratory selects the subcontractor and the work to be subcontracted. The requesting private customer cannot designate either the subcontractor to be used or the portions of the work to be subcontracted.

### For Further Information

For more information on working with DOE laboratories, please send your written request to any of the following persons. Briefly describe your specific area of interest or need, and include your name, address, and phone and fax numbers.

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**Note: The Y-12 National Security Complex has been added to the contact list with the approval of the Department of Energy-Oak Ridge Operations Office on May 7, 1996.**

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## Work for Others Contacts

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<p>Chuck Briggs  <b>Idaho National Engineering and Environmental Laboratory</b>  P. O. Box 1625  Idaho Falls, ID 83415-3805  208/526-0441  208/526-0876 (fax)  cwb@inel.gov</p>	<p>Alan Updike  <a href="#">NNSA Kansas City Plant</a>  P. O. Box 419159  Kansas City, MO 64141-6150  (816) 997-2605 (phone)  (816) 997-4094 (fax)  alan.updike@nnsa.doe.gov  aupdike@kcp.com</p>	<p>Dick Fuendeling  <b>Stanford Linear Accelerator Center</b>  P. O. Box 4349  Stanford, CA 94309  415/926-2211  415/926-4999 (fax)  karenk@slacvm.slac.stanford.edu</p>
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is provided with the appropriate links for your convenience. Please include title, URL, or other document descriptor in your message.

Contact: David W. Bradford, [fdb@ornl.gov](mailto:fdb@ornl.gov)

Date posted: June 2004 (sas)

**HOW TO SEND FEDERAL AGENCY FUNDS  
TO THE DEPARTMENT OF ENERGY  
OAK RIDGE NATIONAL LABORATORY (ORNL) SITE OFFICE (DOE-OSO)<sup>1</sup>  
FISCAL YEAR (FY) 2013 INFORMATION  
As of June 6, 2013**

***Essential Data for a Reimbursable Interagency Acquisition (IA)***

DOE-OSO requires the following minimum documentation from a requesting federal agency to execute an IA and obligate reimbursable funding:

1. Certified funding document identifying the appropriation fund citation and with a period of performance (see IA Funding Document Requirements [Part B]);
2. Statement of Work;
3. Non-competition statement with the US private sector;
4. Other documents that may be required to meet supplementary statutory or regulatory requirement (e.g., special reporting requirements, administrative limitations on use of funds, foreign travel restrictions, etc.)

**DOE-OSO will accept reimbursable funds (not direct cited) from other federal agencies up to 12:00 p.m. (noon), EDT, September 27, 2013 for obligating FY 2013 appropriations-**

***Time and date subject to change.***

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***DOE Point of Contact for Federal Reimbursable Funding Actions***

Funding documents from federal agencies for ORNL research and technical assistance must be sent to:

Ms. Teresa R. Hope  
Contracting Officer  
Department of Energy  
Oak Ridge National Laboratory Site Office  
Building 4500N, MS-6269  
Post Office Box 2008  
Oak Ridge, Tennessee 37831-6269  
Phone: (865) 576-0646  
Fax: (865) 574-9275  
Email: [hopetr@ornl.gov](mailto:hopetr@ornl.gov)

**Electronic submissions are preferred.**

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<sup>1</sup> Prepared by Mr. David W. Bradford, (865) 574-9798, email: [bradforddw@ornl.gov](mailto:bradforddw@ornl.gov).

## Overview

Oak Ridge National Laboratory (ORNL) is a Department of Energy (DOE) National Laboratory and a Federally Funded Research and Development Center (FFRDC) that is managed and operated by UT-Battelle, LLC. All work will be performed in accordance with the DOE, and UT-Battelle, LLC Management and Operating (M&O) Contract No. DE-AC05-00OR22725. All such work shall be on a full cost recovery basis. Appropriations law necessitates that DOE or its M&O contractor perform this work on a best effort basis; however, DOE values other agencies' business and evaluates the M&O contractor on cost, schedule, and customer satisfaction.

ORNL will forward for DOE-OSO review and approval by a DOE contracting officer, the previously negotiated research proposal or statement of work between the technical point of contact from the requesting federal agency and the ORNL researcher. Once approved by DOE-OSO, a notification will be sent from DOE-OSO to the requesting federal agency indicating DOE official authorization to conduct the reimbursable work and outlining the administrative steps to initiate the program. The DOE-OSO package consists of a DOE transmittal letter, the DOE-approved SOW, and the Administrative Instructions. The requirements on Intragovernmental Business Rules directed by the Office of Management and Budget Memorandum, dated November 13, 2006, are also included in the DOE Administrative Instructions. Normally this package answers most of the sponsor's questions or concerns.

As needed, the DOE-OSO will separately negotiate an interagency acquisition (IA) with a requesting federal agency. The IA will be consistent with the June 2008 Office of Management and Budget (OMB) guidance on "*Improving the Management and Use of Interagency Acquisitions.*" Based on the OMB policy, there will be a Part A (the IA document) and a Part B (funding document) plus other supporting documents (such as a Determination and Findings from the requesting federal agency to DOE) as needed. This package will constitute the required information set needed to establish and conduct the IA between the requesting federal agency and DOE-OSO.

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## **IA Document Requirement (Part A) - Civilian Federal Agency**

This declaratory statement or equivalent needs to come from the requesting federal agency. It can be on a cover letter or as part of the funding document itself.

### **Sample Statement from a Civilian Federal Agency**

*This agreement for DOE Proposal Number \*\*Proposal Number\*\* is entered into pursuant to the authority of the Economy Act of 1932, as amended (31 USC § 1535) [or cite here another statutory reference] and adheres to Federal Acquisition Regulation 6.002. To the best of our knowledge the work requested will not place DOE and its contractor in direct competition with the domestic private sector.*

For the phrase “(or cite here another statutory references)”, the requesting federal agency may enter one of their statutory or regulatory citations to do the work instead of 31 USC 1535. Every US federal agency or federal instrumentality has specific reimbursable statutory authority granted to it by the U.S. Congress either in the agency’s originating statutory language or subsequent statutes. All federal agencies and federal instrumentalities (e.g., government corporations such as Tennessee Valley Authority) can use the Economy Act as the statutory basis for the reimbursable work.

## ***IA Document Requirements (Part A) - Department of Homeland Security***

Follow the Interagency Acquisition Document Requirements shown above. If your organization is an organic part of the Department of Homeland Security, please use the following sample statement:

### **Sample Statement from Department of Homeland Security (DHS) Agency**

*This agreement for DOE Proposal Number \*\*Proposal Number\*\* is entered into pursuant to the authority of Section 309 of the Homeland Security Act of 2002, Public Law 107-296 (6 USC 189).*

## ***IA Document Requirements (Part A) - Department of Defense***

The Memorandum of Agreement (MOA) between DOD and DOE governing DOD-funded work performed at the DOE laboratories and facilities defines the working relationship between DOD and DOE for the conduct of work undertaken in support of and directly funded by the DOD under the DOE Work for Others (WFO) program. All work in support of and directly funded by the DOD under the DOE WFO program, will be administered in accordance with the signed MOA, dated May 1, 2013, between the departments. An ORNL research proposal is consistent with that DOD/DOE MOA.

The DOD and DOE Interagency Agreement (IA) Part A (General Terms & Conditions) dated May 1, 2013 will serve as Part A for Interagency Agreements between the DOD and the DOE in accordance with and in support of the guidance issued by the Office of Federal Procurement Policy (OFPP) (June 2008) as endorsed by the DOD in October 2008. DOD and DOE have concluded that by using this Part A for individual WFO agreements OFPP Part A guidance requirements have been satisfied. Using this Part A ensures DOD and DOE have established the necessary framework for entering into Interagency Agreements under DOE’s WFO program. DOE requires that this executed Interagency Agreement Part A document be referenced in each Part B or alternative funding document.

*This agreement for DOE Proposal Number **\*\*Proposal Number\*\*** is entered into pursuant to the authority of the Economy Act of 1932, as amended, 31 USC § 1535, and adheres to Federal Acquisition Regulation (FAR) 6.002. To the best of our knowledge, the work requested will not place DOE and its contractor in direct competition with the domestic private sector.*

The DOD entity requesting support from DOE-OSO is required by the DOD/DOE MOA on WFO to furnish the approved DOD Economy Act determination and findings (D&F) as part of its overall part B funding package.

### ***IA Funding Document Requirements (Part B)***

As part of the required information supplied on the federal agency funding document, please furnish the following:

- a certified fund cite (i.e., signed by a finance officer)
- technical point of contact
- where the bill needs to be sent to
- appropriation obligation expiration date
- a statement of work

The DOE Obligating Number (i.e., the sponsor's agreement number [interagency agreement number], funding document number, MIPR number, etc.) shall serve as the common agreement number required by FMS Bulletin no. 2000-03. The IA should specify information including:

- Agency Location Code (ALC)
- Treasury Account Symbol (TAS)
- Business Event Type Code (BETC)
- Business Partner Network (BPN) number, and
- Contracting and Accounting Points of Contact

### ***DOE Obligation of Requesting Federal Agency's Funds***

When a DOE contracting officer countersigns the funding document of the requesting federal agency, the funds are 100% obligated and are placed in the ORNL financial plan for project execution.

If a requesting federal agency funding document arrives at DOE-OSO without an existing corresponding DOE-OSO internal programmatic approval and mutually-agreeable statement of work (SOW), then DOE-OSO will hold the funds (not obligate them) until there is a DOE programmatic approval and SOW in place. At that point, DOE-OSO will totally obligate the funds and place the funds in the ORNL Financial Plan.

# Oak Ridge National Laboratory (ORNL) Work For Others (WFO) Points of Contact

Current as of June 10, 2013

## *WFO Program Office Contacts*

### **WFO Sponsor Support**

David W. Bradford  
WFO Program Assessment Administrator  
UT-Battelle, LLC  
Oak Ridge National Laboratory  
Bldg 4500N, Mail Stop 6261  
Post Office Box 2008  
Oak Ridge, Tennessee 37831-6261  
Phone: (865) 574-9798  
Fax (865) 576-8346  
Email address: [bradforddw@ornl.gov](mailto:bradforddw@ornl.gov)

### **WFO Proposal Process**

Carol T. Rice  
PIF/Proposal Procedure Coordinator  
UT-Battelle, LLC  
Oak Ridge National Laboratory  
Bldg 4500N, Mail Stop 6261  
Post Office Box 2008  
Oak Ridge, Tennessee 37831-6261  
Phone: (865) 574-5525  
Fax: (865) 576-8346  
Email address: [ricect@ornl.gov](mailto:ricect@ornl.gov)

### **WFO Proposal Process**

Julie A. Holthausen  
WFO Process Coordinator  
UT-Battelle, LLC  
Oak Ridge National Laboratory  
Bldg 4500N, Mail Stop 6261  
Post Office Box 2008  
Oak Ridge, Tennessee 37831-6261  
Phone: (865) 574-8960  
Fax: (865) 576-8346  
Email address: [holthausenja@ornl.gov](mailto:holthausenja@ornl.gov)

### **WFO Proposal Process**

Aurelia J. Carter  
WFO Program Analyst  
UT-Battelle, LLC  
Oak Ridge National Laboratory  
Bldg 4500N, Mail Stop 6261  
Post Office Box 2008  
Oak Ridge, Tennessee 37831-6261  
Phone: (865) 241-8350  
Fax: (865) 576-8346  
Email address: [carteraj@ornl.gov](mailto:carteraj@ornl.gov)

## ***WFO Funding & Accounts Receivable Office***

Patricia A. Reel  
Supervisor, WFO Funding & Accounts Receivable Office  
UT-Battelle, LLC  
Oak Ridge National Laboratory  
1060 COM, Mail Stop 6441  
Post Office Box 2008  
Oak Ridge, Tennessee 37831-6441  
Phone: (865) 576-7897  
Fax: (865) 241-6861  
Email address: [grishampa@ornl.gov](mailto:grishampa@ornl.gov)

R. Gail Baker  
WFO Funding Office/Program  
60, 65, WN Deobligations  
UT-Battelle, LLC  
Oak Ridge National Laboratory  
1060 Com, Mail Stop 6441  
Post Office Box 2008  
Oak Ridge, Tennessee 37831-6441  
Phone: (865) 574-8992  
Fax (865) 241-6861  
Email address: [bakerrg@ornl.gov](mailto:bakerrg@ornl.gov)

Cindy Wilson  
WFO Funding Office/Program 40  
Deobligations  
UT-Battelle, LLC  
Oak Ridge National Laboratory  
1060 Com, Mail Stop 6441  
Post Office Box 2008  
Oak Ridge, Tennessee 37831-6441  
Phone: (865) 574-4191  
Fax (865) 241-6861  
Email address: [wilsoncl@ornl.gov](mailto:wilsoncl@ornl.gov)

Debbie Smith  
Inter DOE Funding/Travel/  
Inter DOE Deobligations  
UT-Battelle, LLC  
Oak Ridge National Laboratory  
1060 Com, Mail Stop 6441  
Post Office Box 2008  
Oak Ridge, Tennessee 37831-6441  
Phone: (865) 241-3300  
Fax (865) 241-6861  
Email address: [smithdl@ornl.gov](mailto:smithdl@ornl.gov)

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## ***WFO Non-Federal Partnership Agreements***

Mark Reeves  
Group Leader, Sponsored Research  
UT-Battelle, LLC  
Oak Ridge National Laboratory  
4500N, Mail Stop 6196  
Post Office Box 2008  
Oak Ridge, Tennessee 37831-6196  
Phone: (865) 576-2577  
Fax: (865) 574-9241  
Email address: [reevesme@ornl.gov](mailto:reevesme@ornl.gov)

Frank V. Damiano  
CRADA and WFO Team Leader  
Sponsored Research Office  
UT-Battelle, LLC  
Oak Ridge National Laboratory  
4500N, Mail Stop 6196  
Post Office Box 2008  
Oak Ridge, Tennessee 37831-6196  
Phone: (865) 576-2967  
Fax: (865) 576-7525  
Email address: [damianofv@ornl.gov](mailto:damianofv@ornl.gov)

Jennifer Carpenter  
CRADA and WFO Manager  
Sponsored Research Office  
UT-Battelle, LLC  
Oak Ridge National Laboratory  
4500N, Mail Stop 6196  
Post Office Box 2008  
Oak Ridge, Tennessee 37831-6196  
Phone: (865) 574-6605  
Fax: (865) 574-4409  
Email address: [carpenterjl@ornl.gov](mailto:carpenterjl@ornl.gov)

**COMPARISON OF  
GOVERNMENT-OWNED CONTRACTOR-OPERATED (GOCO) FACILITIES AND  
MANAGEMENT AND OPERATING (M&O) CONTRACTORS<sup>1</sup>**

**DEFINITION**

**GOCO<sup>2</sup>:** (Government-Owned, Contractor Operated) facility is a manufacturing plant that is owned by the Government and operated under contract by a non-government, private firm. Operation and maintenance of facilities when done by contract with the private sector.<sup>3</sup>

**M&O<sup>4</sup>:** (Management and operating contract) means an agreement under which the Government contracts for the operation, maintenance, or support, on its behalf, of a Government-owned or -controlled research, development, special production, or testing establishment wholly or principally devoted to one or more major programs of the contracting Federal agency.<sup>5</sup>

**Key Difference:** The Federal Agency uses an M&O contractor “to carry out the actual performance of the agency’s mission; that is, these contractors were to perform the agency’s mission as opposed to the agency’s using civil servants.”<sup>6</sup>

**COMPARISONS**

<u>GOCO</u>	<u>M&amp;O</u>	<u>Reference</u>	<u>Functions</u>
			1. <i>Type of U.S. Government Contract</i>
X		FAR 16.101	a. Fixed price
	X	FAR 16.300	b. Cost reimbursable

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1 Information updated June 7, 2013. For further information, contact Mr. David W. Bradford, Oak Ridge National Laboratory, at (865) 574-9798 or [fdb@ornl.gov](mailto:fdb@ornl.gov)

2 Source: Department of Defense Joint Publication (JP) 1-02, dated April 15, 2013

3 Source: OMB Circular A-11, August 2012

4 Source: FAR 17.600, current as of September 29, 2010

5 See Supreme Court Decision, United States v. New Mexico, 455 U.S. 720, 723(1982) where the Supreme Court opined that management and operating contracts are a unique type of contract, in that they have a special identity with DOE and indicia of agency without actually causing the contractors to be agents of the Department. The Court stated: [I]n several ways DOE agreements are a unique species of contract, designed to facilitate long-term private management of Government-owned research and development facilities. As the parties to this case acknowledge, the complex and intricate contractual provisions make it virtually impossible to describe the contractual relationship in standard agency terms. . . . While subject to the general direction of the Government, the contractors are vested with substantial autonomy in their operations and procurement practices. . . .

AEC management contracts were developed in an attempt to secure Government control over the production of fissionable materials, while making use of private industry's expertise and resources. . . .

6 DOE Acquisition Guide, Chapter 17.6, dated October 2007.

			2.	<i>Relationship with Sponsoring Federal Agency</i>
X		CICA (PL 98-369)	a.	Organizationally separate from contracting federal agency operations
	X	FAR 17.604	b.	Fully integrated with contracting federal agency financial operations
	X	FAR 17.601/17.604	c.	Performs major function or program of contracting federal agency.
			3.	<i>Normal Type of Work</i>
X			a.	Performs routine production (All categories minus nuclear related)
	X	FAR 17.601	b.	Conducts Research and Development (R&D)
	X	Atomic Energy Act	c.	Performs Special Production (Nuclear)
	X	Stevenson-Wydler Tech. Act	d.	Performs Special Production (non-Nuclear technology invention or application)
	X	FAR 17.601	e.	Operates a Testing Establishment
	X	FAR 35.017	f.	Operates a Federally Funded Research and Development Center (FFRDC)
	X	FAR 35.005/35.006	g.	Does work on Level of Effort (LOE) status
X	X	FAR 35.005/35.006	h.	Designs firmly established so that risks are reduced.
X	X	FAR 35.005.35.006	I.	Uses production tooling, equipment, and processes that are developed and proven.
			4.	<i>Organizational Conflicts of Interest (OCI)</i>
	X	FAR 35.001/35.017	a.	Has special access to Government and supplier data, employees, and facilities beyond that which is common in a normal contractual relationship.
X			b.	Has operations that are commingled with commercial operations.
X			c.	Can compete in the U.S. private, commercial sector.
	X	FAR 35.017/17.504(e)	d.	Accept cost-reimbursable work from other federal agencies through federal sponsor.
	X	FAR 35.017	e.	Has Special OCI restrictions on communicating with parent company.
			5.	<i>Contractor Changeover after New Contract Award</i>
X			a.	Wholesale replacement of personnel; may hire some previous contractor personnel.
	X	FAR 17.604(d)	b.	Retain en masse the trained scientific and technical staff; may replace senior management
			6.	<i>Use by Federal Agencies (Sample only)</i>
X			a.	Department of Defense (DOD)
	X		b.	Department of Energy (DOE)
X			c.	Internal Revenue Service (IRS)
X			d.	General Services Agency (GSA)
X	X		e.	National Aeronautics and Space Administration (NASA) <sup>7</sup>

<sup>7</sup> NASA contractors work under "National Aeronautics and Space Act of 1958," Public Law #85-568, 72 Stat., 426 as a variation of the M&O contract.

## APPENDIX A: SUBPART 17.6—MANAGEMENT AND OPERATING CONTRACTS

As of FAC 2005–46, September 29, 2010

### **17.600 Scope of subpart.**

This subpart prescribes policies and procedures for management and operating contracts for the Department of Energy and any other agency having requisite statutory authority.

### **17.601 Definition.**

“Management and operating contract” means an agreement under which the Government contracts for the operation, maintenance, or support, on its behalf, of a Government-owned or -controlled research, development, special production, or testing establishment wholly or principally devoted to one or more major programs of the contracting Federal agency.

### **17.602 Policy.**

- (a) Heads of agencies, with requisite statutory authority, may determine in writing to authorize contracting officers to enter into or renew any management and operating contract in accordance with the agency’s statutory authority, or the Competition in Contracting Act of 1984, and the agency’s regulations governing such contracts. This authority shall not be delegated. Every contract so authorized shall show its authorization upon its face.
- (b) Agencies may authorize management and operating contracts only in a manner consistent with the guidance of this subpart and only if they are consistent with the situations described in [17.604](#).
- (c) Within 2 years of the effective date of this regulation, agencies shall review their current contractual arrangements in the light of the guidance of this subpart, in order to—
- (1) Identify, modify as necessary, and authorize management and operating contracts; and
  - (2) Modify as necessary or terminate contracts not so identified and authorized, except that any contract with less than 4 years remaining as of the effective date of this regulation need not be terminated, nor need it be identified, modified, or authorized unless it is renewed or its terms are substantially renegotiated.

### **17.603 Limitations.**

(a) Management and operating contracts shall not be authorized for—

- (1) Functions involving the direction, supervision, or control of Government personnel, except for supervision incidental to training;
- (2) Functions involving the exercise of police or regulatory powers in the name of the Government, other than guard or plant protection services;
- (3) Functions of determining basic Government policies;
- (4) Day-to-day staff or management functions of the agency or of any of its elements; or
- (5) Functions that can more properly be accomplished in accordance with [Subpart 45.3](#), Authorizing the Use and Rental of Government Property.

(b) Since issuance of an authorization under [17.602\(a\)](#) is deemed sufficient proof of compliance with paragraph (a) immediately above, nothing in paragraph (a) immediately above shall affect the validity or legality of such an authorization.

(c) For use of project labor agreements, see subpart [22.5](#).

### **17.604 Identifying management and operating contracts.**

A management and operating contract is characterized both by its purpose (see [17.601](#)) and by the special relationship it creates between Government and contractor. The following criteria can generally be applied in identifying management and operating contracts:

(a) Government-owned or -controlled facilities must be utilized; for instance—

- (1) In the interest of national defense or mobilization readiness;
- (2) To perform the agency's mission adequately; or
- (3) Because private enterprise is unable or unwilling to use its own facilities for the work.

(b) Because of the nature of the work, or because it is to be performed in Government facilities, the Government must maintain a special, close relationship with the contractor and the contractor's personnel in various important areas (*e.g.*, safety, security, cost control, site conditions).

(c) The conduct of the work is wholly or at least substantially separate from the contractor's other business, if any.

(d) The work is closely related to the agency's mission and is of a long-term or continuing nature, and there is a need—

(1) To ensure its continuity; and

(2) For special protection covering the orderly transition of personnel and work in the event of a change in contractors.

**17.605 Award, renewal, and extension.**

(a) Effective work performance under management and operating contracts usually involves high levels of expertise and continuity of operations and personnel. Because of program requirements and the unusual (sometimes unique) nature of the work performed under management and operating contracts, the Government is often limited in its ability to effect competition or to replace a contractor. Therefore contracting officers should take extraordinary steps before award to assure themselves that the prospective contractor's technical and managerial capacity are sufficient, that organizational conflicts of interest are adequately covered, and that the contract will grant the Government broad and continuing rights to involve itself, if necessary, in technical and managerial decisionmaking concerning performance.

(b) The contracting officer shall review each management and operating contract, following agency procedures, at appropriate intervals and at least once every 5 years. The review should determine whether meaningful improvement in performance or cost might reasonably be achieved. Any extension or renewal of an operating and management contract must be authorized at a level within the agency no lower than the level at which the original contract was authorized in accordance with [17.602\(a\)](#).

(c) Replacement of an incumbent contractor is usually based largely upon expectation of meaningful improvement in performance or cost.

Therefore, when reviewing contractor performance, contracting officers should consider—

(1) The incumbent contractor's overall performance, including, specifically, technical, administrative, and cost performance;

(2) The potential impact of a change in contractors on program needs, including safety, national defense, and mobilization considerations; and

(3) Whether it is likely that qualified offerors will compete for the contract.

## **APPENDIX B: SPECIAL CONTRACTUAL FEATURES OF DOE'S M&O CONTRACTS**

Under a DOE M&O contract, the terms of the contract differentiate it from typical contracts awarded by other agencies under the FAR. These terms are indicators of a “special relationship,” the M&O contractors share with DOE:

1. DOE's involvement in M&O contractor labor relations, e.g., DOE's stewardship of M&O contractor pension and post-retirement medical systems, review of contractor executive compensation,
2. Laws governing contractor wages and working conditions affect DOE's M&O contractors differently than they affect other Federal contractors. For example, M&Os are not subject to the Service Contract Act (41 USC § 351 et seq.); however, the M&O contractors must flow down the Act to service subcontracts they award. Generally, DOE prohibits its M&O contractors from performing construction with their own workforces but requires them to apply the Davis-Bacon Act to M&O subcontracts for construction.
3. DOE's significant involvement in M&O contractor management controls.
4. DOE's involvement with the M&O contractor's purchasing process.
5. DOE's application of specific DOE directives to the operations of the M&O contractor.
6. DOE's authorizing the M&O contractor to finance contract performance by use of Special Financial Institution Accounts, under which checks written by the contractor one day are covered by the Department of Treasury overnight.
7. DOE's requiring the M&O contractor to maintain integrated accounting systems, under which the contractors budgeting and accounting follow DOE's Accounting Handbook.
8. DOE's relying on the DOE Inspector General for auditing its M&O contractors. DOE requires the M&O contractor to maintain an internal audit function, which performs critical audit functions under DOE's Cooperative Audit Strategy.
9. The M&O contractor's reconciling its accounts annually by use of DOE's Statement of Costs Incurred and Claimed.
10. The M&O contractor's accepting no work from entities other than DOE, except as specifically allowed by its contract with DOE. DOE assigns program work to the M&O by means of DOE's work authorization system.
11. The M&O contractor's operating under certain cost principles designed by DOE for use in its M&O contracts.

# 2013

## U.S. DEPARTMENT OF ENERGY (DOE) TECHNOLOGY TRANSFER MECHANISMS



David W. Bradford, 865-574-9798 or [fdb@ornl.gov](mailto:fdb@ornl.gov)  
Oak Ridge National Laboratory (ORNL) is managed and  
operated by UT-Battelle, LLC under DOE contract # DE-  
AC05-00OR22725.

6/5/2013

**AGREEMENTS FOR COMMERCIALIZING TECHNOLOGY (ACT)**

Mechanism	Description	Characteristics/Features
<p>Agreements For Commercializing Technology</p>	<p>ACT represent work performed at ORNL for a non-federal entity on a reimbursable basis for which the sponsoring entity is the DOE management and operating contractor (UT-Battelle, LLC). ACT differ from other types of reimbursable work as they allow UT-Battelle, LLC to execute agreements with third parties in the contractor’s private capacity for work to be performed at ORNL. For such agreements, UT-Battelle, LLC assumes financial and performance risk in return for financial consideration from the 3rd party sponsor of the work.</p>	<ul style="list-style-type: none"> <li>• UT-Battelle, LLC will have no authority to bind the DOE in any way with such terms and conditions. The DOE will have no obligation to UT-Battelle, LLC due to such terms and conditions.</li> <li>• The outside third party to the ACT cannot use U.S. appropriated funds to fund the ACT.</li> <li>• UT-Battelle, LLC must not perform ACT activities that would place it in direct competition with the U.S. private sector.</li> <li>• UT-Battelle, LLC may use staff and other resources associated with this DOE Contract for the purposes of conducting research and furthering the DOE technology transfer mission.</li> <li>• UT-Battelle, LLC assumes all Contractor Liability and Indemnification in the performance and execution of an ACT.</li> <li>• Disposition of intellectual property (IP) arising from ACT work shall be governed by DOE Class Waiver W(C)-2011-013 (ACT Class Waiver).</li> <li>• UT-Battelle, LLC shall be responsible for providing adequate advance payment for ACT work consistent with procedures defined in the DOE's Financial Management Handbook. UT-Battelle, LLC shall be solely responsible for collecting payments from third parties for any work conducted and such collections shall be independent of providing advance payment. For such payments and for any costs, obligations, or liabilities arising due to UT-Battelle, LLC's ACT work, the UT-Battelle, LLC is entirely at risk and the DOE shall have no risk.</li> </ul> <p>(Note: ORNL staff members are legal employees of UT-Battelle, LLC.)</p>

**COLLEGIAL INTERCHANGE & CONSULTING**

<b>Mechanism</b>	<b>Description</b>	<b>Characteristics/Features</b>
Collegial interchange, conference, publication	The informal and free exchange of information among professional colleagues is encouraged.	Includes: <ul style="list-style-type: none"> <li>• presentation at professional and technical conferences</li> <li>• publication in professional journals</li> </ul> ( <b>Note:</b> ORNL staff members are legal employees of UT-Battelle, LLC and will avoid premature disclosure of information that may be the subject of a patent application or proprietary data.)
Consulting by ORNL experts	Consultation is provided to a private sector party by ORNL (UT-Battelle) personnel to further technology transfer initiatives	<ul style="list-style-type: none"> <li>• DOE and UT-Battelle, LLC must approve of the personal consulting arrangement.</li> <li>• Conflicts of interest will be avoided.</li> </ul>
Consulting by industry experts to ORNL	A party outside ORNL provides technical advice or information	<ul style="list-style-type: none"> <li>• There is a formal written contract, generally short-term and specific.</li> <li>• The consultant must certify that no intellectual property conflicts exist.</li> </ul>

## COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT (CRADA)

Mechanism	Description	Characteristics/Features
Cooperative Research and Development Agreement (CRADA)	<p>This is a contractual agreement among one or more federal laboratories/facilities, such as ORNL, and one or more non-federal parties under which the DOE through its laboratories/facilities provides personnel, facilities, equipment or other resources with or without reimbursement. Note that the DOE does not provide funds directly to the non-federal partner.</p>	<ul style="list-style-type: none"> <li>• The non-federal partner provides funds, personnel, services, facilities, equipment, or other resources to conduct specific research or development efforts consistent with ORNL's mission.</li> <li>• Costs are shared. An example is where there is a <i>"no funds"</i> exchange with a non-federal party and ORNL doing their respective parts of the statement of work. The DOE is funding ORNL's participation in the CRADA up to a preset funding limit at no cost to the non-federal partner. However, the non-federal partner may also provide funds (<i>"funds-in"</i>) to ORNL.</li> <li>• The CRADA is not considered a procurement action, grant, or cooperative agreement as defined in 31 USC 6303-6305.</li> <li>• Rights to inventions and other intellectual property are negotiated between the non-federal partner and ORNL as part of the agreement.</li> <li>• Certain information generated by either partner, either non-federal or ORNL, which qualifies as "protected CRADA information" may be withheld from public distribution for a period up to five years.</li> <li>• Each CRADA must have a joint work statement (JWS) that is reviewed and approved by DOE.</li> <li>• DOE has granted a class patent waiver to inventions arising from the CRADA work.</li> <li>• The CRADA includes U.S. competitiveness and product liability provisions.</li> </ul>

**CONTRACT, GRANT, COOPERATIVE AGREEMENT**

Mechanism	Description	Characteristics/Features
Contract	A contract is an acquisition instrument reached between the DOE and a contractor so that the contractor can provide goods or services to the DOE.	<ul style="list-style-type: none"> <li>• This vehicle may be used to fund research and development that may be transferred to the private sector.</li> <li>• The allocation of patent rights is decided by the type of contractor performing the work.                             <ul style="list-style-type: none"> <li>▪ Large businesses may frequently obtain a waiver on inventions where waiver criteria are satisfied.</li> <li>▪ Nonprofit organizations/small businesses may obtain title to inventions under Public Law (PL.) 96-517.</li> </ul> </li> <li>•ORNL can technically support the grant or cooperative agreement recipient in the execution of the award separately under an independent Work For Others (WFO) agreement.</li> </ul>
Co-funded and Cost - shared Contract	A contract reached between the DOE and a non-federal party in which costs associated with the work are shared as identified in the contract.	<ul style="list-style-type: none"> <li>• Arrangements are in-cash or in-kind.</li> <li>• Both partners must benefit from the work.</li> <li>• Commercially valuable data may be protected for a limited period.</li> <li>• Advance waivers are frequently granted where the contractor agrees to cost share at least 20% of the total contract cost.</li> <li>• ORNL can technically support the contract winner in the execution of the award separately under an independent Work For Others (WFO) agreement.</li> </ul>
Grants and Cooperative Agreements (Assistance Instruments)	Grants and cooperative agreements are entered into solely by the DOE with a recipient under which money or property is transferred to the recipient to support or stimulate research.	<ul style="list-style-type: none"> <li>• Only the DOE can enter these agreements; the laboratories or other facilities cannot.</li> <li>• There is substantially less involvement (contract oversight) between the DOE and recipients than normal contracts (acquisition instruments).</li> <li>• ORNL can technically support the grant or cooperative agreement recipient in the execution of the award separately under an independent Work For Others (WFO) agreement.</li> </ul>

## EDUCATION AND TRAINING, LICENSING

Mechanism	Description	Characteristics/Features
Education and Training	Consists of structured activities designed to have trainees master a defined set of knowledge and skills	<p>This includes:</p> <ul style="list-style-type: none"> <li>• Professional courses</li> <li>• On-The-Job Training</li> <li>• Modification and delivery of training curriculum to meet needs of the private sector and academia.</li> <li>• Mentoring of post-doctoral students.</li> </ul>
Licensing from the DOE or ORNL	Licensing is the transfer of "less-than-ownership rights" in intellectual property to a third party. This allows the third party to use the intellectual property for commercial reasons.	<ul style="list-style-type: none"> <li>• Licensing by ORNL is governed by the terms of the DOE contract with ORNL.</li> <li>• Licensing by the DOE follows the General Services Administration (GSA) issued licensing regulations with preference for nonexclusive licenses. Where an exclusive license is granted, a notice of availability is published allowing an opportunity for the public to object to any plans or intentions to commercialize the products derived from the licenses.</li> <li>• Licensing can be exclusive, or nonexclusive, for a specific field of use, geographical area, or for U.S. or foreign usage.</li> <li>• The potential licensee must present plans and intentions for government review to commercialize the invention.</li> <li>• The U.S. government obtains/retains a nonexclusive, royalty-free, worldwide license to the invention.</li> <li>• ORNL licenses: <ul style="list-style-type: none"> <li>▪ are subject to conflict-of-interest consideration and U.S. preference provisions.</li> <li>▪ require that a major portion of the royalties return to ORNL.</li> <li>▪ share royalties with the ORNL inventor.</li> </ul> </li> </ul>

**PERSONNEL EXCHANGES, RESEARCH AND DEVELOPMENT CONSORTIA (R&D),  
SMALL BUSINESS COMPANY(SBC) RESEARCH PROGRAMS**

<b>Mechanism</b>	<b>Description</b>	<b>Characteristics/Features</b>
Personnel Exchanges	This is an assignment of personnel from either ORNL to another research partner's facility (either federal or non-federal) or vice versa. The purpose is to interchange expertise and information among the parties concerned.	<ul style="list-style-type: none"> <li>• Generally, there is no exchange of proprietary data or classified information.</li> <li>• All costs are paid by the organization sending the personnel.</li> <li>• Programs are normally one year or less.</li> </ul>
Research and Development Consortia	This is a method leveraging DOE research and providing new technology to a wide segment of industry.	<ul style="list-style-type: none"> <li>• Two or more industrial partners are involved.</li> <li>• Industrial partners are normally from one industrial sector.</li> <li>• There is a commitment by all partners to diffuse the technology throughout the industry.</li> <li>• ORNL may participate as either a lead or as a subrecipient. As a subrecipient, there must be a DOE Work For Others (WFO) agreement in place between one or more members of the consortia.</li> </ul>
Small Business Innovation Research (SBIR)	The SBIR program is federally funded to promote small business company (SBC) participation in government programs.	<ul style="list-style-type: none"> <li>• Data have a two-year confidentiality limit.</li> <li>• Small business partners acquire titles to inventions.</li> <li>• DOE may provide further funds during incremental research stages from feasibility to private commercialization dependent upon the products viability.</li> <li>• ORNL can technically support the small business applicant in the proposal response subject to a DOE OSO approval and in execution of the award separately under an independent Work For Others (WFO) agreement.</li> </ul>
Small Business Technology Transfer Research (STTR)	The STTR is a federally-funded program that expands the public/private sector partnership to include the joint venture opportunities for small businesses and nonprofit research institutions. The unique feature of the STTR program is the requirement for the small business to formally collaborate with a research institution in Phase I and Phase II. The STTR's most	<ul style="list-style-type: none"> <li>• Data have a two-year confidentiality limit.</li> <li>• Small business partners acquire titles to inventions.</li> <li>• DOE may provide further funds during incremental research stages from feasibility to private commercialization dependent upon the products viability.</li> </ul>

important role is to bridge the gap between performance of basic science and commercialization of resulting innovations.

- STTR differs from SBIR in three important aspects:
  1. The SBC and its partnering institution are required to establish an intellectual property agreement detailing the allocation of intellectual property rights and rights to carry out follow-on research, development or commercialization activities.
  2. STTR requires that the SBC perform at least 40% of the R&D and the single partnering research institution to perform at least 30% of the R&D.
  3. Unlike the SBIR program, STTR does not require the Principal Investigator to be primarily employed by the SBC.
- ORNL can technically support the small business applicant in the proposal response subject to a DOE OSO approval and in execution of the award separately under an independent Work For Others (WFO) agreement.

**TECHNICAL ASSISTANCE AND USER FACILITIES**

<b>Mechanism</b>	<b>Description</b>	<b>Characteristics/Features</b>
<p>Technical Assistance</p>	<p>ORNL personnel provide specialized technical assistance to a private sector party for a finite period in order to further technology transfer</p>	<ul style="list-style-type: none"> <li>• Specialized help is given to solve a particular problem, normally not to exceed 40 man-hours directly charged.</li> <li>• ORNL must approve of the personal consulting arrangement.</li> <li>• Potential conflict of interest by the ORNL staff must be avoided.</li> <li>• Routine costs are borne by ORNL under a separate DOE work authorization.</li> </ul>
<p>User Facilities</p>	<p>User facilities are unique, complex experimental scientific facilities, including equipment and technology expertise at ORNL. These facilities are designated by the DOE for use by the technical community, universities, industry, other laboratories, and other government facilities.</p>	<ul style="list-style-type: none"> <li>• User facilities are designated as such by DOE and are Centers of Excellence.</li> <li>• Research may be conducted on a proprietary or non-proprietary basis.</li> <li>• Full cost recovery is required from the non-DOE partner on proprietary research and development (R&amp;D).</li> <li>• Class patent waiver is granted in which title goes to the user and the user's proprietary data can be protected.</li> <li>• For non-proprietary R&amp;D, title to inventions goes to the user but data generated are freely available.</li> <li>• If funded under another U.S. government contractor or international agreement, users are subject to those particular intellectual property clauses.</li> </ul>

## WORK FOR OTHERS (WFO) PROGRAM

Mechanism	Description	Characteristics/Features
Work For Others (WFO) Program	This is work done by ORNL for a non-DOE entity, either private or federal. Work is fully funded by the non-DOE entity.	<ul style="list-style-type: none"><li>• WFO may be research and development (R&amp;D) or non-R&amp;D specialized technical services to the requesting organization.</li><li>• Work must be consistent with the missions of DOE and/or special expertise of ORNL.</li><li>• Work must not affect the achievement of DOE work requirements.</li><li>• Work must not directly compete with the domestic U.S. private sector.</li><li>• Title to invention of WFO sponsor's requirement goes to sponsor under class patent waiver.</li><li>• Sponsor's proprietary data will be protected.</li><li>• The U.S. government retains a nonexclusive royalty free license to any WFO invention.</li><li>• Safeguards are in place to preclude organizational conflicts of interest (e.g., disclosure to WFO sponsor regarding background intellectual property).</li></ul>

# Department of Energy (DOE) Policies on Accepting Other Federal Agency Funds For Interagency Acquisitions<sup>1</sup>

As of June 7, 2013

## 1. DOE Requirements

- 1.1 Appropriation funds cite certified by an appropriate agency official with funding document number as part of a reimbursable work order.  
*(Note: DOE is unable to accept direct cite funds.)*
- 1.2 A statement indicating when the funds must be obligated by.
- 1.3 A statement indicating the appropriated funds obligation expiration date.
- 1.4 Sample Statement from a Federal Agency ("legal authority and no direct competition with U.S. private sector").
- 1.5 Statement of Work (SOW) or Research Proposal (RP) indicating what needs to be done.
- 1.6 Name, address, and telephone number of requesting agency financial contact.
- 1.7 Requesting agency billing address.
- 1.8 All billings, collections and payments related to reimbursable interagency acquisition (IA) work performed by DOE for other federal agencies will be recorded through the Intergovernmental Payment and Collection (IPAC) System. As expenditures are incurred against a customer agency's funding authorization, monthly billings will be issued on behalf of DOE by Oak Ridge National Laboratory (ORNL) Accounts Receivable Department through the IPAC System. Chargebacks to DOE should not occur unless the customer agency has agreement with DOE to do so. In addition, sufficient accounting classification or other funding information required by the customer agency to properly identify the charges should be provided.

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<sup>1</sup> For further information, please contact Mr. David W. Bradford, Oak Ridge National Laboratory at phone (865) 574-9798, or by facsimile at (865) 576-7192, or by email at [bradforddw@ornl.gov](mailto:bradforddw@ornl.gov).

- 1.9 The DOE Obligating Number (i.e., the sponsor's agreement number [interagency agreement number], funding document number, MIPR number, etc.) shall serve as the common agreement number required by FMS Bulletin no. 2007-03. The requesting agency IA should specify information including:
  - 1.9.1 Agency Location Code (ALC)
  - 1.9.2 Treasury Account Symbol (TAS)
  - 1.9.3 Business Event Type Code (BETC)
  - 1.9.4 Business Partner Network (BPN) number
  - 1.9.5 Contracting and Accounting Points of Contact, and
  - 1.9.6 DUNS
  
- 1.10 A copy of the Determination and Findings done by the requesting federal agency.

## **2. Funding Documents That DOE Will Accept**

DOE does not impose the use of a specific DOE or a particular standard government form so as not to impede the requesting agency from asking for services. To enhance government efficiency, DOE will accept for obligation purposes any reimbursable funding document that the sponsoring agency may desire to use as long as the information in paragraph 1 above is provided.

Some examples of acceptable funding documents are:<sup>2</sup>

- 2.1 Agency Memorandums on Agency Letterhead
- 2.2 SF 26, Award/Contract (also SF 30, Amendment of Solicitation/Modification of Contract, when used to modify the SF 26)
- 2.3 SF 1034, Public Voucher for Purchase and Service Other than Personal Services
- 2.4 DD 1144, Inter-Service/Interdepartmental Support Agreement
- 2.5 DD 1155, Order for Supplies or Services
- 2.6 AF Form 185, Reimbursable Order
- 2.7 NAVCOMPT 2275, Order for Work and Services
- 2.8 DA 3953, Purchase Request and Commitment Form

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<sup>2</sup> Form definitions are: SF = Standard Form; DD = Department of Defense; AF = Air Force; NAVCOMPT = Navy Comptroller; DA = Department of the Army; DTRA = Defense Threat Reduction Agency; PHS = Public Health Service; DOT = Department of Transportation; NRC = Nuclear Regulatory Commission; NSA = National Security Agency; DARPA = Defense Advanced Research Projects Agency; TDF = Treasury Department Form.

- 2.9 DD 448, Military Interdepartmental Purchase Request (MIPR)
- 2.10 PHS 5152-5, Notice of Grant Award
- 2.11 DOT F 2300.1, Department of Transportation Reimbursable Agreement
- 2.12 NRC 173, Standard Order for DOE Work
- 2.13 DTRA IACRO, Inter-Agency Cost Reimbursement Order
- 2.14 NSA ORM B5549, Universal Order Form
- 2.15 DARPA 26F, Award/Contract
- 2.16 TDF 35, Department of Treasury Form Agreement for Reimbursable Services

### **3. Financial Policy.**

DOE will account for and control funds by individual funding document unless specific written instructions to the contrary are received from a certifying official of the other federal agency. Multiple funding documents for the same scope of work under this agreement will be fully costed on a first-in, first-out basis utilizing cost transfers if authorized.

### **4. References**

- 4.1 Federal Acquisition Regulation Subpart 17.500 (see Appendix A).
- 4.2 DOE Order 481.1C, Non-DOE Funded Work (Work For Others), dated 01/09/2005.
- 4.3 DOE Accounting Handbook, Paragraph 2 (Reimbursable Work) of Chapter 13 (Reimbursable Work, Revenues, And Other Collections).

## **APPENDIX A: FEDERAL ACQUISITION REGULATION SUBPART 17.500**

*Current through FAC 2005–62 NOVEMBER 20, 2012*

### **17.500 Scope of subpart.**

(a) This subpart prescribes policies and procedures applicable to all interagency acquisitions under any authority, except as provided for in paragraph (c) of this section. In addition to complying with the interagency acquisition policy and procedures in this subpart, nondefense agencies acquiring supplies and services on behalf of the Department of Defense shall also comply with the policy and procedures at Subpart 17.7.

(b) This subpart applies to interagency acquisitions, see 2.101 for definition, when—

(1) An agency needing supplies or services obtains them using another agency’s contract; or

(2) An agency uses another agency to provide acquisition assistance, such as awarding and administering a contract, a task order, or delivery order.

(c) This subpart does not apply to—

(1) Interagency reimbursable work performed by Federal employees (other than acquisition assistance), or interagency activities where contracting is incidental to the purpose of the transaction; or

(2) Orders of \$500,000 or less issued against Federal Supply Schedules.

### **17.501 General.**

(a) Interagency acquisitions are commonly conducted through indefinite-delivery contracts, such as task- and delivery-order contracts. The indefinite-delivery contracts used most frequently to support interagency acquisitions are Federal Supply Schedules (FSS), Governmentwide acquisition contracts (GWACs), and multi-agency contracts (MACs).

(b) An agency shall not use an interagency acquisition to circumvent conditions and limitations imposed on the use of funds.

(c) An interagency acquisition is not exempt from the requirements of subpart 7.3, Contractor Versus Government Performance.

(d) An agency shall not use an interagency acquisition to make acquisitions conflicting with any other agency’s authority or responsibility (for example, that of the Administrator of General Services under title 40, United States Code, “Public Buildings, Property and Works” and title III of the Federal Property and Administrative Services Act of 1949.)

## **17.502 Procedures.**

### **17.502-1 General.**

(a) Determination of best procurement approach.

*(1) Assisted acquisitions.* Prior to requesting that another agency conduct an acquisition on its behalf, the requesting agency shall make a determination that the use of an interagency acquisition represents the best procurement approach. As part of the best procurement approach determination, the requesting agency shall obtain the concurrence of the requesting agency's responsible contracting office in accordance with internal agency procedures. At a minimum, the determination shall include an analysis of procurement approaches, including an evaluation by the requesting agency that using the acquisition services of another agency—

(i) Satisfies the requesting agency's schedule, performance, and delivery requirements (taking into account factors such as the servicing agency's authority, experience, and expertise as well as customer satisfaction with the servicing agency's past performance);

(ii) Is cost effective (taking into account the reasonableness of the servicing agency's fees); and

(iii) Will result in the use of funds in accordance with appropriation limitations and compliance with the requesting agency's laws and policies.

*(2) Direct acquisitions.* Prior to placing an order against another agency's indefinite-delivery vehicle, the requesting agency shall make a determination that use of another agency's contract vehicle is the best procurement approach and shall obtain the concurrence of the requesting agency's responsible contracting office. At a minimum, the determination shall include an analysis, including factors such as:

(i) The suitability of the contract vehicle;

(ii) The value of using the contract vehicle, including—

(A) The administrative cost savings from using an existing contract;

(B) Lower prices, greater number of vendors, and reasonable vehicle access fees; and

(iii) The expertise of the requesting agency to place orders and administer them against the selected contract vehicle throughout the acquisition lifecycle.

(b) Written agreement on responsibility for management and administration.

*(1) Assisted acquisitions.*

(i) Prior to the issuance of a solicitation, the servicing agency and the requesting agency shall both sign a written interagency agreement that establishes the general terms and conditions governing the relationship between the parties, including roles and responsibilities for acquisition planning, contract execution, and administration and management of the contract(s) or order(s). The requesting agency shall provide to the servicing agency any unique terms, conditions, and applicable agency-specific statutes, regulations, directives, and other applicable requirements for incorporation into the order or contract. In the event there are no agency unique requirements beyond the FAR, the requesting agency shall so inform the servicing agency contracting officer in writing. For acquisitions on behalf of the Department of Defense, also see Subpart 17.7. for patent rights, see 27.304-2. In preparing interagency agreements to support assisted acquisitions, agencies should review the Office of Federal Procurement Policy guidance, Interagency Acquisitions, available at [http://www.whitehouse.gov/omb/assets/procurement/iac\\_revised.pdf](http://www.whitehouse.gov/omb/assets/procurement/iac_revised.pdf).

(ii) Each agency's file shall include the interagency agreement between the requesting and servicing agency, and shall include sufficient documentation to ensure an adequate audit consistent with 4.801(b).

(2) *Direct acquisitions.* The requesting agency administers the order; therefore, no written agreement with the servicing agency is required.

(c) Business-case analysis requirements for multi-agency contracts and governmentwide acquisition contracts. In order to establish a multi-agency or governmentwide acquisition contract, a business-case analysis must be prepared by the servicing agency and approved in accordance with the Office of Federal Procurement Policy (OFPP) business case guidance, available at <http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/development-review-and-approval-of-business-cases-for-certain-interagency-and-agency-specific-acquisitions-memo.pdf>. The business-case analysis shall—

(1) Consider strategies for the effective participation of small businesses during acquisition planning (see 7.103(u));

(2) Detail the administration of such contract, including an analysis of all direct and indirect costs to the Government of awarding and administering such contract;

(3) Describe the impact such contract will have on the ability of the Government to leverage its purchasing power, e.g., will it have a negative effect because it dilutes other existing contracts;

(4) Include an analysis concluding that there is a need for establishing the multi-agency contract; and

(5) Document roles and responsibilities in the administration of the contract.

## **17.502-2 The Economy Act.**

(a) The Economy Act (31 U.S.C. 1535) authorizes agencies to enter into agreements to obtain supplies or services from another agency. The FAR applies when one agency uses another agency's contract to obtain supplies or services. If the interagency business transaction does not result in a contract or an order, then the FAR does not apply. The Economy Act also provides authority for placement of orders between major organizational units within an agency; procedures for such intra-agency transactions are addressed in agency regulations.

(b) The Economy Act applies when more specific statutory authority does not exist. Examples of more specific authority are 40 U.S.C. 501 for the Federal Supply Schedules (subpart 8.4), and 40 U.S.C. 11302(e) for Governmentwide acquisition contracts (GWACs).

(c) Requirements for determinations and findings.

(1) Each Economy Act order to obtain supplies or services by interagency acquisition shall be supported by a determination and findings (D&F). The D&F shall—

(i) State that use of an interagency acquisition is in the best interest of the Government;

(ii) State that the supplies or services cannot be obtained as conveniently or economically by contracting directly with a private source; and

(iii) Include a statement that at least one of the following circumstances applies:

(A) The acquisition will appropriately be made under an existing contract of the servicing agency, entered into before placement of the order, to meet the requirements of the servicing agency for the same or similar supplies or services.

(B) The servicing agency has the capability or expertise to enter into a contract for such supplies or services that is not available within the requesting agency.

(C) The servicing agency is specifically authorized by law or regulation to purchase such supplies or services on behalf of other agencies.

(2) The D&F shall be approved by a contracting officer of the requesting agency with authority to contract for the supplies or services to be ordered, or by another official designated by the agency head, except that, if the servicing agency is not covered by the FAR, approval of the D&F may not be delegated below the senior procurement executive of the requesting agency.

(3) The requesting agency shall furnish a copy of the D&F to the servicing agency with the request for order.

(d) Payment.

(1) The servicing agency may ask the requesting agency, in writing, for advance payment for all or part of the estimated cost of furnishing the supplies or services. Adjustment on the basis of actual costs shall be made as agreed to by the agencies.

(2) If approved by the servicing agency, payment for actual costs may be made by the requesting agency after the supplies or services have been furnished.

(3) Bills rendered or requests for advance payment shall not be subject to audit or certification in advance of payment.

(4) In no event shall the servicing agency require, or the requesting agency pay, any fee or charge in excess of the actual cost (or estimated cost if the actual cost is not known) of entering into and administering the contract or other agreement under which the order is filled.

Note: Section 3136 of Public Law 105-196 requires DOE to charge a 3% surcharge, called the Federal Administrative Charge (FAC), on all reimbursable work. There are a limited set of both statutory and regulatory waivers available to waive the FAC surcharge.)

#### **17.503 -- Determinations and Findings Requirements.**

(a) Before placing an order for supplies or services with another Government agency, the requesting agency shall follow the procedures in 17.502-1 and, if under the Economy Act, also 17.502-2.

(b) The order may be placed on any form or document that is acceptable to both agencies. The order should include—

(1) A description of the supplies or services required;

(2) Delivery requirements;

(3) A funds citation;

(4) A payment provision (see 17.502-2(d) for Economy Act orders); and

(5) Acquisition authority as may be appropriate (see 17.503(d)).

(c) The requesting and servicing agencies should agree to procedures for the resolution of disagreements that may arise under interagency acquisitions, including, in appropriate circumstances, the use of a third-party forum. If a third party is proposed, consent of the third party should be obtained in writing.

(d) When an interagency acquisition requires the servicing agency to award a contract, the following procedures also apply:

(1) If a justification and approval or a D&F (other than the requesting agency's D&F required in 17.502-2(c)) is required by law or regulation, the servicing agency shall execute and issue the justification and approval or D&F. The requesting agency shall furnish the servicing agency any information needed to make the justification and approval or D&F.

*(Note: This FAR 17.503(d)(1) provision is used when an interagency acquisition requires the servicing agency [i.e., sponsor agency, DOE] to award a contract.)*

(2) The requesting agency shall also be responsible for furnishing other assistance that may be necessary, such as providing information or special contract terms needed to comply with any condition or limitation applicable to the funds of the requesting agency.

(3) The servicing agency is responsible for compliance with all other legal or regulatory requirements applicable to the contract, including—

(i) Having adequate statutory authority for the contractual action; and

(ii) Complying fully with the competition requirements of part 6 (see 6.002). However, if the servicing agency is not subject to the Federal Acquisition Regulation, the requesting agency shall verify that contracts utilized to meet its requirements contain provisions protecting the Government from inappropriate charges (for example, provisions mandated for FAR agencies by part 31), and that adequate contract administration will be provided.

(e) Nonsponsoring Federal agencies may use a Federally Funded Research and Development Center (FFRDC) only if the terms of the FFRDC's sponsoring agreement permit work from other than a sponsoring agency. Work placed with the FFRDC is subject to the acceptance by the sponsor and must fall within the purpose, mission, general scope of effort, or special competency of the FFRDC. (See 35.017; see also 6.302 for procedures to follow where using other than full and open competition.) The nonsponsoring agency shall provide to the sponsoring agency necessary documentation that the requested work would not place the FFRDC in direct competition with domestic private industry.

*(Note: DOE contract # DE-AC05-00OR22725 for management and operation of the Oak Ridge National Laboratory has this authorization in Section C (Statement of Work), subsection 2e(3) Other Services.)*

#### **17.504 Reporting requirements.**

The senior procurement executive for each executive agency shall submit to the Director of OMB an annual report on interagency acquisitions, as directed by OMB.

**Department of Energy (DOE) Policies on Responding to  
Competitive Solicitations of the U.S. Government or Other Legal Entities**  
As of June 5, 2013

**Purpose:** To discuss the categories of competitive solicitations that Oak Ridge National Laboratory (ORNL) may participate in.

**1. What is Oak Ridge National Laboratory? ORNL is a:**

- 1.1 DOE National Laboratory.
- 1.2 Federal Laboratory.
- 1.3 DOE Federally Funded Research and Development Center (FFRDC) under FAR 35.017.
- 1.4 U.S. Government-owned and leased research facility.
- 1.5 Managed and operated by UT-Battelle, LLC (1) under a DOE performance-based prime contract DE-AC05-00OR22725.
- 1.6 UT-Battelle, LLC is a DOE management and operating (M&O) contractor as authorized in Federal Acquisition Regulation (FAR) 35.016.
- 1.7 Authorized to furnish reimbursable research or technical services to non-DOE entities with a separate DOE approval for each agreement.

**2. Competition Policy Restrictions on DOE Management and Operating (M&O) Contractors**

- 2.1 Based on the FAR and other pertinent laws and regulations (see references), it is DOE's policy that DOE M&O contractors will NOT be placed in the position of directly competing with the U.S. private sector. Therefore, ORNL is not permitted to respond to formal U.S. government procurement solicitations or other solicitation-type entities where specific costing information is required and the solicitation has a fixed statement of work. Generally, these solicitations are labeled as:
  - 2.1.1 Requests for Proposal(s) - RFP
  - 2.1.2 Invitations for Bids or Requests For Bid(s) –IFB or RFB
  - 2.1.3 Request for Quotations - RFQ
- 2.2 This restriction includes any other acquisition document that is open for competitive solicitation and award (however designated), is announced in the Federal Business Opportunities, FedConnect, or Grants.gov and has either a fixed statement of work and/or consists of routine services that are available in the U.S. private sector.
- 2.3 ORNL is not permitted to respond to non-U.S. government procurement solicitations in the categories of:

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1 An equal non-profit partnership between University of Tennessee and Battelle Memorial Institute.

2.3.1 Any competitive solicitation from any U.S. state or local government entity where there will be head-to-head competition on a fixed statement of work.

2.3.2 Any U.S. private sector company (including for-profit companies, non-profit corporations, and universities) where there will be head-to-head competition on a fixed statement of work.

2.3.3 Where the solicitation specifically mentions that there will be only one awardee.

2.3.4 Any competitive solicitation from any foreign entity (government, state, local government entity, research facility, or commercial entity) where there will be head-to-head competition on a fixed statement of work.

### **3. Permissible Competition or Solicitation Categories**

Under the authority of the Atomic Energy Act and other statutes, DOE is authorized to conduct research and development (R&D) through its own facilities for non-DOE sponsors when DOE finds that private facilities are inadequate for these purposes.

DOE has determined that performance of R&D activities, which utilize the special and unique capabilities of DOE's M&O contractors, is not a form of competition when the private sector is unable to perform such activities. All responses to formal solicitations must receive an upfront DOE review and approval.

#### **3.1 Broad Agency Announcements (BAA or equivalent)**

The only type of federal procurement solicitations that ORNL can respond to are BAAs. A BAA is governed by the provisions of FAR Subpart 6.102(d)(2) and/or Subpart 35.016. In a BAA, a federal agency advertises its general research interest. Proposals presented in response to a BAA are not submitted in accordance with a common work statement proposed by the requesting federal agency. Each proposal is completely unique and the requesting federal agency may make multiple awards from one BAA. That is, the federal agency may award contracts, enter into interagency acquisitions, make grants, enter into cooperative agreements, etc., with multiple respondents with completely different statements of work from the same BAA.

The Energy Policy Act of 2005 (EPAct 2005) permits a DOE National Laboratory response to energy efficiency type of solicitations coming under EPAct 2005.

#### **3.2 Federal Financial Assistance Solicitations (FAS)**

FAS are not procurement-related instruments but come under a separate statute (31 USC 6301-6308) authorizing these activities. DOE will permit responses to federal agency financial assistance solicitations (e.g., grants), including DOE sponsors that:

3.2.1 are *research-oriented*;

3.2.2 have no fixed statement of work;

- 32.3 have no cost-sharing from DOE or the M&O contractor using DOE funds; and
- 3.2.4 when the federal agency, including DOE sponsors, permits such responses

### 3.3 Non-Federal Agency Solicitations Equivalent to a BAA

DOE will permit authorized responses to solicitations from U.S. State governments, commercial companies, universities, and non-profit organizations when these solicitations instruments are characterized by the following:

- 3..3.1 The instrument is a general research announcement that is being used for the acquisition of basic and/or applied research ideas to further advance scientific knowledge or understanding rather than focusing on a specific system or hardware solution.
- 3.3.2 Evaluations and selections are performed through a merit or peer review process based on pre-established general selection criteria.
- 3.3.3 The primary bases for selection are technical approach, importance to the agency, and funds availability.
- 3.3.4 There is more than one award winner being contemplated in the solicitation.

## 4. **Permissible Teaming Arrangements**

### 4.1 Small Business Innovation Research (SBIR) Program

Under the same R&D criteria for a BAA, DOE will approve an M&O contractor providing limited technical assistance to a U.S. Small Business under the federal government's SBIR program. Small business concerns include sole proprietorships, partnerships, corporations, joint ventures, associations, or cooperatives. A DOE M&O contractor is limited to doing 49 per cent or less of the work as a subcontractor to a small business in the SBIR. The program objectives are:

- 4.1.1 to increase private sector commercialization of technology developed through federal R&D;
- 4.1.2 to increase small business participation in federal R&D; and
- 4.1.3 to improve the federal government's dissemination of information to women-owned-, and economically-disadvantaged small business concerns.

SBIR funds are used to support an annual competition for Phase I awards of up to \$150,000 for about 9 months to explore the feasibility of innovative concepts. Only Phase I winners are eligible to compete for Phase II, which is the principal research or R&D phase. The maximum funding for Phase II projects is \$750,000 over a two-year period.

#### 4.2 Small Business Technology Transfer (STTR) Program

STTR is similar to the SBIR program in that both programs seek to increase the participation of small businesses in federal R&D and to increase private sector commercialization of technology developed through federal R&D. Furthermore, in each program, a solicitation for grant applications is issued at least once per year, and the same program structure is used: Phase I to determine feasibility, Phase II to conduct the bulk of the R&D, and Phase III to pursue commercialization.

The purpose of Phase I is to conduct feasibility related experimental or theoretical research or R&D in order to determine the scientific or technical merit/feasibility of concepts/ideas as a prerequisite to further support under Phase II. Individuals receiving awards under Phase I will be eligible to compete for Phase II contracts. Those receiving Phase II awards are then eligible to compete for Phase III awards.

The unique feature of the STTR program is that, for both Phases I and Phase II projects, at least 40 per cent of the work must be performed by the small business and at least 30 per cent of the work must be performed by the non-profit research institution. Such institutions include federally-funded research and development centers (for example, DOE national laboratories), universities, and other non-profits.

#### 4.3 BAA Partnerships

Under the same R&D criteria for a BAA, DOE will approve ORNL providing research or technical services **as a Work For Others (WFO) subcontractor** to a commercial business, university, or non-profit organization. As a rule of thumb, DOE desires that the national laboratory participation be kept in the range of 25 per cent of total expected cost. However, this is not a fixed percentage and DOE will evaluate each case separately. The BAA must:

- 4.3.1 *be research-oriented*
- 4.3.2 have no fixed statement of work
- 4.3.3 have no cost-sharing from DOE or the M&O contractor, and
- 4.3.4 not exclude national laboratory or Federally Funded Research and Development Center (FFRDC) participation

#### 4.4 FAS Partnerships

The same criteria shown in 4.3 above apply where a DOE M&O contractor is approached to be a subcontractor participant in a financial award solicitation.

#### 4.5 Teaming After Competitive Award

DOE will permit certain arrangements that occur after a federal solicitation or other solicitation is conducted and the award is made. *There must be no active participation by any member of the DOE M&O contractor staff that would affect the initial contract award.* In this case, a U.S. domestic sector organization (e.g., a commercial company, university, nonprofit institution, etc.) will request research or technical support in order to complete its work on the previously awarded contract(s). DOE will authorize a WFO subcontract arrangement between its M&O contractor and the other domestic sector organization or foreign entity. The WFO arrangement must follow existing DOE rules.

The above scenario frequently occurs where a domestic sector organization received a formal award based on a response to a commercial solicitation of the U.S. government or from another non-federal source. In evaluating the technical requirements needed to complete the contract, the organization with the award decides that it needs certain special expertise or unique technical skills that are available only in a DOE facility. ORNL must obtain DOE ORNL Site Office (DOE-OSO) formal approval for the capabilities to be provided to the domestic sector organization. Approval will be done under DOE Order 481.1C procedures.

#### 4.6 General Partnership Arrangements

DOE will permit certain arrangements with non-federal entities that are general in nature and are not tied to a specific solicitation. In this case, a U.S. domestic sector organization (e.g., a commercial company, university, nonprofit institution, etc.) will request research or technical support due to identifying research or technical weaknesses in its own technological portfolio or strategic vision. ORNL could be used as an on-call reimbursable research facility for the non-federal entity to furnish special expertise, knowledge, skills, or unique facilities that are not available in the routine commercial environment. DOE will authorize a WFO subcontract arrangement between ORNL and the other domestic sector organization or foreign entity. The WFO arrangement must follow existing DOE rules.

### **5. Permissible Information Sharing on DOE Capabilities**

DOE will permit information distribution of DOE capabilities or expertise to be shared with other federal agencies, private sector components, foreign entities, etc. *All information sharing and/or distribution are subject to normal DOE review policies associated with classified information, proprietary information, unclassified nuclear information, Privacy Act restrictions, etc.* Other than these normal parameters, this information sharing does not require advance DOE approval and may take the form of responding to or furnishing data for:

- 5.1 Requests for Information - RFI
- 5.2 Sources Sought Announcements - SSA

- 5.3 Statement of Capabilities - SOC
- 5.4 Requests for White Papers
- 5.5 Rough Order of Magnitude - ROM
- 5.6 Information Sought for Market Analysis (MA)
- 5.7 Sponsor-initiated contacts or information requests
- 5.8 Research Abstracts (RA)

## **6. DOE Approval Requirement**

Therefore, it is DOE policy to allow ORNL, under certain conditions and with advance DOE approval, to respond to certain competitive solicitations. The DOE intent is to make their special or unique capabilities available to other federal agencies and to non-federal entities. The following general procedures apply:

- 6.1 The work contemplated must consist of R&D essential to a national program or DOE's mission, or both, and involve ORNL's special and unique capability developed in conjunction with an approved DOE mission and/or program.
- 6.2 All proposed responses will be prepared according to procedures outlined in DOE Order 481.1C. If a BAA, FAS, etc., is involved, ORNL must specifically inform DOE-OSO that the proposed R&D work is in response to a BAA, FAS, or a commercial equivalent.
- 6.3 DOE-OSO will be responsible for reviewing and approving the BAA/FAS or other competitive proposal and formally forwarding the authorized proposal to the proposed customer by the solicitation due date.

## **7. References**

- 7.1 Atomic Energy Act of 1954 (42 USC 2011, et seq.)
- 7.2 Sections 3136 and 3137 of the Strom Thurmond National Defense Authorization Act of 1999 (Public law 105-261)
- 7.3 Office of Federal Procurement Policy Letter 84-1, April 20, 1994, subject: Federally Funded Research and Development Centers (FFRDC)
- 7.4 Federal Acquisition Regulation (FAR) Part 6, Competition Requirements
- 7.5 FAR Section 6.102, Use of Competitive Procedures
- 7.6 FAR Section 17.500, Scope of Subpart Interagency Acquisitions
- 7.7 FAR Section 17.600, Management and Operating Contractors
- 7.8 FAR Section 35.016, Broad Agency Announcements

- 7.9 FAR Section 35.017, Using an FFRDC
- 7.10 DOE Order 481.1C, Work For Others (Non-Department of Energy Funded Work), dated 01/24/05
- 7.11 DOE Headquarters Memorandum from Mr. Richard Hopf, the Deputy Assistant Secretary for Procurement and Assistance Management, dated July 30, 1997, subject: Work For Others - Teaming With Industry
- 7.12 DOE Headquarters Memorandum from Mr. Richard Hopf, the Deputy Assistant Secretary for Procurement and Assistance Management, dated October 6, 1997, subject: Clarification of the Department of Energy's Policy on Teaming with Industry Through the Work for Others Program
- 7.13 DOE Acquisition Regulation (DEAR) 970.5217-1 Work For Others Program (Non-DOE Funded Work) (Jan 2005) which is incorporated into the DOE contract DE-AC05-00OR22725 for Oak Ridge National Laboratory at Clause I.130
- 7.14 Section 989 of the Energy Policy Act of 2005
- 7.15 Section 9008(e)(5) of Farm Security, and Rural Investment Act of 2002 (FSRIA), as amended (7 U.S.C. 8108(e)(5)), for Biomass Research and Development Initiatives. Eligible entities are:
  - (A) an institution of higher education;
  - (B) a National Laboratory;
  - (C) a Federal research agency;
  - (D) a State research agency;
  - (E) a private sector entity;
  - (F) a nonprofit organization; or
  - (G) a consortium of 2 or more entities described in (A) through (F) above.
- 7.16 DOE Policy Flash 2013-03, dated October 11, 2012, subject: Responding to Solicitations under DOE's Work for Others Program (WFO)
- 7.17 DOE Acquisition Guide on BAA/RFP, issued September 27, 2012, subject: Responding To Solicitations Under DOE Work For Others Program

## **8. DOE Determination on Authority to Submit Proposals for BAA**

- 8.1 Section 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201);
- 8.2 Section 644 of the Department of Energy Organization Act, Pub. Law (PL). 95-91 (42 U.S.C. 7254);
- 8.3 Sections 11(a)(1) and 12(g) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C.3710a);

- 8.4 Section 3132(b) of P. L. 101-189;
- 8.5 Sections 3134 and 3160 of P.L. 103-160, and Chapter 38 of the Patent Laws (35 U.S.C. 200 et seq.);
- 8.6 Section 152 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2182);
- 8.7 Section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908); and
- 8.8 Executive Order 12591 of April 10, 1987, Facilitating Access to Science and Technology

For further information, contact Mr. David Bradford of the ORNL Work For Others Program Office at (865) 574-9798, fax (865) 576-8346, or Internet at [bradforddw@ornl.gov](mailto:bradforddw@ornl.gov).

**Department of Energy (DOE) Work For Others (WFO) Information Distribution Policies**  
April 5, 2013

1. References. See Appendix A.
2. General.

DOE encourages its National Laboratories and Technology Centers to present scientific and technical information to actual or potential customers,<sup>1</sup> either federal or non-federal. This collaborative policy maximizes the synergistic benefits of sharing technology and research findings throughout the U.S. government and U.S. commercial industry in order to solve national problems while conserving technical and financial resources.

DOE authorizes the management and operating (M&O) contractors of its laboratories (such as UT-Battelle which manages Oak Ridge National Laboratory [ORNL]) to enter into direct discussions on research and technical assistance with both federal and non-federal customers.<sup>2</sup> DOE also permits its laboratories to respond to federal agency Broad Agency Announcements (BAAs) and research-oriented financial assistance solicitations. The BAA-type criterion is similar for non-federal entities proposing research solicitations.<sup>3 4</sup>

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<sup>1</sup> For purposes of clarity, customers, as used in this document, include federal agencies, federal government corporations, independent federal entities, State and local governments, U.S. private sector companies, and foreign entities.

<sup>2</sup> Clause I.130 of DOE Contract DE-AC05-00OR22725 of the DOE and UT-Battelle contract authorizes this action. This clause implements DOE Acquisition Regulation (DEAR) subpart 970.5217-1 Work for Others Program.

<sup>3</sup> As non-federal solicitations are seldom labeled as a BAA, DOE ORNL Site Office (DOE-OSO) recommends Oak Ridge National Laboratory (ORNL) to have a DOE-OSO contracting officer review the solicitation first to see if it is a BAA-type solicitation before ORNL can submit a response.

<sup>4</sup> From DOE Order 481.1C, Paragraph 4:

REQUIREMENTS. It is Departmental policy that DOE/NNSA resources are made available to non-DOE/non-NNSA entities. Requirements of DOE/NNSA directives, applicable regulations, and the following requirements must be satisfied before work is performed.

a. In operating DOE/NNSA Federally Funded Research and Development centers (FFRDCs) or other facilities, a contractor may not respond to Requests For Proposals (RFPs) or other solicitations from another Federal agency or non-Federal entity that involves head-to-head competition as an offeror team member, or subcontractor to an offeror.

b. When these requirements are met and following notification to the cognizant field office, a DOE/NNSA site/facility management contractor operating an FFRDC or other DOE/NNSA facility may respond to Broad Agency Announcements, financial assistance solicitations, Program Research and Development Announcements, and similar solicitations from other Federal agencies or non-Federal entities that do not result in head-to-head competition, subject to the requirements of this Order. These solicitations must meet the following requirements.

3. Responding to Federal Agency Requests for Proposal (RFP).

DOE M&O contractors **may not respond** to any U.S. Government RFP or Request for Quotations (RFQ). As discussed below, this restriction includes a prohibition against being a member of team that submits a proposal in response to a RFP or RFQ. Once a legal entity wins a proposal, however, ORNL certainly can furnish specialized assistance or research in meeting the proposal's deliverables after a DOE-OSO approval.

Customers cannot be furnished any detailed, specific information by a DOE M&O contractor that will either (1) indicate involvement by DOE or its M&O contractor in preparing a response to an RFP, or (2) materially assist a customer in the submission of a response to a fixed statement of work under an RFP. Specific information means any deliberate writing of scientific or technical data geared to respond to RFP criteria and the furnishing of cost data necessary to support that RFP submission. DOE contractor personnel cannot write a response to, nor actively participate in, any customer submission to any federal agency RFP or other document that has a fixed statement of work.

4. Basic Information Restrictions

Customers must be notified that any actual or potential work to be done by a DOE M&O contractor must be authorized in advance by a cognizant DOE contracting officer on a full-cost-recovery basis.

DOE classified, sensitive unclassified information, or intellectual property (IP), will not be given to customers unless authorized by the appropriate Laboratory or contracting official.

DOE M&O contractors generally have broad authority to receive and to share scientific, technical, and business information with sponsors and potential sponsors. This type of information exchange usually is conducted pursuant to a Non-Disclosure Agreement between the parties, or pursuant to a work agreement, such as an approved WFO agreement where proprietary information is involved.

However, there are limitations on the authority to disclose sensitive information. Export control laws may limit disclosures in certain circumstances, and technical or research information that is

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(1) The solicitation must be a general research announcement used for the acquisition of basic or applied research to further advance scientific knowledge or understanding rather than focus on a specific system or hardware solution.

(2) Evaluation and selection is performed through a merit or peer review process using pre-established general selection criteria.

(3) The primary basis for selection is technical approach, importance to the Agency, and funds availability.

not in the public domain must be reviewed for compliance prior to disclosure. There are stringent DOE rules to preclude furnishing personally identifiable information (PII) to unauthorized parties.<sup>5</sup>

5. Information Supplied Prior to an Agreement or a Contract is in Place between the Customer and ORNL.

Customers may receive information on DOE research and technical capabilities through any or all of the following open-source methods:

- peer-reviewed publications, such as refereed scientific, technical, or engineering journals,
- publicity announcements and press releases,
- technical brochures and/or technical presentations,
- publicly available technical capability statements or White Papers covering ORNL's unique expertise and specialized facilities available,
- electronic announcements via the Internet,
- annual or periodic formal publications, such as the R&D 100 Awards list,
- distribution of customers' literature, reports, and analyses, as authorized,
- providing Rough Order of Magnitude (ROM) of actual or projected costs,
- scientific abstracts based on previously conducted work or speculative concepts based on existing or evolving scientific theory, and
- researcher-supplied resumes or Curriculum Vitae.

6. After an Agreement or a Contract is in Place Between the Customer and ORNL

Customers may receive information on ORNL's research and technical capabilities through any or all of the methods listed in Section 4 above. Customers also may request specific and detailed information from UT-Battelle about the specific research capabilities or unique facilities available at ORNL. This information can be supplied at no cost to the customer as a general information request or it can be done under a full-cost-recoverable policy. Unless otherwise directed by cognizant DOE authority, ORNL will make the determination to charge costs back to the customer or to not charge costs on any standard or detailed information request.

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<sup>5</sup>

**Definition of PII**

PII: Any information about an individual maintained by an agency, including but not limited to, education, financial transactions, medical history, and criminal or employment history and information which can be used to distinguish or trace an individual's identity, such as their name, social security numbers, date and place of birth, mother's maiden name, biometric records, etc., including any other personal information which is linked or linkable to an individual.

DOE-approved work will be done on an advance-payment basis. Work will be accomplished in accordance with the approved statement of work incorporated into either the federal interagency agreement or the scope of work in the DOE-approved subcontract, as appropriate.

7. Information Submission, Distribution, or Attribution Parameters

- A DOE M&O contractor cannot actively participate in, nor have the appearance of active involvement in, any U.S. federal agency RFP bid submitted by a U.S. private sector company<sup>6,7</sup>.
- IP of all parties involved will be protected.
- Inventions made in performance of any DOE-approved work may fall within the DOE-issued Class Patent Waiver to the M&O contractor(s), and the M&O contractor(s) may elect to retain title to such inventions subject to retention by the federal government of march-in-rights and a non-exclusive, non-transferrable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the invention throughout the world.
- Proprietary information of all parties will be protected and not released to other parties unless specially authorized.
- Public release of scientific or technical information is based on the DOE policy to routinely make publicly available all unclassified scientific information (including scientific and technical computer software) resulting from the performance of work for other federal agencies unless that agency specifically requests otherwise.
- Regardless of the above statement on agencies restricting release of scientific or technical information, DOE must still provide information subject to the Freedom of Information Act and/or other relevant laws.

8. Summary of Third-Party Use of DOE and DOE M&O Contractor Information

- A Third Party may further release or distribute information specifically supplied to them by ORNL subject to U.S. government classification restrictions and any Non-Disclosure Agreements that have been executed by the parties.
- A Third Party may further release or distribute information specifically obtained from a

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<sup>6</sup> A private sector company means any one of the following non-public sector entities: University, Commercial For-Profit Companies, Joint Ventures, Limited Partnerships, Non-Profit Organizations, Limited-Liability Corporation, etc.

<sup>7</sup> See DOE Headquarters Memorandum from Mr. Richard Hopf, the Deputy Assistant Secretary for Procurement and Assistance Management, dated July 30, 1997, subject: Work For Others - Teaming With Industry; and DOE Headquarters Memorandum from Mr. Richard Hopf, the Deputy Assistant Secretary for Procurement and Assistance Management, dated October 6, 1997, subject: Clarification of the Department of Energy's Policy on Teaming with Industry Through the Work for Others Program.

DOE or a DOE M&O contractor's publicly available information site, such as a publicity announcement or an external DOE World Wide Web site.

- A Third Party may further release or distribute information specifically indicating an existing DOE or DOE M&O contractor relationship, such as a licensing agreement, procurement contract, grant award, or a subcontract arrangement. These announcements are subject to any non-disclosure statements resident in the original contract agreement or financial assistance award.
- DOE does not control a Third Party's use, further distribution, or further usage of DOE or DOE M&O contractor-supplied information (subject to obvious restrictions on classified, export control, IP, or other information covenants agreed to in the original rendering of the information.)

## APPENDIX A:

## REFERENCES

1. DOE Headquarter Office of Science Memorandum August 7, 2006, **Office of Science Policy on the Protection of Personally Identifiable Information.**
2. The National Competitiveness Technology Transfer Act of 1989, Public Law 101-189, Sections 3131, 3132, 3133, and 3159, which prescribes technology transfer as a mission of the DOE and its facilities.
3. Stevenson-Wydler Technology Innovation Act of 1980, Public Law 96-480, as amended, Section 11, which states as public policy that the federal government shall strive to transfer federally owned or originated technology to State and local governments and the private sector.
4. DOE Order 481.1C, 1-24-05, subject: **Work for Others (Non-Department of Energy Funded Work)**
5. DOE Manual 481.1-1A, Chg 1: 9-28-01, **Reimbursable Work for Non-federal Sponsors Process Manual**
6. DOE Acquisition Regulation 970.5217-1 **Work for Others Program.**
7. DOE O 471.3, 04/09/2003, **Identifying and Protecting Official Use Only Information**
8. DOE Headquarters Brochure, **How Federal Agencies Obtain Technical Resources and Skills from the U.S. Department of Energy.** Published by the U. S. Department of Energy, Assistant Secretary for Human Resources and Administration, January 1996.
9. DOE Headquarters Memorandum from Mr. Richard Hopf, the Deputy Assistant Secretary for Procurement and Assistance Management, dated July 30, 1997, subject: **Work For Others - Teaming With Industry**
10. DOE Headquarters Memorandum from Mr. Richard Hopf, the Deputy Assistant Secretary for Procurement and Assistance Management, dated October 6, 1997, subject: **Clarification of the Department of Energy's Policy on Teaming with Industry Through the Work for Others Program**
11. Export Administration Regulations (EAR) - 15 CFR Parts 730-744.
12. International Traffic in Arms Regulations (ITAR) - 22 CFR Parts 120-130.
13. Nuclear Regulation Commission (NRC) - 10 CFR Part 110.

14. DOE O 522.1, **Pricing of Departmental Materials and Services**, dated 11-03-04, which establishes requirements and assigns responsibilities for setting prices and charges for materials or services sold or provided by DOE, either directly or through site/facility management contractors, to organizations and persons outside DOE/NNSA.
15. DOE O 241.1A, **Scientific and Technical Information Management**, dated 4-9-01, which establishes requirements and assigns responsibilities to ensure that scientific and technical information emanating from DOE research is appropriately identified, processed, disseminated, and preserved.
16. DOE P 443.1, **Policy on the Protection of Human Subjects**, dated 05-15-00, which defines the DOE policy for the protection of human subjects in research activities.
17. DOE O 443.1 **Protection of Human Subjects**, dated 05-15-00, which establishes the procedures and responsibilities for implementing the policy and requirements set forth in 10 CFR Part 745 and in DOE P 443.1.
18. DOE Acquisition Regulation Section 970.5217-1 **Work For Others Program (Non-DOE Funded Work) (Jan 2005)**.

# Project Life Cycle Reimbursable Funding Perspective For Federal Agencies

Department of Energy (DOE) Oak  
Ridge National Laboratory (ORNL)  
Site Office (OSO)

by

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**May 29, 2013**

# Briefing Outline

- **Secretary of Energy Legal Authority**
- **How Federal Agencies Do Reimbursable Work With DOE**
- **Interagency Acquisition (IA) Overview**
- **The IA Approval Process**
- **Project Execution Process**
- **Project Closeout Process**
- **Summary**

# Secretary of Energy Legal Authority to Conduct Reimbursable Research and Technical Assistance

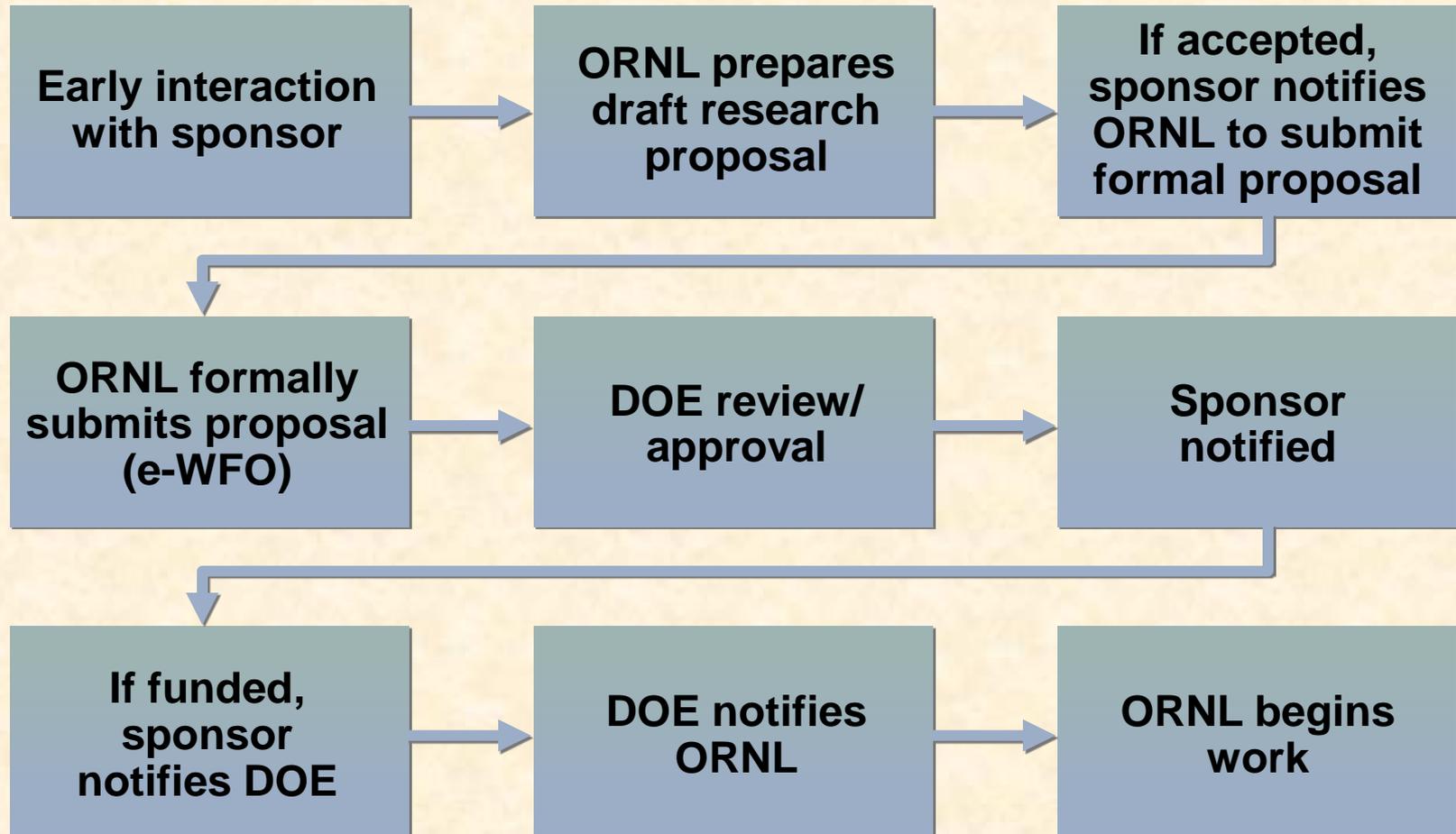
**The research and other activities that may be conducted are those which the secretary is authorized to conduct by law, including research and activities authorized under the following provisions of law.**

- **The Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.)**
- **The Energy Reorganization Act of 1974 (42 U.S.C. 5811 et seq.)**
- **The Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5901 et seq.)**
- **Section 3137 of The Strom Thurmond National Defense Authorization Act of 1999 (Public Law 105-261)**
- **Section 636 of the Economy Act of 1932 (31 USC 1535)**

# How Federal 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 is the Work For Others (WFO) Program.**
- **In DOD, this is called an Economy Act Order or Inter Service Support Agreement (ISSA).**
- **In civilian federal agencies, this is normally called an Inter Agency Cost Reimbursement Order (IACRO).**

# Interagency Acquisition (IA) Overview



# The IA Approval Process

- **DOE will accept IA from other federal 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 statutes or regulatory authorities can be used if Economy Act is not appropriate (e.g., 42 USC 2451 Space Act of 1958 for NASA).**
- **IA process is shown in Federal Acquisition Regulation (FAR) Subpart 17.500.**

# The IA Approval Process (cont.)

- **Requesting federal agencies must have a bona fide need (31 USC 1502) and obtain internal agency approval to do an IA.**
- **An IA is NOT a contract.**
- **DOE authorizes ORNL researchers to work with the other agency to define science or technical requirement at no cost to requesting agency.**
- **DOE must approve internal request from ORNL to do work for another federal 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 Federal agency will send a funding document giving a reimbursable appropriation citation to DOE-OSO for obligation.**
- **The Congressional restrictions or parameters on the federal 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 Federal 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 Federal agency uses an Economy Act Order as the authority for sending the reimbursable funds to DOE, then the Federal 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 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 Federal agency appropriation nor changing the five year expiration date of the obligation for expenditure (31 USC 1552).**

# Project Execution Process

- **The federal agency determines the research or technical priority of their reimbursable funds.**
- **The federal agency performs technical oversight of the project and establishes deliverables, project reporting criteria, etc.**
- **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 federal 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 Federal agency for the federal administrative charge and ORNL costs.**
- **Billing to the Federal 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., DOD WAWF).**
- **The Federal agency is responsible for timely payment of the invoices.**

# Project Closeout Process

- **When the federal 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 go on.**
- **These activities will include final billings, reconciliations, data and technology transfer, and task certifications.**
- **If there are Federal agency funds held by DOE that still remain available (not committed nor costed), these funds will be de-obligated and returned to the Federal 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 and responsibility to help other federal agencies.**
- **Both agencies are leveraging the nation's significant investment in ORNL science and research for each other.**
- **Other federal agencies 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.**

**DEPARTMENT OF ENERGY (DOE)  
RESEARCH AND TECHNICAL ASSISTANCE PROGRAM  
AT OAK RIDGE NATIONAL LABORATORY (ORNL)  
FOR U.S. STATE AND LOCAL GOVERNMENT ENTITIES<sup>1</sup>**

**Legal Authority**

The DOE sponsors a research and technical assistance program, called the Work For Others (WFO) program, for U.S. State and local government entities. DOE is authorized to supply technical assistance and to make arrangements for conducting research and development activities with States and their political subdivisions. This work activity includes participating in joint or cooperative research, developmental, or experimental projects. The authority for this activity is in statutes such as the Atomic Energy Act of 1954 and the Intergovernmental Cooperation Act of 1968 (P.L. 90-577). DOE also uses the general parameters of the Office of Management and Budget (OMB) Circular A-97 in executing this assistance.

**Why come to DOE?**

The U.S. government's interest in furthering industrial competitiveness and scientific advances encourages innovative approaches and solutions to technical, infrastructure, educational, and social problems facing U.S. States. This U.S. governmental concern translates into having scientific and technology resources available to give various options in solving issues. The U.S. government's considerable investments in basic technology research and development have produced a substantive scientific foundation of knowledge in the National Laboratory system. For DOE, their intent is to:

- (1) encourage intergovernmental cooperation in the conduct of specialized or technical services and provisions of facilities essential to the administration of State or local governmental activities; and,
- (2) enable State and local governments to avoid unnecessary duplication of special service functions.
- (3) capitalize on previous U.S. government funded work which can materially assist a State or local Government in its responsibilities in such diverse areas as homeland security, counter-terrorism, energy planning and analysis, or transportation systems assistance for an Intelligent Transportation System.

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<sup>1</sup> As of October 11, 2010. Prepared by David Bradford, ORNL Work For Others (WFO) Program Office at (865) 574-9798 or by [bradforddw@ornl.gov](mailto:bradforddw@ornl.gov)

## Available DOE Research and Technical Services

As a general rule, DOE will furnish "specialized or technical services" to a State government or to a local government based on the variety of statutes and also OMB A-97 circular criteria.

These "specialized or technical services" are services such as “. . . statistical and other studies and compilations, development projects, technical tests and evaluations, technical information, training activities, surveys, reports, documents, and any other similar service functions” which DOE is especially equipped and authorized by law to perform. These services are divided into the following components:

- (1) Any existing statistical or other studies and compilations, results of technical tests and evaluations, technical information, surveys, reports, and documents, and any such materials which may be developed or prepared in the future to meet the needs of the Federal Government or to carry out the normal program responsibilities of the Federal agencies involved.
- (2) Preparation of statistical and other studies and compilations, technical tests and evaluations, technical information, surveys, reports, and documents, and assistance in the conduct of such activities and in the preparation of such materials, provided they are of a type similar to those which the Federal agency is authorized by law to conduct or prepare.
- (3) Training of the type which the Federal agency is authorized by law to conduct for Federal personnel and others or which is similar to such training.
- (4) Technical aid in the preparation of proposals for development and other projects, for which the Federal agency provides grants-in-aid or other assistance, provided such aid primarily strengthens the ability of the recipient in developing its own capacity to prepare proposals.

Technical information, data processing, communications and personnel management systems services which the Federal agency normally provides for itself or others under existing authorities.

Additionally, upon request, DOE will furnish reimbursable services in the following areas:

- Basic Research
- Applied Research
- Applied Development
- Technical Analyses or Specialized Scientific Studies
- Data Sampling/Confirmation
- Prototype Development
- Objective Consultation
- Essential Engineering Design and Development
- Model Fabrication
- Manufacturing of Specialized Materials or Components
- Engineering and Technical Services

DOE determines the decision criteria on what work can be done if it is within the special scientific and technical capabilities of the DOE management and operating (M&O) contractor.

### **DOE Relationships with its Performance-Based Contractors**

DOE competitively awards M&O contracts under the authority of 48 CFR Subpart 17.6 to manage and operate DOE facilities. These performance-based M&O contractors are financially integrated with DOE and operate under strict DOE controls and guidelines. A DOE M&O contractor, UT-Battelle, LLC, manages and operates the scientific and research facilities of ORNL under the control of the DOE Oak Ridge Office (DOE-ORO). UT-Battelle, LLC, is a distinct "arms-length" subsidiary of its parent organizations (the University of Tennessee and Battelle Memorial Institute) and is established exclusively to perform work assigned by DOE-ORO, including work which DOE-ORO accepts from State and local governments. A DOE M&O contractor performs a completely different role as a financially-integrated contractor of DOE versus a contractor who fulfills a Government-Owned-Contractor-Operated (GOCO) function within other federal agencies. This distinction is vital to understanding the role that DOE plays in technology research and applied development for the U.S. government, U.S. States and local U.S. governments.

DOE-ORO establishes the programmatic controls, oversight functions, customary reporting information, and general categories and procedures for the overhead cost structure for the M&O contractors. DOE approves all overhead rate categories.

### **DOE Administrative Processing**

DOE-ORO accepts taskings from the non-federal governmental sector to meet research or technological requirements. DOE-ORO authorizes work that is consistent with its overall mission and is relevant to the ORNL unique capabilities, specialized expertise, singular facilities, or derived competencies. For the State or local government agency seeking help and prior to work beginning, ORNL researchers will prepare for DOE approval a research proposal describing the work to be performed. Upon approval, DOE-ORO will formally notify ORNL that contract negotiations with a State or local governmental entity can begin.

Research or technical efforts on a project can be done under a Material or Services Order Form (MSOF) which is a one page abbreviated contract between the DOE M&O Contractor and the requesting State agency or local governmental unit if there are no intellectual property (patents, trademarks, copyrights) concerns involved. When the State or local governmental unit has proprietary information involved that needs to be protected, then a Proprietary Information Agreement disclaimer can be signed and attached to the MSOF. *The State or local governmental entity's proprietary information associated with the research or technical development will be protected and safeguarded from disclosure at all times.*

If there are special requirements for intellectual property information that need to be addressed, a Work For Others agreement will normally be used. There is a standard DOE version applicable to U.S. State governments. This is a DOE previously-agreed-to set of uniform contractual clauses for research and development contracts which will expedite arranging the legal commitment between the State or the local governmental unit and the DOE M&O Contractor. However, if the DOE standard language is not acceptable to the State or local governmental unit, a negotiated contract may be done.

### **Administrative Recovery of DOE Program Costs**

Based on Section 3137 of the National Defense Authorization Act of 1999 (Public Law 105-261), DOE is authorized to charge a flat 3% surcharge to cover DOE administrative processing and overhead costs. This surcharge is Federal Administrative Charge (FAC) and the FAC is charged on all non-DOE funded work effective October 1, 1998. However, state governments and local governmental entities are statutorily excluded from paying the FAC.

Furthermore, as part of the annual DOE Administrative Appropriation from Congress, funds are identified to furnish an advance payment for charges incurred by the State or the local governmental unit for work under the MSOF or a DOE WFO agreement. This provision of advance funding by DOE is contingent upon the State that is requesting assistance to have either a State Constitutional prohibition or a State statutory ban in making advance payments. In essence, DOE will make the advance payment for the funding for the State or local governmental entity until the routine billing cycle is established. The State or local governmental entity is fully responsible for paying all incurred charges for the work or services furnished them by ORNL. During the conduct of the project, ORNL will invoice monthly for accumulated expenses (that is, funds spent) against the project. It is the responsibility of the requesting state governmental agency to pay that invoice.

# 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**

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**June 6, 2013**

# Briefing Outline

- **Statutory Authorities for the Conduct of Reimbursable Work**
- **Joint DOD & DOE Regulatory Reimbursable Work Process**
- **Implementation Process Overview**
- **How DOD Agencies Do Reimbursable Work With DOE**
- **Interagency Acquisition (IA) Overview**
- **The IA Approval Process**
- **Project Execution Process**
- **Project Closeout Process**
- **Summary**

# 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.)**

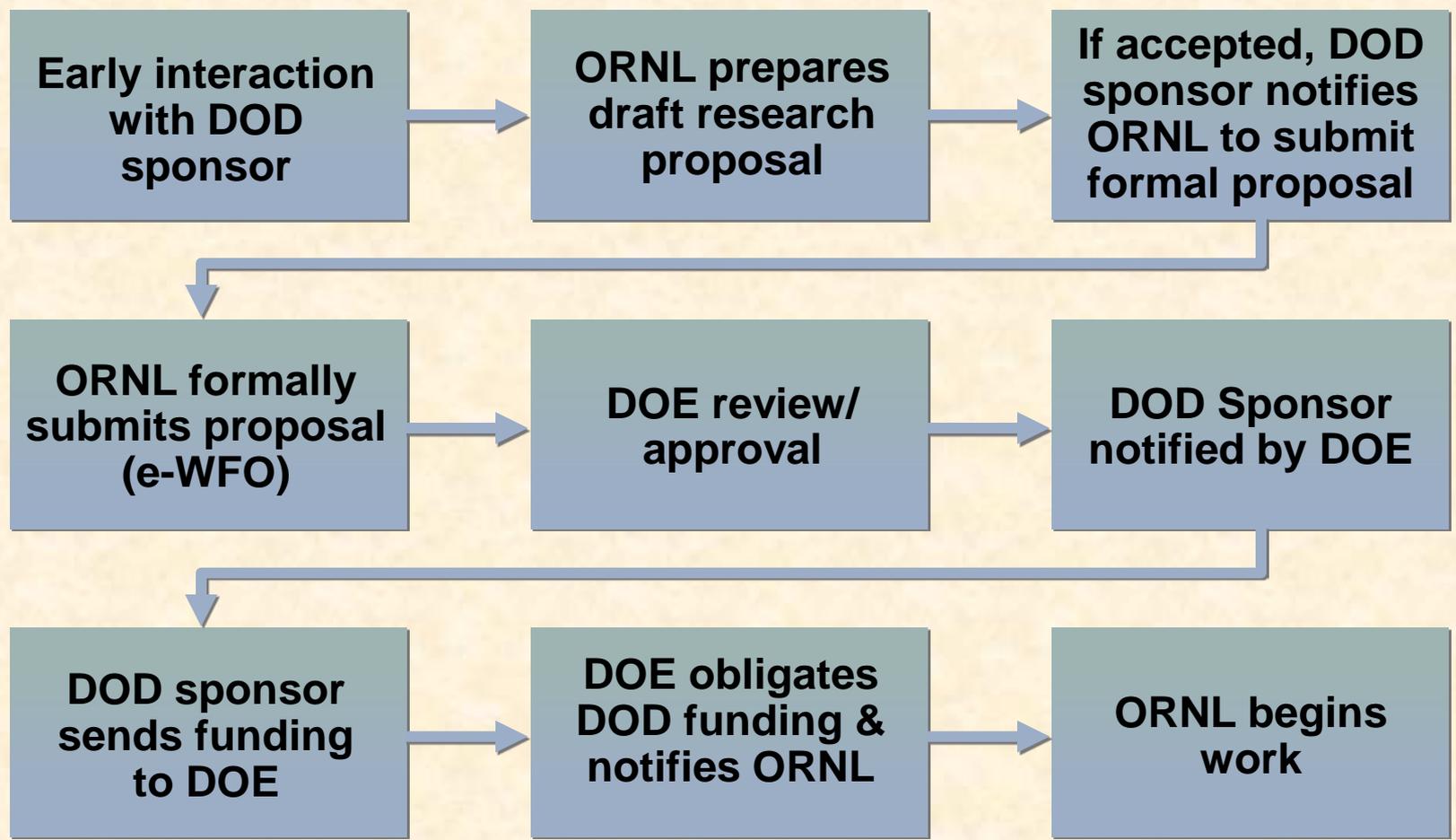
# Joint DOD & DOE Regulatory Reimbursable Work Process

- **Federal Acquisition Regulation (FAR) 17.500, “Interagency Acquisitions” and DOD 217.5, “Interagency Acquisitions”**
- **OMB Memorandum, dated June 6, 2008, “Improving the Management and Use of Interagency Acquisitions”**
- **DODI 4000.19, “Interservice and Intragovernmental Support”**
- **DOE Order 481.1C, “Non-DOE Funded Work”**
- **DOD Memorandum, dated May 1, 2013, “Department of Defense-Wide Policy for using the Department of Energy’s Work for Others Program to Access DOE-owned Research, Development, and Production Facilities through Interagency Agreements”**
- **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, dated May 1, 2013**

# Implementation Process overview

- **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 the requesting DOD entity and the servicing DOE ORNL Site Office (OSO) .**
- **DOE OSO 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 to be furnished from DOE OSO by 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

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

# The IA Approval Process (cont.)

- **DOE OSO 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-OSO 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 OSO 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 OSO, 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 OSO 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 OSO 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 OSO 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 OSO 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 OSO 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 OSO 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.**

## RESEARCH AND TECHNICAL ASSISTANCE PROGRAM FOR FOREIGN ENTITIES<sup>1</sup> AT OAK RIDGE NATIONAL LABORATORY (ORNL)

### **The Department of Energy (DOE) Mission is to Research Science Areas and to Furnish Novel Technologies**

The DOE sponsors a research and technical assistance program for foreign entities. Within DOE, this research and technical assistance is called the Work for Others (WFO) program. For foreign entities, DOE is authorized to provide specialized technical assistance and to make arrangements (including contracts and agreements) for conducting research and development activities. This work activity includes participating in joint or cooperative research, developmental, or experimental projects. The U.S. legal authority for such activity comes from statutes such as the Atomic Energy Act of 1954 (as amended), the Energy Reorganization Act of 1974 (Section 107a of Public Law 93-438) and the DOE Organization Act (Public Law 95-91). The DOE utilizes Oak Ridge National Laboratory (ORNL) to supply the requisite expert research talent and unique facilities to meet these technological needs.

### **Foreign Entity**

A foreign entity is (1) a non-U.S. organization based external to the United States; and/or (2) is not principally under the laws and regulations of the United States (even though a subsidiary may be); and/or (3) means any partnership, corporation, association, or institution where 75 percent or more of the voting interest is owned by non-U.S. citizens. A foreign entity falls into one or more of these categories:

1. International Organizations (e.g., International Red Cross)
2. United Nations Organizations (e.g., International Atomic Energy Agency)
3. Foreign Governments (e.g., Canada, Germany, Japan, Brazil, Egypt)
4. Foreign Companies (e.g., Siemens AG in Germany, Phillips Electronics in the Netherlands, Matsushita in Japan)
5. Foreign Government Corporations (e.g., British Petroleum of Great Britain, Thompson-CSF of France, or Korean Atomic Energy Research Institute)
6. Non-Governmental Organizations (i.e., NGO which normally are a voluntary, non-profit type of organization and which have a social service, medical, humanitarian, or environmental objective to accomplish, e.g., “*Doctors Without Borders*” or “*Green Peace*”)
7. Foreign Persons (i.e., the term foreign person means any person who is not a citizen or national of the United States or lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act and includes foreign corporations, international organizations, and foreign governments.) (22 USC Sec. 2778(9) (C))

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<sup>1</sup> As of June 17, 2013. Prepared by David W. Bradford, ORNL, at [bradforddw@ornl.gov](mailto:bradforddw@ornl.gov) or (865) 574-9798.

## **Research or Technical Assistance Categories Provided by ORNL for DOE**

DOE can furnish specialized help in three domains of expertise. These are:

1. Non-nuclear research or technology assistance.
2. Limited nuclear research or nuclear-related technology assistance. (See 10 Code of Federal Regulation (CFR) 810 for policy and approval requirements.)
3. Visits or assignments of foreign nationals to DOE facilities.

### **What Does ORNL Bring to the Table?**

- Access to DOE's most diverse multi-program research and technical facilities at ORNL for:
  - ◆ Basic Research
  - ◆ Applied Research
  - ◆ Applied Development
- World-class energy research capability
- The world leader in neutron science
- Incredible Biotechnology and Bioengineering expertise
- Environmental security
- World-class materials science research and facilities
- World-class supercomputer computational & network capability
- Specialized consulting in multiple scientific fields
- Access to rest of DOE National Laboratory System
- Access to University Research through University of Tennessee (UT)
- Access to National Transportation Research Center, Inc. (NTRC)
- Access to Battelle Corporation and Affiliates expertise

### **Legal Parameters**

For those activities involving nuclear-related activities, a review will be done for compliance with the Price Anderson Act, as amended and Nuclear Non-Proliferation concerns. This requirement is based on the liability considerations of the Price Anderson Act and Amendments (PAAA - 42 U.S.C. 2282a).

All DOE activities involving foreign entities must also comply with U.S. Export Compliance laws and regulations. Employees and subcontractors who send or personally carry outside the United States any equipment, commodities, information, or computer hardware and software must follow requirements in accordance with U.S. export control<sup>2</sup> laws and regulations.

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<sup>2</sup> Export Control at ORNL is governed by the U.S. laws and regulations. Contact the Export Compliance Manager, Rolf Migun, at ([migunrp@ornl.gov](mailto:migunrp@ornl.gov) or (865) 576-7230 to determine if any export/import licenses are required. Recognize early any need to export and plan ahead. A license from either the Department of State or Department of Commerce can take several months to process.

Contacts with foreign entities are also covered under the Foreign Corrupt Practices Act (FCPA). Both DOE and ORNL mandate that all professional or business contacts will scrupulously adhere to the letter and spirit of the FCPA. The FCPA prohibits giving any thing of value to a foreign official for the purpose of influencing a foreign government. All transactions involving foreign officials must be coordinated with ORNL and DOE legal departments.

### **Why should a Foreign Sponsor come to ORNL for research and development or for technical assistance?**

The U.S. government's interest in furthering industrial competitiveness and scientific advances encourages innovative approaches and solutions to technical problems facing a foreign sponsor. As such, ORNL furnishes various options in solving issues early in a product or systems developmental life cycle. The U.S. government's considerable investments in basic technology research and development have provided a substantive scientific foundation of knowledge at ORNL.

A foreign sponsor may be trying to develop increased research or technological capabilities to meet their technical shortfalls or to satisfy requirements in their Business Plan. As such, the use of ORNL may be suitable for these initial research efforts and prototype tests where product or scientific feasibility is being established. ORNL can establish the scientific parameters of achievement during this early research phase where subjective evaluations are the rule rather than the objective evaluation of criteria against business strategies. At this research stage, general performance specifications only cover the minimum essential requirements. A foreign sponsor might have only the initial performance specifications available. ORNL can address the sponsor's technical requirements to determine output, function, or operation of items or equipment. This allows an unbiased technical approach in the details of design, fabrication, formulation, and initial pilot or prototype by the ORNL research team.

To reach the stage where design specifications are available for maximum commercial development, a model is developed. To assure adequacy of the performance specifications, the prototype is tested and deficiencies are corrected at minimal cost. Since performance specifications are not restrictive to any particular method or process, this approach permits an objective approach when the sponsor prototypes are finished, conserves sponsoring company's funds, and expedites the system or product when it is ready for final development, manufacturing, and/or marketing.

### **DOE Administrative Processing**

DOE accepts taskings from a foreign sponsor to meet a research or technological requirement. DOE performs work that is consistent with its overall scientific mission, is relevant to the DOE unique capabilities or special competencies, is consistent with U.S. foreign policy objectives, and is in consonance with U.S. laws. Prior to work beginning, ORNL will prepare for DOE approval

a research proposal describing the work to be performed. Upon approval, DOE will formally notify ORNL to begin agreement negotiations with the foreign sponsor so that work can begin.

Some tasks require an approval by DOE-Headquarters in Washington, D.C. Examples of these transactions are:

1. Work directly funded by a foreign sponsor and performed at a DOE facility requires the review and concurrence of the Office of International Science and Technology Cooperation.
2. General Counsel establishes policy on patent and technical data, advises on patent and technical data clauses of contracts, and approves waiver of patent rights for foreign entities.
3. Work for Others activities involving human subjects, including research that is classified and proprietary, whether performed domestically or in an international environment, can begin only if it is conducted in compliance with Federal regulations and DOE requirements for human subject protection.
4. Work that involves a space nuclear reactor or non-commercial power reactor and radioisotope power source projects at DOE facilities requires the concurrence of the Director, Office of Space and Defense Power Systems.
5. DOE Program Secretarial Officers review and concur in foreign-sponsored WFO agreements that use program developed technologies.
6. The DOE Office of Science must initially approve each individual WFO arrangement with a foreign sponsor.

### **WFO Partnership Agreements**

Research or technical assistance efforts at ORNL are performed under one of two agreement mechanisms, either a Material Services Order Form (MSOF) or a DOE WFO Agreement with intellectual property provisions.

The MSOF uses a one page abbreviated agreement format between the requesting foreign sponsor and UT-Battelle, LLC (the DOE performance-based contractor managing and operating the ORNL facility) if there are no intellectual property concerns involved. If the foreign entity has special requirements for proprietary information protection, ORNL will attach a Proprietary Information Agreement to the MSOF. *The sponsor's proprietary information associated with the research or technical development will be protected and safeguarded from inappropriate disclosure.*

Where there items on intellectual information or patent rights involved or that need to be addressed, a DOE WFO standard agreement will be initiated as the preferred form of agreement. If the foreign sponsor cannot accept the DOE agreement language as is, a negotiated agreement is the next step and will be conducted among the foreign sponsor, the local DOE ORNL Site Office (OSO), and ORNL. If the foreign sponsor's concerns cannot be satisfied within the authorized discretionary approval areas of the DOE OSO, all future negotiations will then be conducted by DOE Headquarters in Washington, D.C., and assisted by the U.S. Department of State.

Periodically, there may be minor language sensitivities in abbreviations, form titles, or acronyms used within either a MSOF or a WFO agreement. Where there will be no substantive difference in the meaning of the proposed WFO agreement, DOE may agree to modify language to meet the concerns of the foreign sponsor. However, the English language version of the signed WFO agreement will always take precedence.

### **Administrative Recovery of DOE Program Costs**

Based on U.S. Public Law 105-261, DOE is authorized to levy a flat 3% surcharge to cover DOE administrative processing and overhead costs. This surcharge is called the Federal Administrative Charge (FAC) and the FAC is charged on all non-DOE-funded work.

Foreign sponsors will provide an advance payment in U.S. dollars equal to three months of estimated effort prior to work commencing. This advance funding provision is mandated by U.S. Federal Law and is included in the basic DOE WFO agreement. During the conduct of the project, ORNL will invoice monthly for accumulated expenses (that is, funds spent) plus FAC against the project. It is the responsibility of the foreign sponsor to pay the invoices or work may be stopped.

As an exception to the 90-day advance payment option, DOE may agree to a 30-day advance payment option given the following written assurances or guarantees:

1. No DOE appropriated funds will be used to cover any foreign sponsor's work requirements (unless specifically approved in writing by DOE Chief Financial Officer as part of an U.S. Government or DOE International Voluntary Agreement).
2. The foreign sponsor must provide full funding in advance for all projects with estimated costs up to \$25,000.
3. For project costs exceeding \$25,000 and will take longer than 90 days to complete, a pre-determined partial cash advance<sup>3</sup> will be provided by the foreign sponsor by a specific monthly date agreed to in the WFO agreement. This monthly advance payment will be prior to, or in lieu of, receiving an invoice for payment for prior expenditures.
4. During the life of the project, invoice adjustments will be made to reflect actual expenditures versus advance payments<sup>4</sup>. At the end of the project, any surplus funding will be returned to the foreign sponsor.

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<sup>3</sup> The initial partial cash advance requirement for a project is the sum of the following: (1) estimated total cost for the current business month; (2) estimated in-house cost for the next business month; and (3) estimated outstanding commitments at the end of the current business month.

<sup>4</sup> Second and subsequent partial advances will represent the sum of the next business month estimated in-house costs plus the change in outstanding commitments for the current business month.

## **DOE Relationships with its Performance-based Contractors**

DOE competitively awards management and operating (M&O) contracts to manage and operate DOE facilities. These M&O contractors are financially integrated with DOE and operate under strict DOE controls and guidelines. The DOE M&O performance-based contractor that operates ORNL is UT-Battelle, LLC, which is a distinct "arms-length" subsidiary of its parent organizations (the University of Tennessee and Battelle Memorial Institute). UT-Battelle, LLC is established exclusively to perform work assigned by DOE, including work which DOE accepts from private companies. A DOE M&O contractor is a financially-integrated contractor of DOE and is vital to understanding the role that DOE plays in technology research and applied development for the potential foreign sponsors by utilizing its network of national laboratories, such as ORNL.

DOE establishes the programmatic controls, oversight functions, customary reporting information, and general categories and procedures for the overhead cost structure for UT-Battelle, LLC. DOE approves all overhead rate categories.

# THE VALUE OF THE DEPARTMENT OF ENERGY'S RESEARCH AND TECHNICAL ASSISTANCE PROGRAM (WORK FOR OTHERS PROGRAM)<sup>1</sup>

## *TO THE WORLD!*

- Exploring and expanding the frontiers of science and technology to identify and solve global challenges.
- Supporting the progression of scientific knowledge as a lever for advancing intellectual discussion free from political or commercial ideologies.
- Promoting and furthering independent and objective analyses to discover scientific truth.
- Encouraging innovation by using U.S.-developed world class core competencies.

## *TO THE NATION!*

- Encouraging intellectual curiosity.
- Making important scientific discoveries for more efficient energy sources, new materials, and related technologies.
- Helping to maintain the strength of the U.S. national security.
- Supporting the foreign, national security, and economic policies of the United States.

## *TO THE U.S. COMMERCIAL AND UNIVERSITY SECTORS!*

- Enhancing scientific and technological development.
- Transferring bias-free technologies and methodologies to encourage commercial development.
- Increasing the scientific research and engineering capabilities of the nation as a whole.
- Reinforcing scientific education and outreach programs for all groups, regardless of background or status.

## *TO THE U.S. GOVERNMENT!*

- Expanding technological requirements demand the reduction of duplication and more efficient use of federal resources.
- Reducing costs to the U.S. Taxpayer.
- Maintaining scientific objectivity without a commercial bias.
- Supporting the homeland security, national security, and scientific research policies of the United States.

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<sup>1</sup> As of June 18, 2013. Prepared by David W. Bradford, ORNL WFO Program Office, (865) 574-9798 or [bradforddw@ornl.gov](mailto:bradforddw@ornl.gov)

***TO THE DEPARTMENT OF ENERGY!***

- **Originating world-class core competencies in technologies that include energy, pollution control and remediation, advanced materials, advanced instrumentation, biotechnology, advanced prototype development, information and communication software, aerospace and transportation, high-performance computing, modeling and simulation, and advanced weapons technologies and sensors.**
- **Accomplishing research or technology goals that may otherwise be unattainable, and avoiding unnecessary duplication of effort.**
- **Maintaining core competencies and enhancing the science and technology base at DOE facilities.**
- **Offsetting the costs of running DOE programs and facilities and thereby showing economic efficiencies.**

## **What is Work For Others (WFO)?**

- The Department of Energy (DOE) offers the WFO mechanism to provide research and technical assistance to solve problems and provide working models or prototypes. This scientific help is done for federal agencies, commercial companies, local and state governments, and foreign entities.
- Succinctly, WFO is research or technical assistance done by a DOE Laboratory or a DOE Technology Center for a non-DOE entity, either private or federal. Work is fully funded on a reimbursable basis by the non-DOE entity.
- The DOE uses the Oak Ridge National Laboratory (ORNL) to conduct the research and development or specialized technical assistance for a WFO sponsor.
- WFO objectives are to:
  1. furnish research assistance and aggregate technical resources in accomplishing goals of a national concern that may otherwise be unattainable,
  2. make available access to highly specialized or unique facilities, services, or technical expertise, and
  3. increase research and development (R&D) interactions between ORNL and the U.S. domestic sector to facilitate technology transfer.

## **What are the WFO Work Parameters?**

- WFO projects may be either R&D or non-R&D services to the requesting organization.
- Work must be consistent with the mission and/or special expertise of the DOE and ORNL.
- Work must not affect the achievement of DOE work requirements.
- Work must not directly compete with the domestic U.S. private sector.
- Title to invention of WFO sponsor's requirement goes to sponsor under class patent waiver.
- Sponsor's proprietary data will be protected.
- The US government retains a nonexclusive royalty free license to any WFO invention.
- Safeguards are in place to preclude organizational conflicts of interest (e.g., disclosure to WFO sponsor regarding background intellectual property).