

Approved: 2-28-03
Expires: 2-28-04

SUBJECT: REIMBURSABLE WORK FOR DEPARTMENT OF HOMELAND SECURITY

1. OBJECTIVE. To authorize a modified process for the acceptance, performance, and administration of work from the Department of Homeland Security (DHS) by Department of Energy (DOE) contractor and federally operated laboratories, sites, and other facilities.
2. CANCELLATIONS. None.
3. APPLICABILITY.
 - a. DOE Elements. This Notice applies to all DOE elements listed in Attachment 1, including the National Nuclear Security Administration (NNSA).
 - b. Site/Facility Management Contracts.
 - (1) The Contractor Requirements Document (CRD), Attachment 2, sets forth requirements of this Notice that, on an interim basis, will apply to site/facility management contracts that include the CRD.
 - (2) This Notice does not automatically apply to other than site/facility management contracts. Any application of any requirements of this Notice to other than site/facility management contracts will be communicated separately from this Notice.
 - (3) Contracting officers are responsible for incorporating the CRD into site/facility management contracts via the Laws, Regulations, and DOE Directives clause of the contracts.
 - (4) As the Laws, Regulations, and DOE Directives clause of site/facility management contracts states, regardless of the performer of the work, a site/facility management contractor with the CRD incorporated into its contract is responsible for compliance with the requirements of the CRD.
 - c. Exclusions. None.
4. BACKGROUND. DOE O 481.1B, *Work for Others (Non-Department of Energy Funded Work)*, dated 9-28-01, sets forth the objectives, applicability, requirements, and responsibilities for DOE Federal employees and DOE contractor personnel performing work and/or using DOE facilities to perform work that has not been directly funded by

DOE appropriations for non-DOE entities. Among other things, the Order requires certain determinations be made consistent with the requirements of the Economy Act of 1932, as amended (31 U.S.C. 1535), and the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.), and their implementing regulations. The Order also provides requirements for the reimbursement of costs and payment of other charges.

The Homeland Security Act of 2002 (Act) authorizes DHS to access the capabilities of DOE's laboratories and other sites to further DHS mission objectives. In order to ensure the availability of DOE capabilities under the existing site contracts on March 1, 2003, the Secretary of Energy and the Secretary of Homeland Security entered into a Memorandum of Agreement (MOA), dated February 28, 2003. This MOA, among other things, implements provisions of the Act specifying that, notwithstanding any other law governing the administration, mission, use or operation of any DOE national laboratories or sites, DOE may accept and perform work for DHS at those laboratories and sites, consistent with the resources provided, and perform the work on an equal basis with other missions at the site and not on a non-interference basis with other missions of the site. The Act further provides that DHS will reimburse DOE for the work performed through a method under which DOE waives any requirement for DHS to pay administrative charges or personnel costs of DOE or its contractors in excess of the amount that DOE pays for work performed by its contractors. Lastly, under the Act, DHS funds are not to be expended for laboratory directed research and development unless such activities support the missions of DHS.

5. REQUIREMENTS. Work for DHS shall be accepted, performed, and administered in accordance with the terms of the attached MOA. The Office of Management, Budget and Evaluation, in coordination with the Office of General Counsel and the National Nuclear Security Administration, are in the process of developing additional information and direction to cognizant DOE contracting officers and other affected Federal and contractor personnel identifying the processes and requirements to ensure the efficient implementation of the MOA.
6. CONTACT. For additional information, contact Mary H. Egger, Office of General Counsel, at (202) 586-5246

BY ORDER OF THE SECRETARY OF ENERGY:



KYLE E. McSLARROW
Deputy Secretary

DOE ORGANIZATIONS TO WHICH DOE N 481.1 IS APPLICABLE

Office of the Secretary
Chief Information Officer
Office of Civilian Radioactive Waste Management
Office of Congressional and Intergovernmental Affairs
Office of Counterintelligence
Departmental Representative to the Defense Nuclear Facilities Safety Board
Office of Economic Impact and Diversity
Office of Energy Efficiency and Renewable Energy
Energy Information Administration
Office of Environment, Safety and Health
Office of Environmental Management
Office of Fossil Energy
Office of General Counsel
Office of Hearings and Appeals
Office of Independent Oversight and Performance Assurance
Office of the Inspector General
Office of Intelligence
Office of Management, Budget and Evaluation and Chief Financial Officer
National Nuclear Security Administration
Office of Nuclear Energy, Science and Technology
Office of Policy and International Affairs
Office of Public Affairs
Office of Science
Secretary of Energy Advisory Board
Office of Security
Office of Worker and Community Transition
Office of Energy Assurance

Bonneville Power Administration
Southeastern Power Administration
Southwestern Power Administration
Western Area Power Administration

CONTRACTOR REQUIREMENTS DOCUMENT

DOE N 481.1, *Reimbursable Work for Department of Homeland Security*

This Contractor Requirements Document (CRD) establishes the requirements for Department of Energy (DOE) contractors, including National Nuclear Security Administration contractors, performing work and/or using DOE facilities to perform work not directly funded by DOE appropriations for the Department of Homeland Security (DHS). Contractors must comply with the requirements listed in the CRD to the extent set forth in their contracts.

Regardless of the performer of the work, contractors with the CRD incorporated into their contracts are responsible for compliance with the requirements of the CRD.

DOE contractors with the CRD incorporated into their contracts must comply with the requirements of DOE N 481.1, *Reimbursable Work for Department of Homeland Security*, dated 2-28-03, including its attached Memorandum of Agreement (Attachment 3), and otherwise applicable rules, regulations, and directives. Further, the contractor must perform work for DHS according to any additional processes and/or requirements developed by DOE and conveyed to the contractor regarding performance of work for DHS.

**Memorandum of Agreement
Between
Department of Energy
And
Department of Homeland Security**

I. Preamble

This Memorandum of Agreement (MOA) between the Department of Energy (DOE) and the Department of Homeland Security (DHS) establishes a framework for DHS to access the capabilities of various DOE assets. It recognizes that DOE and DHS anticipate that DOE capabilities may assist DHS in executing its mission.

II. Scope and Objectives

This MOA provides broad guidance to enable DHS to gain efficient access to specific DOE capabilities. Certain provisions of this agreement may continue to be refined, resulting in amendments and appendices to this MOA.

III. Nuclear Incident Response Team Assets

This MOA delineates specific functions and responsibilities relative to the control, utilization, exercise of, and standards for Nuclear Incident Response Team (NIRT) assets. NIRT assets (with the exception of the RAP, which may continue to self-deploy under circumstances where self-deployment is currently authorized) will deploy at the direction of DHS for domestic events in connection with an actual or threatened terrorist attack, major disaster, or other emergency in the United States. These assets are:

- Accident Response Group (ARG) – DHS will assume operational control of this asset when the response is at other than a DOE or DOD facility;
- Radiological Assistance Program (RAP) – DHS will assume operational control of this asset when the response is at other than a DOE facility; in instances of self-deployment, the RAP, in addition to following existing procedures for notifying DOE, will normally notify the DHS within fifteen minutes of receiving the request for deployment;
- Aerial Measuring System (AMS) and the National Atmospheric Advisory Release Capability (NARAC) – DHS will assume operational control of these assets when the response is at other than a DOE or DOD facility;
- Federal Radiological Monitoring and Assessment Center (FRMAC) and Radiation Emergency Assistance Center/Training Site (REAC/TS) – DHS will assume operational control of these assets when their capabilities are required; and

- Nuclear Emergency Support Team (NEST) – DHS will assume operational control when the capabilities of the NEST assets are required.

The particulars of deployment and operational command of these assets, including security requirements, funding and reimbursement of costs, are set forth in the Appendix to this document.

IV. Performing work at DOE Laboratories and Sites

The Secretary of Energy will make the resources and expertise of the DOE national laboratories and other DOE sites, including production plants, available to DHS on mutually acceptable terms.

Arrangements with DHS for it to fund and conduct work at DOE national laboratories and other sites will reflect the following elements:

- DHS-funded work at a DOE national laboratory or site will be performed on an equal basis to other missions at the laboratory or site and not on a noninterference basis with other missions of such laboratory or site.
- No added administrative or personnel charges in excess of those paid by DOE will be charged for DHS work.
- DHS and DOE will mutually determine what long-term arrangements best serve the needs of both Departments with respect to DHS access to the national laboratories. In the interim, DOE will make the national laboratories available to DHS under existing DOE contracts consistent with the other terms set out in this portion of the MOA.
- DHS work performed pursuant to this interim process will be accomplished through the issuance of work assignments using the system currently in place under the respective contracts and subject to the environmental, safety, security, intelligence, and counterintelligence policies and procedures that apply to DOE work at that location, except that the DHS financial and budget resource allocation decisions associated with DHS work will not require further DOE approval. The cost charged DHS for its activities at each DOE national laboratory or site will be consistent with the cost of similar work performed for DOE at that laboratory or site.
- DHS and DOE will establish appropriate mechanisms to resolve any issues relating to the prioritization of work that might arise at the site. To the extent that DHS work is conducted under a DOE contract, the resolution of any work prioritization issues will be communicated to the contractor exclusively through a DOE Contracting Officer. This MOA shall not be construed to be inconsistent with the Contracting Officers' authority over and responsibility for the administration of the site contracts..
- For work performed under DOE contracts pursuant to this interim process, the DOE Contracting Officer for each laboratory or site's operations will provide for the particulars of conducting DHS-funded work requests consistent with these elements.

DHS and DOE may also enter into basic ordering arrangements to have multiple projects performed at a particular DOE facility. DHS may establish by agreement with DOE an appropriate DHS presence at any DOE site to direct, coordinate, and monitor the DHS work being performed at that site. Site-specific details will be established through separate implementing agreements.

V. DHS Intelligence Activities at DOE National Laboratories and Other Sites

DHS projects and programs that utilize intelligence personnel, information, technology or systems at the DOE national laboratories or sites will be conducted through the Intelligence Work-for-Others Program (IWFO), administered by the DOE Office of Intelligence.

VI. Other Areas of Agreement

Access authorization: DOE-cleared personnel transferred to DHS and continuing to require access to DOE classified information and facilities will retain their current DOE access authorizations until DHS can maintain and administer clearance for those personnel. DOE will expedite the process for DHS personnel requiring initial Q or L clearances for access to DOE classified information and facilities. Previously granted SCI clearances for DOE personnel transferred to DHS also will be retained by DOE until such time as DHS assumes responsibility for maintaining and administering those clearances. All DOE security requirements pertaining to acquiring and maintaining clearances will apply to those DHS personnel afforded access under the terms of this MOA.

Special Access Programs: All work for DHS that is to be conducted as a special access program (SAP) in any DOE laboratory, plant, site or facility must be approved by the Executive Secretary, DOE Special Access Program Oversight Committee (SAPOC) prior to initiation of work. Intelligence SAPs must be reviewed and accepted by the DOE Director, Office of Intelligence, and are not under the purview of the SAPOC.

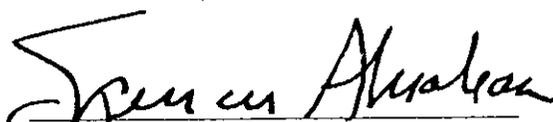
Counterintelligence: DHS will comply with the counterintelligence protections and requirements currently in place at DOE sites for any facilities at DOE sites where DHS may locate personnel pursuant to this agency agreement.

Role of the DOE Office of Independent Oversight and Performance Assurance (OA): DOE OA will provide independent oversight of all safeguards and security, cyber security for non-intelligence systems, emergency management, and environment, safety and health programs for DHS work performed at DOE facilities

Role of the DOE Office of Inspector General: All DHS work conducted at DOE facilities will be within the purview of the DOE OIG, in coordination with the DHS OIG.

VII. Termination, Modification and Sunset Review

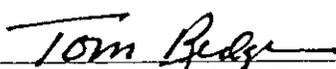
This MOA is effective on the date of the last signature and will remain in effect until it is terminated by mutual agreement of the Parties or by either Party's providing ninety days' written notice to the other. This MOA may be modified at any time by written agreement of the Parties. Nothing in this MOA shall be interpreted to limit or otherwise affect any authorities, powers, rights, or privileges accorded to DHS or DOE or any of their officers, employees, or organizational units under any statute, rule, regulation, contract, or agreement.



Secretary of Energy

February 28, 2003

Date



Secretary of Homeland Security

Feb. 28, 2003

Date

Appendix

Nuclear Incident Response Team Assets

The Nuclear Incident Response Team (NIRT) is defined in the Homeland Security Act of 2002 as: “those entities of the Department of Energy that perform nuclear or radiological emergency support functions (including accident response, search response, advisory, and technical operations functions), radiation exposure functions at the medical assistance facility known as the Radiation Emergency Assistance Center/Training Site (REAC/TS), radiological assistance functions, and related functions.” This Appendix delineates specific functions and responsibilities relative to the control, utilization, exercise of, and standards for those assets. The specific assets covered are:

- the Accident Response Group (ARG);
- the Aerial Measuring System (AMS);
- the Federal Radiological Monitoring and Assessment Center (FRMAC);
- the National Atmospheric Advisory Release Capability (NARAC);
- the teams that comprise the Nuclear Emergency Support Team (NEST);
- the Radiation Emergency Assistance Center/Training Site (REAC/TS); and
- the Radiological Assistance Program (RAP).

1. Deployment and Operational Control of the DOE Radiological Emergency Response Assets

The Parties agree that the radiological emergency response assets of DOE, with the exception of RAP, will deploy at the direction of the Secretary of Homeland Security (or other DHS official as authorized by law) for domestic events in connection with an actual or threatened terrorist attack, major disaster, or other emergency in the United States (as defined in the Homeland Security Act of 2002).

While deployed or when providing assistance, the DOE radiological emergency response assets or their emergency-specific activities associated with the assistance being provided shall fall under the operational control of the Secretary of Homeland Security for the length of the deployment. Under this Appendix, the Parties agree that operational control is the authoritative direction over all aspects of nuclear/radiological operations and provides the authority to perform those functions of command and control over the response assets involving planning, deploying, assigning tasks, designating objectives, and giving authoritative direction necessary to accomplish the mission. Operational control provides full authority to the Secretary of Homeland Security, or his designee, to organize the deployed assets and/or establish assistance priorities as necessary to accomplish assigned missions. It does not, per se, include responsibility for supplies, equipment, administration, discipline, or internal organization. Nor does it apply to those activities being performed by those assets that are not related to the emergency for which they are being deployed or for which their assistance was required. All operational

functions shall be consistent with current Presidential Decision Directives and Executive Orders. All deployed assets will support the designated Lead Federal Agency and the DHS-designated On-Scene Commander. Operational control of the assets by the Secretary of Homeland Security applies only within the United States. Policies and procedures related to DOE intelligence support for these activities will be covered under a separate appendix.

Specific direction for each response asset is detailed below:

ARG – DHS will assume operational control of this asset when the response is at other than a DOE or Department of Defense (DOD) facility.

RAP - DHS will assume operational control of this asset when the response is at other than a DOE facility. Radiological assistance through the RAP teams will continue to be available to all Federal, State, local, tribal authorities, commercial entities, and private citizens, upon request. RAP teams currently have the authority to self-deploy in order to provide this assistance in the timeliest manner. This authority to self-deploy remains unchanged; however, the RAP Regional Coordinator, or his designee, in addition to following existing procedures for notification of DOE, will normally notify the Secretary for Homeland Security or his designee, within 15 minutes of receiving the request for RAP support.

AMS and NARAC – DHS will assume operational control of these assets when they deploy for a response or the emergency-specific assistance being provided (e.g., modeling, dose projections/estimates, etc.) is at or for a location other than a DOE or DOD facility.

FRMAC and REAC/TS – DHS will assume operational control of these assets when their capabilities are required, they deploy for a response, or the emergency-specific assistance being provided (e.g., medical treatment advice, decontamination guidance, etc.) is at or for a location other than a DOE or DOD facility.

NEST – DHS will assume operational control when the capabilities of the NEST assets are required. While some of the teams under the NEST provide specific, time critical support to the DOD, they remain under the operational control of DHS.

2. Liaison Between DOE and DHS

The Parties agree that during a DHS deployment of the response assets, DOE will provide a liaison officer (DOE LNO) to the DHS Secretary, or his designee, to assist with incident management. The necessity for a DOE LNO for a RAP Team deployment will be decided jointly by DHS and DOE on a case-by-case basis. The DOE LNO will have knowledge of the DOE radiological emergency response assets, their capabilities, limitations, and employment. Additionally, DOE will designate and deploy a Senior Energy Official to the emergency location to act as the single point of contact for DOE nuclear/radiological support provided to the Lead Federal Agency and On-Scene

Commander. When a Senior Energy Official is designated, that person will report to the DHS Secretary, or his designee, for the duration of the deployment.

3. Exercises and Training

The DHS Secretary, or his designee, will plan, coordinate, and conduct exercises and training with the NIRT. Exercises and training will take the form of scheduled and no-notice readiness drills and deployments of all or part of DOE radiological emergency response assets. The Parties agree that DHS will provide funding to DOE for homeland security planning, exercises, and training. The DHS Secretary, or his designee, will coordinate and de-conflict the exercise and training schedule with all appropriate agencies and departments to ensure that no DOE radiological emergency response assets are tasked concurrently by multiple departments to support non-emergency-related activities.

4. Standards

The DHS Secretary, or his designee, will establish operational and technical standards for the NIRT. The operational standards will consist of statements of desired nuclear/radiological response capabilities. The technical standards will consist of criteria that delineate specific scientific requirements for the radiological response assets. These technical requirements will be coordinated with DOE and jointly managed between DHS and DOE. DHS will be responsible for the research, development, testing, fielding and funding of any new equipment required.

5. Safety and Security

The Parties agree that safety and security are paramount concerns when the NIRT is activated and DOE radiological emergency response assets are deployed. All existing DOE safety and security requirements for the DOE radiological emergency response assets shall remain in effect.

6. Financial Considerations

The DHS Secretary, or his designee, will establish a mechanism to reimburse DOE for services and equipment stipulated elsewhere in this Appendix.

With regard to available funding for NIRT, the Parties recognize that the total enacted funding (prior to the application of offsetting reductions directed by Congress) for DOE Nuclear Weapons Incident Response activities in FY 2003 is \$83.8 million and that the President's FY 2004 budget request for these activities is \$89.7 million. The Parties acknowledge that the amount set out in the President's FY 2004 request is needed to support the entire infrastructure of the assets and is not available solely for deployments. The Secretary of Energy and Secretary of Homeland Security, or their designees, will monitor available funding throughout the fiscal year and establish benchmarks to determine if budgetary resources are sufficient to meet anticipated deployment requirements. Should the Parties determine that available resources are not sufficient,

DHS and DOE jointly will pursue any additional funding required for anticipated deployments (to include reprogramming and appropriation transfer actions, budget amendment, or a Supplemental funding request) with the Office of Management and Budget and the Congress.

The Parties agree that, in the President's FY 2005 Budget Submission, DHS will request funds for necessary DHS deployment activities for the reimbursement to DOE as required based on the principle that the Department that directs the deployment is responsible for paying for the deployment.

7. "Hotwash" Lessons-Learned Sessions

DOE will invite representatives of DHS to participate in the "hotwash" lessons-learned sessions to be conducted by DOE after each DHS deployment or exercise.

8. DOE Order Review

DOE will review each DOE Order covering NIRT assets, including the pending proposed Order to consolidate all NIRT Orders ("NIRT Consolidation Order"), and insure that the requirements of the final NIRT Consolidation Order are consistent with the DOE-DHS Memorandum of Understanding (MOU), including this Appendix. DOE will provide the relevant existing Orders and draft NIRT Consolidation Order to DHS and consult it with respect to any changes that either Party believes necessary. In the event of an inconsistency with the MOU before the inconsistency is corrected in the issuance of the final NIRT Consolidation Order, the Parties will agree on interim measures.