

U.S. Department of Energy
Washington, D.C.

ORDER

DOE O 484.1

Approved: 8-17-06
Admin Chg 1: 3-14-11
Admin Chg 2: 6-30-14
Certified: 1-15-15

SUBJECT: REIMBURSABLE WORK FOR THE DEPARTMENT OF HOMELAND SECURITY

1. OBJECTIVE. To establish Department of Energy (DOE) policies and procedures for the acceptance, performance, and administration of reimbursable work directly funded by the Department of Homeland Security (DHS).
2. CANCELLATION. DOE N 481.1A, *Reimbursable Work for Department of Homeland Security*, dated 4-21-03, and DOE N 251.62, *Extension of DOE N 481.1A*, dated 4-21-05, are canceled. Cancellation of the above Notices does not modify or otherwise affect any contractual obligation to comply with the Notices. Canceled Notices that are incorporated by reference in a contract remain in effect until the contract is modified to delete the reference to the requirements of the canceled Notices.
3. APPLICABILITY.

- a. DOE Elements. Except for the exclusions in paragraph 3c, this Order applies to all DOE elements.

The NNSA Administrator will ensure that NNSA employees and contractors comply with their respective responsibilities under this Order.

For purposes of clarity, where the DOE acronym is used in this Order both NNSA and non-NNSA organizations within DOE are included unless otherwise noted. When necessary, a clear distinction will be made between NNSA and non-NNSA organizations within DOE.

- b. DOE Contractors.

- (1) Except for the exclusions in paragraph 3c, the Contractor Requirements Document (CRD), Attachment 1, sets forth requirements of this Order that will apply to site/facility management contracts that include the CRD.
 - (2) This CRD must be included in site/facility management contracts to provide authorization to the contractor to perform reimbursable work for DHS under the facility management contract.

- c. Exclusions.

- (1) Any work performed on a reimbursable basis under DOE O 481.1C, *Work for Others (Non-Department of Energy Funded Work)*, dated 1-24-05.
 - (2) Work conducted under an agreement with the private sector or other agencies, regardless of whether the funds originated with DHS.

- (3) DHS activities that use DOE laboratory or site intelligence personnel, information, technology, or systems defined as “intelligence and intelligence-related” per section V of the “Memorandum of Agreement between Department of Energy and Department of Homeland Security,” dated 2-28-03, (DOE/DHS MOA), which provides that these projects will be conducted through and administered by the DOE Office of Intelligence and Counterintelligence.
 - (4) Work performed by the Bonneville Power Administration.
- 4. REQUIREMENTS. It is Departmental policy that DOE resources be available to DHS consistent with the Homeland Security Act of 2002, which authorizes DHS to access the capabilities of DOE’s laboratories and other sites to further DHS mission objectives. In addition, DOE will provide access to its facilities under the terms of the DOE/DHS MOA (Attachment 2). DOE O 481.1C does not apply to work directly funded by DHS. All DHS reimbursable work requires the approval of a DOE contracting officer or authorized designee. Approval must not be delegated to the contractor. 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 non-interference basis with other missions of such laboratory or site.
 - a. Unless otherwise noted in this Order, all DHS reimbursable work will be performed consistent with the terms and conditions set forth in the applicable DOE facility/site contracts and subject to other DOE approvals consistent with DOE work.
 - b. DHS is responsible for costs a DOE contractor incurs while performing work for DHS under DOE O 484.1, including third party liability costs determined allowable under the contract and consistent with the DHS approved scope of work.
 - c. DOE must base its review and approval of DHS reimbursable work on a DHS, DOE, or DOE contractor-prepared project proposal that clearly describes the agreed-to statement of work, work methodology, resources, and schedule.
 - d. DHS reimbursable work must—
 - (1) be within the DOE facility/site contract scope and in accordance with the terms and conditions of the contract,
 - (2) not propose work that requires a DOE contractor to incur costs or long-term liabilities that create an unfunded burden on DOE facilities and resources, and
 - (3) be consistent with applicable laws and regulations.

- e. Work will be priced in accordance with DOE pricing policies and the pricing provisions applicable to DHS work, which includes the following.
 - (1) Costs charged to DHS will be consistent with the costs of similar work performed for DOE.
 - (2) Costs for the DOE Federal administrative charge will not be assessed for directly funded DHS work.
 - (3) Amounts charged for general site safeguard and security surcharges or personnel costs will not be in excess of the amounts that DOE programs incur for similar work.
 - (4) Costs of DHS requirements for site safeguards, security, or personnel that can be attributed directly to a DHS project and exceed those of DOE for similar work may be charged to DHS. Such costs will be identified in the proposal.
 - (5) Laboratory-directed research and development (LDRD) costs to be charged will be identified to DHS in the proposal and will be consistent with costs charged to DOE for similar activities. The objectives of the LDRD program are to maintain scientific and technical vitality of the laboratories, enhance the laboratories' ability to address future DOE and national 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. Normally, LDRD will also include one or more of the following characteristics:
 - (a) advanced study of hypotheses, concepts, or innovative approaches to scientific or technical problems;
 - (b) experiments and analyses directed towards "proof of principle" or early determination of the utility of new scientific ideas, technical concepts, or devices; and
 - (c) conception and preliminary technical analyses of experimental facilities or devices.
 - (6) Language acknowledging/accepting LDRD charges must be included in the cover letter accompanying new/revised DHS proposals and in each DHS funding acceptance document (see Attachment 3).
- f. Equipment acquired as part of a project must be accounted for and maintained in the same manner as DOE property. Disposition of equipment must be as previously agreed or as instructed by DHS. Equipment shipping costs are the responsibility of DHS.

- g. Special access program (SAP) work requires the approval of the DOE SAP Oversight Committee before the start of work at any DOE or NNSA facility. Intelligence-related SAPs will be reviewed and approved by the Director, Office of Intelligence and Counterintelligence.
- h. DHS reimbursable work activities involving human subjects, including research that is classified, whether performed domestically or in an international environment, can begin only if they are conducted in compliance with Federal regulations and DOE requirements for human subject protection.
- i. DHS proposed project construction that exceeds the general plant project (GPP) threshold at a DOE site must be coordinated with the cognizant Secretarial Officer and the DOE Chief Financial Officer (CFO) for a DOE site or, for an NNSA site, the NNSA Associate Administrator for Management and Administration and the NNSA Director, Office of Field Financial Management. Projects must meet the following requirements:
 - (1) construction projects must be performed according to the requirements of DOE O 413.3B, *Program and Project Management for the Acquisition of Capital Assets*, dated 11-29-10, and
 - (2) title for permanent construction must vest with DOE. Title disposition for permanent construction located on DOE-owned or controlled property shall be determined and agreed upon between DOE and DHS during the initial planning stages of a project.
- j. In operating DOE Federally Funded Research and Development Centers (FFRDCs) or other facilities, a contractor may not respond to DHS Requests for Proposals or other DHS solicitations that involve head-to-head competition with the private sector as an offeror, team member, or subcontractor to an offeror.
- k. Unless prohibited by DHS policy, when these requirements are met and following notification to the cognizant field office, a DOE site/facility management contractor operating an FFRDC or other DOE facility may respond to DHS Broad Agency Announcements, financial assistance solicitations, and similar DHS solicitations that do not result in head-to-head competition with the private sector, subject to the requirements of this Order. These solicitations must meet the following requirements:
 - (1) announcements must be general research announcements 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 must be performed through a merit or peer review process using pre-established general selection criteria; and

- (3) primary basis for selection must be technical approach, importance to the Agency, and funds availability.
- 5. RESPONSIBILITIES—NON-NNSA ENTITIES WITHIN DOE. In keeping with Section 3220 of the National Nuclear Security Administration Act (P.L. 106-65), 50 U.S.C. 2410, responsibilities under this Order have been separated into DOE organizational responsibilities, below, and NNSA organizational responsibilities (paragraph 6). Unless otherwise noted, all DHS reimbursable work referred to in paragraph 5 and its subparagraphs is non-NNSA.
 - a. Deputy Under Secretary for Counterterrorism.
 - (1) Serves as DOE and NNSA senior point of contact with DHS.
 - (2) Provides DHS (Office of Science and Technology) a copy of DOE's annual report to Congress on LDRD activities.
 - b. Director, Office of Management.
 - (1) Coordinates the establishment of DHS reimbursable work policy and procedures with Secretarial Officers and NNSA officials.
 - (2) Conducts periodic reviews of the implementation of this Order by Secretarial Officers and heads of field organizations.
 - (3) Approves requests for excluding DHS projects from requirements of this Order [for NNSA exclusions see paragraph 6b(4)].
 - c. Chief Financial Officer.
 - (1) Concurs on all DHS construction projects that exceed the GPP threshold established by the DOE CFO.
 - (2) Develops and maintains financial information on DHS reimbursable work and prepares financial reports as required.
 - (3) Coordinates with the NNSA Director, Office of Field Financial Management, on approval of requests to exclude NNSA DHS projects from the requirements of this Order.
 - d. Director, Office of Procurement and Assistance Management. Ensures that the Director, Office of Headquarters Procurement Services, or an authorized designee, reviews and accepts all Headquarters-accepted DHS projects, unless delegated (see paragraph 5i).

e. General Counsel/Field Counsel.

- (1) Provides legal advice and representation on DOE issues related to DHS reimbursable work.
- (2) Establishes policy on patent and technical data in coordination with NNSA General Counsel/NNSA Field Counsel and in consultation with the DHS Office of General Counsel.
- (3) Advises on patent and technical data clauses of contracts in consultation with the DHS Office of General Counsel.
- (4) Approves waivers of patent rights in consultation with the DHS Office of General Counsel.
- (5) Provides the DHS Office of General Counsel quarterly reports of invention disclosures arising from reimbursable work directly funded by DHS.

f. Associate Director, Office of Biological and Environmental Research oversees the DOE (including NNSA) system to ensure that proposed DHS-reimbursable research using human or animal subjects complies with established Federal regulations and DOE requirements for the protection of these subjects.g. DOE Director, Office of Intelligence and Counter-Intelligence.

- (1) Develops and implements procedures for DHS intelligence and intelligence-related reimbursable work.
- (2) Reviews and approves proposed intelligence and intelligence-related DHS reimbursable work and intelligence SAPs through the appropriate site office.
- (3) Coordinates program reviews of intelligence and intelligence-related DHS reimbursable work with the participation of appropriate field organizations.
- (4) Reviews intelligence and intelligence-related DHS reimbursable work for duplication of effort.
- (5) Serves as the DOE, including the NNSA, central point of contact for coordination with DHS on intelligence and intelligence-related reimbursable work for DHS.
- (6) Ensures that the cognizant Secretarial Officer/NNSA Administrator is informed of problems in field management of intelligence and intelligence-related DHS reimbursable work.

- h. Director, Office of Security and Safety Performance Assurance provides for conducting independent evaluations to assess the effectiveness of environment, safety, health, and safeguards and security of DHS reimbursable work.

- i. Program Secretarial Officers.

When delegated the authority, accept agreements for DHS reimbursable work:

- (1) For work that is accepted at Headquarters but performed in the field, the responsible program Secretarial Officer, when delegated authority to accept agreements for DHS work, must ensure the cognizant field organization has met the requirements of this Order (paragraph 4) before accepting the project.
- (2) For work accepted and performed at Headquarters involving human and/or animal subjects, the responsible program Secretarial Officer must ensure that DOE and/or contractor representatives review proposed DHS projects for compliance with established Federal regulations and DOE requirements for protection of these subjects.

NOTE: If the responsible program Secretarial Officer has not been delegated authority to accept agreements for DHS reimbursable work, the Director, Office of Headquarters Procurement Services, will accept DHS projects.

- j. Cognizant Secretarial Officers.

- (1) Recommend changes in policies on reimbursable work for DHS to the Director, Office of Management.
- (2) Concur in all facility construction projects that exceed the DOE CFO GPP threshold.
- (3) Obtain concurrence from the CFO for facility construction projects that exceed the DOE CFO GPP threshold.
- (4) For DOE facilities under their cognizance—
 - (a) review DHS activities annually to be aware of the level and type of DHS activities being conducted and
 - (b) ensure that heads of the responsible DOE field organizations have developed and implemented procedures for review, acceptance, authorization, and monitoring of reimbursable work from DHS consistent with DOE policy [see paragraph 5k(3)].
- (5) Invite DHS to attend DOE annual LDRD reviews.

k. Heads of DOE Field Elements.

- (1) Function as Departmental managers for DHS reimbursable work conducted at facilities under their purview.

NOTE: In this capacity, heads of field organizations are accountable to the cognizant Secretarial Officers.

- (2) Provide notification to DOE contracting officers to incorporate the CRD into site/facility management contracts for those sites under their purview.
- (3) Develop and implement field procedures for DHS reimbursable work review, acceptance, authorization, notification to DHS of accepted work, and monitoring consistent with DOE policies and procedures.
- (4) Encourage parallel review and processing by DOE, DHS, and the site/facility management contractor to expedite reviews and approvals.
- (5) Conduct periodic reviews of contractor policies and procedures for negotiating and administering DHS reimbursable work projects.
- (6) Notify the cognizant Secretarial Officer of DHS reimbursable work projects that involve sensitive subjects.
- (7) Ensure that DOE and/or contractor representatives review proposed DHS reimbursable work projects involving human and/or animal subjects for compliance with established Federal regulations and DOE requirements for protecting these subjects.
- (8) Ensure that DHS reimbursable work projects under their purview are protected in accordance with applicable DOE security, safeguards, counter intelligence and classification policies; site security plans; and supplemental security plans specific to the projects.
- (9) Ensure that DOE and contractor representatives review DHS reimbursable work projects for compliance with the National Environmental Policy Act of 1969 and other environment, safety, and health requirements.
- (10) Ensure that the appropriate Headquarters program and/or administrative offices are involved in the DHS review process before accepting DHS work when such coordination/approval is required by this Order (paragraphs 4e and 4g).
- (11) Establish and implement closeout procedures for DHS reimbursable work projects.

- (12) Ensure that scientific and technical information resulting from DHS reimbursable work is coordinated with DHS and is consistent with existing DOE Orders and regulations before dissemination.
 - (13) Establish DOE performance goals and measures to assess field performance, effectiveness of local DHS reimbursable work processes, and impacts of subsequent improvements and additional requirements.
 - (14) Ensure that a summary of each active DHS reimbursable work project is maintained. At minimum, the information should include—
 - (a) project title and description,
 - (b) assigned laboratory or contractor,
 - (c) field points of contact,
 - (d) total estimated costs, and
 - (e) estimated start and completion dates.
 - (15) Ensure that project information documenting policy compliance is maintained by DOE and/or the performing contractor.
 - (16) In coordination with cognizant Secretarial Officers, submit to the Director, Office of Management, requests to grant exclusions from the requirements of this Order.
1. Contracting Officers, once notified by the head of the DOE field organization, are responsible for incorporating the CRD into site/facility management contracts. In addition, if the head of the DOE field organization has provided delegated authority, reviews and accepts DHS projects.
6. RESPONSIBILITIES—NNSA ORGANIZATIONS. Unless otherwise noted, all DHS reimbursable work referred to in paragraph 6 and its subparagraphs is work performed by NNSA organizations and their contractors.
- a. Associate Administrator for Management and Administration.
- (1) Working in coordination with the DOE Office of Management, the CFO, and other program Secretarial Officers, establishes DOE DHS reimbursable work policy and procedures.
 - (2) Develops and implements procedural guidance on DHS reimbursable work for NNSA organizations.
 - (3) Concurs on all DHS construction projects that exceed the GPP threshold.

- (4) Delegate authority to Deputy Administrators to accept Headquarters-accepted DHS reimbursable agreements.
- b. Director, Office of Field Financial Management.
 - (1) Conducts periodic reviews of the implementation of this Order by NNSA Headquarters and heads of NNSA field organizations.
 - (2) Develops and maintains financial information on DHS reimbursable work, and prepares financial reports as necessary.
 - (3) Concurs on DHS construction projects that exceed the GPP threshold.
 - (4) Approves requests to exclude DHS projects from the requirements of this Order in coordination with the DOE Director, Office of Management.
- c. NNSA General Counsel or NNSA Field Counsel.
 - (1) Provides legal advice and representation on issues related to DHS reimbursable work.
 - (2) Establishes policy on patent and technical data in coordination with the DOE General Counsel and in consultation with the DHS Office of General Counsel.
 - (3) Advises on patent and technical data clauses of contracts in coordination with the DOE General Counsel and in consultation with the DHS Office of General Counsel.
 - (4) Coordinates approvals patent rights waivers with the DOE Office of General Counsel and in consultation with the DHS Office of General Counsel.
- d. Deputy Administrators are responsible for the overall management and oversight of DHS reimbursable work activities at their sites. Responsibilities include the following.
 - (1) Developing and recommending changes in DHS reimbursable work policies to the NNSA Associate Administrator for Management and Administration.
 - (2) Accepting DHS reimbursable agreements accepted at Headquarters, when delegated authority by the Associate Administrator for Management and Administration.

- (3) For work that is accepted at Headquarters but performed in the field, ensure that the cognizant field organization has met the requirements of paragraph 4 before accepting a project.

NOTE: If the responsible NNSA Deputy Administrator has not been delegated authority to accept DHS reimbursable agreements, a site office manager or authorized designees will perform this function for Headquarters acceptance of a DHS reimbursable project.

- (4) After obtaining concurrence from the Director, Office of Field Financial Management, approving facility construction that exceeds the GPP threshold.

- (5) Inviting DHS to attend NNSA annual LDRD reviews.

e. Assistant Deputy Administrator, Office of Nonproliferation Research and Engineering. Reviews and provides comments on DHS nuclear nonproliferation detection technology projects to the NNSA Office of Institutional and Joint Programs for action.

f. Director, Office of Counterintelligence/Chief, Office of Defense Nuclear Counterintelligence.

- (1) Serves as the focal point for coordination with DHS for counterintelligence or counterintelligence-related reimbursable work.
- (2) Coordinates program reviews of counterintelligence and counterintelligence related DHS reimbursable work with the participation of appropriate field organizations.

g. Site Office Managers.

- (1) Function as administrative managers for DHS reimbursable work conducted at NNSA facilities under their purview.

NOTE: In this capacity, site office managers are accountable to the cognizant NNSA Deputy Administrator.

- (2) Review and accept NNSA DHS projects, consistent with authorities delegated by the NNSA head of contracting activities (see paragraph 6d).

NOTE: Authority for the review and acceptance of individual DHS projects may be delegated to site-specific staff such as a site contracting officer.

- (3) Provide notification to NNSA contracting officers to incorporate the CRD into site/facility management contracts for those sites under their purview.
- (4) Develop and implement field procedures for DHS reimbursable work review, acceptance, authorization, notification to DHS of accepted work, and monitoring consistent with NNSA policies and procedures.
- (5) Encourage parallel review and processing by NNSA, DHS, and the site/facility management contractor to expedite reviews and approvals.
- (6) Conduct periodic reviews of contractor policies and procedures for negotiating and administering DHS reimbursable work projects.
- (7) Notify the cognizant NNSA Deputy Administrator of DHS reimbursable work projects that involve sensitive subjects.
- (8) Ensure that NNSA and/or contractor representatives review proposed DHS reimbursable work projects involving human and/or animal subjects for compliance with established Federal regulations and NNSA requirements for protecting these subjects.
- (9) Ensure that DHS reimbursable work projects under their purview are protected in accordance with applicable NNSA security, safeguards, counter intelligence, and classification policies; site security plans; and supplemental security plans specific to the project.
- (10) Ensure that NNSA and contractor representatives review DHS reimbursable work projects for compliance with the National Environmental Policy Act of 1969 and other environment, safety, and health requirements.
- (11) Coordinate when required by this Order (paragraphs. 4g and 4i) with the NNSA Office of Institutional and Joint Programs to ensure that appropriate Headquarters organizations are involved in the DHS reimbursable work review process before accepting DHS work.
- (12) Establish and implement closeout procedures for DHS reimbursable work projects.
- (13) Ensure that scientific and technical information resulting from the performance of DHS reimbursable work is coordinated with DHS and is consistent with existing DOE Orders and regulations before dissemination.

- (14) Establish NNSA performance goals and measures to assess field performance, effectiveness of local DHS reimbursable work processes, and impacts of subsequent improvements and additional requirements.
 - (15) Ensure that a summary of each active DHS reimbursable work project is maintained. At minimum, the information should include—
 - (a) project title and description,
 - (b) assigned laboratory or contractor,
 - (c) field points of contact,
 - (d) total estimated costs, and
 - (e) estimated start and completion dates.
 - (16) Ensure that project information documenting policy compliance is maintained by NNSA and/or the performing contractor.
 - (17) Submit requests for exclusion from requirements of this Order to the cognizant Deputy Administrator.
- h. Contracting Officers, once notified by site office managers, are responsible for incorporating the CRD into site/facility management contracts. In addition, if the Site Office Manager has provided delegated authority, reviews and accepts DHS projects.

7. REFERENCES.

- a. DOE O 241.1B, *Scientific and Technical Information Management*, dated 12-13-10, which establishes requirements and assigns responsibilities to ensure that scientific and technical information emanating from DOE research is appropriately identified, processed, disseminated, and preserved.
- b. DOE O 413.2B, *Laboratory Directed Research and Development*, dated 4-19-06, which establishes DOE requirements for laboratory directed research and development while providing laboratory director broad flexibility for program implementation.
- c. DOE O 413.3B, *Program and Project Management for the Acquisition of Capital Assets*, dated 11-29-10, which establishes requirements and responsibilities for the acquisition of capital assets.

- d. DOE O 443.1B, *Protection of Human Subjects*, dated 3-17-11, 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.
- e. DOE O 471.5, *Special Access Programs* dated 3-29-11, which delineates policies, responsibilities, and procedures for SAP projects.
- f. DOE O 475.1, *Counterintelligence Program*, dated 12-10-04, which establishes DOE counterintelligence requirements and responsibilities.
- g. DOE O 475.2A, *Identifying Classified Information*, dated 2-1-11, which specifies responsibilities, authorities, policies, and procedures for management of the DOE Classification System.
- h. DOE M 481.1-1A, *Reimbursable Work for Non-Federal Sponsors Process Manual*, dated 1-3-01, which defines requirements for performance of work for non-DOE/non-NNSA entities by DOE/NNSA and contractor personnel and for use of DOE/NNSA facilities for work that is not directly funded by DOE/NNSA appropriations.
- i. DOE O 481.1C, *Work for Others (Non-Department of Energy Funded Work)*, dated 1-24-05, which establishes the requirements and responsibilities that must be met before work for others (WFO) is performed.
- j. DOE O 522.1, *Pricing of Departmental Materials and Services*, dated 11-3-04, 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.
- k. *Department of Energy Financial Management Handbook*, dated 5-29-12, Chapter 13, "Reimbursable Work, Revenues, and Other Collections," which establishes DOE-/NNSA-wide financial policy and procedural guidance for certain interagency reimbursable actions and reimbursable actions with non-DOE/non-NNSA entities (www.energy.gov/cfo/downloads/financial-management-handbook).
- l. "DOE Procedures for Intelligence Activities," 1992, which provides supplemental guidance/requirements for the conduct of intelligence WFO.
- m. The National Competitiveness Technology Transfer Act of 1989 (P.L. 101-189; Sections 3131, 3132, 3133, and 3159 of the DoD Authorization Act for FY 1990), which prescribes technology transfer as a DOE mission.
- n. The National Environmental Policy Act of 1969 (P.L. 91-190), which encourages efforts to prevent or eliminate damage to the environment.

- o. The National Nuclear Security Administration Act (P.L. 106-65), which establishes NNSA responsibilities.
 - p. The Stevenson-Wydler Technology Innovation Act of 1980 (P.L. 96-480), as amended, Section 11, which states as public policy that the Federal Government must strive to transfer Federally owned or originated technology to State and local governments and the private sector.
 - q. E.O. 12333, “United States Intelligence Activities,” part 1.13, which establishes responsibilities for DOE to support the U.S. intelligence community by providing expert technical, analytical, and research capability to others within the intelligence community and by anticipating how DOE can contribute to the formulation of intelligence collection and analysis requirements.
 - r. Federal Acquisition Regulation (FAR) 17.5, “Interagency Acquisitions under the Economy Act,” which prescribes policies and procedures for a Federal agency to obtain supplies or services from another Federal agency.
 - s. FAR 35.017, “Federally Funded Research and Development Centers,” which establishes Government-wide policies for review and termination of FFRDCs.
 - t. Office of Management and Budget Circular A-97, Specialized or Technical Services for State and Local Governments, dated 8-29-69, which defines rules and regulations permitting Federal agencies to provide specialized or technical services to State and local units of government under Title III of the Intergovernmental Cooperation Act of 1968.
 - u. Title 10 Code of Federal Regulations (CFR) Part 745, “Protection of Human Subjects,” which sets out Federal regulations for DOE for protecting human subjects of research activities.
 - v. Homeland Security Act of 2002 (6 U.S.C. 189), which authorizes the Secretary of the Department of Homeland Security to use the Department of Energy national laboratories and sites to perform work for the Department of Homeland Security on an equal basis to other missions at the laboratories/sites.
8. DEFINITIONS. The following terms apply to DHS reimbursable work agreements performed by DOE, NNSA, and/or their contractors.
- a. Acceptance. Official signing of a DHS reimbursable agreement and funding document (i.e., interagency agreement) by a DOE/NNSA contracting officer or an official with delegated authority to commit DOE/NNSA and their contractors to perform DHS reimbursable work.

- b. Cognizant Secretarial Officers. Headquarters Assistant Secretaries, Deputy Administrators, Associate Administrator and staff office directors responsible for oversight or institutional management of DOE/NNSA facilities.
- c. Site/Facility Management Contracts. Contracts for the operation and maintenance of DOE Government-owned facilities.
- d. Heads of Field Elements/Site Office Managers. Officials who direct activities of DOE/NNSA field or site offices and field organizations reporting directly to Headquarters.
- e. Human Subjects. Living individuals about whom a researcher obtains data through intervention, interaction, or identifiable information.
- f. Intelligence and Intelligence-Related Work (IW).
 - (1) Work directly funded by intelligence appropriations or by an organization specifically identified in E.O. 12333 as an intelligence organization.
 - (2) Work funded by either the National Foreign Intelligence Program or the Tactical Intelligence and Related Activities Program.
 - (3) Work for which the technical DOE Headquarters official is the Director, Office of Intelligence.
- g. Interagency Agreement. Agreement providing funding, billing, and payment data in support of a reimbursable agreement. The format of a DHS interagency agreement is acceptable as long as it contains the appropriate elements as outlined in this Order.
- h. Program Secretarial Officers and Deputy NNSA Administrators. Headquarters Assistant Secretaries, Deputy Administrators, and staff office directors who have management responsibility for program planning, budgeting, and execution of DOE/NNSA mission program activities.
- i. Reimbursable Agreement. Written agreement to perform work or provide a service to DHS.
- j. Research. Systematic investigation, research development, testing, and evaluation designed to expand or contribute to general knowledge.
- k. Space Nuclear and Noncommercial Power Reactor and Radioisotope Power Projects. Research and development associated with nuclear energy that is space

nuclear reactor, noncommercial power reactor, and radioisotope power source projects. Excludes Nuclear Regulatory Commission, fusion, weapons-related activities, naval propulsion reactors, and experimental reactors.

- l. Sponsor. An entity that provides work for others funding.
 - m. Reimbursable Work for the Department of Homeland Security (DHS). Work for DHS by DOE/NNSA and/or their contractors or use of DOE/NNSA facilities for work that is not directly funded by DOE/NNSA appropriations.
9. CONTACT. For additional information contact Office of General Counsel at 202-586-2939, Office of Acquisition and Project Management at 202-287-1507, or Office of Institutional and Joint Programs at 202-586-3561.

BY ORDER OF THE SECRETARY OF ENERGY:



CLAY SELL
Deputy Secretary

CONTRACTOR REQUIREMENTS DOCUMENT
DOE O 484.1, *Reimbursable Work for the Department of Homeland Security*

Regardless of the performer of the work, the contractor is responsible for complying with the requirements of this Contractor Requirements Document (CRD) and flowing down CRD requirements to subcontractors at any tier to the extent necessary to ensure contractor compliance.

This CRD establishes requirements for Department of Energy (DOE) contractors, including National Nuclear Security Administration contractors, performing work and/or using DOE facilities to perform work directly funded by the Department of Homeland Security (DHS).

Contractors will perform and administer DHS reimbursable work in accordance with the “Memorandum of Agreement between Department of Energy and Department of Homeland Security,” dated 2-28-03 (Attachment 2) or amendments thereto and the following requirements.

As directed by the contracting officer, the contractor must meet the following requirements.

1. Establish and maintain a management system that ensures reimbursable work for DHS requirements are satisfied.
2. Prepare project proposals that clearly describe the agreed-to statement of work, work methodology resources, and schedule before DOE acceptance of funding.
3. Ensure the work is—
 - a. within the facility/site contract scope and
 - b. priced in accordance with DOE pricing policies and provisions applicable to DHS work, which include the following.
 - (1) Cost estimates will be based on charges consistent with the costs of similar work performed for DOE.
 - (2) Costs for the DOE Federal administrative charge will not be assessed for directly funded DHS work.
 - (3) Amounts charged for general site safeguard and security surcharges or personnel costs will not be in excess of the amounts that DOE programs incur for similar work.
 - (4) When DHS requirements for site safeguards, security, or personnel exceed those of DOE for similar work, the costs of those special DHS requirements that can be attributed directly to the DHS project may be charged to DHS. Such costs will be identified in proposals.

- c. accepted by a DOE contracting officer or authorized designee
- 4. Equipment acquired as part of a project must be accounted for and maintained in the same manner as DOE property. Disposition of equipment must be as previously agreed or as instructed by DHS. Equipment shipping costs are the responsibility of 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.

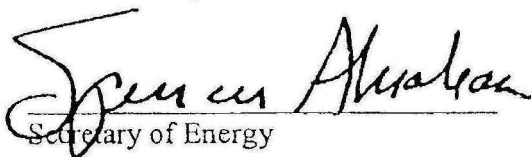
Counterintelligence: DHS will comply with the counterintelligence protections and requirements currently in place at DOE sites for any facilities at DOE sites where DHS may locate personnel pursuant to this agency agreement.

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.

LABORATORY-DIRECTED RESEARCH AND DEVELOPMENT COST INSTRUCTIONS

Estimated laboratory-directed research and development (LDRD) costs (dollar amount rounded to nearest thousand) must be separately identified in Department of Homeland Security (DHS) project cost proposals. Section 309(f) of the Homeland Security Act of 2002 (P.L. 107-296), provides that “no funds authorized to be appropriated or otherwise made available to the Department [of Homeland Security] in any fiscal year may be obligated or expended for laboratory directed research and development activities carried out by the Department of Energy unless such activities support the missions of the Department of Homeland Security.” The Department of Energy (DOE) manages its LDRD program in a manner that will demonstrate that LDRD activities support DHS missions commensurate with the funding provided by DHS.

The following language must be included in the cover letter accompanying a new and/or revised DHS proposal.

“Consistent with the Department of Energy’s (DOE’s) full cost recovery policy, DOE collects, as part of its standard indirect cost rate, a laboratory-directed research and development (LDRD) cost levied on all monies received at the laboratory. The estimated amount of LDRD costs is identified in the Department of Homeland Security (DHS) proposal cost estimate section. LDRD efforts provide opportunities in research that are instrumental in maintaining cutting-edge science capabilities that benefit all of the customers at the laboratory. DOE recognizes that Section 309(f) of the Homeland Security Act of 2002 (P.L. 107-296), provides that “no funds authorized to be appropriated or otherwise made available to the Department in any fiscal year may be obligated or expended for laboratory directed research and development activities carried out by the Department of Energy unless such activities support the missions of the Department of Homeland Security.” In accordance with DOE procedures, DHS will be apprised of the activities conducted under the LDRD program that support DHS missions.

The following language must be included in each DHS funding acceptance document.

“Consistent with the Department of Energy’s (DOE’s) full cost recovery policy, DOE collects, as part of its standard indirect cost rate, a laboratory-directed research and development (LDRD) cost. Based on the amount of funds accepted for this project, \$ _____ represents an estimated amount that will be used for LDRD efforts. DHS agrees that LDRD efforts provide opportunities in research that are instrumental in maintaining cutting-edge science capabilities that benefit all of the customers at the laboratory. In addition, DOE manages its LDRD program in a manner that will demonstrate that LDRD activities support DHS mission areas commensurate with the funding provided by DHS. In providing funds to DOE to perform this work, DHS anticipates that such activities will support the missions of DHS and will be consistent with appropriations acts that provide its funds.”