



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

OCT 12 2010

MEMORANDUM FOR PROGRAM DIRECTOR, ACQUISITION AND CONTRACT MANAGEMENT, DoDIG

THROUGH: DIRECTOR, ACQUISITION RESOURCES AND ANALYSIS

SUBJECT: Response to DoDIG Draft Report on More DoD Oversight Needed for Purchases Made
through the Department of Energy

As requested, I am providing responses to the general content and recommendations contained in the subject report.

Recommendation A.1.:

We recommend that the Under Secretary of Defense for Acquisition, Technology, and Logistics either obtain certification from the Department of Energy regarding Section 801 requirements or work with the Department of Energy to develop alternative plans to make direct purchases from National Nuclear Security Administration sites. Use of direct purchases would alleviate most of the problems identified in this report. If the Department of Energy certifies that it will comply with the Defense Procurement requirements, DOD needs to ensure that:

- a. Detailed DOD procurement data related to individual Work for Others projects is entered into the Federal Procurement Data System-Next Generation database.
- b. Price reasonableness determinations are made for all Work for Others projects.
- c. Contracting officer's representatives are designated for individual Work for Others projects.
- d. Individuals are designated to review contractor invoices.

Response:

Partially concur. Attached is a "Memorandum of Agreement" that the Department of Energy and the Office of the Under Secretary of Defense for Acquisition, Technology and Logistics/Defense Procurement and Acquisition Policy executed on September 15, 2010, that addresses "direct purchases" and recommendations (a-d) above. Specifically the MoA details that DoE and DoD will conduct a study to determine if the use of direct purchases is "desirable, feasible, and implementable". The study will be completed by January 2011.

The MoA addresses each of the recommendations (a-d) above. In addition, the Director, Defense Procurement and Acquisition Policy issued the attached policy memorandum that implements recommendations (b-d).

Recommendation A.2.:

We recommend that the Under Secretary of Defense for Acquisition, Technology, and Logistics establish a requirement that DOD warranted contracting officers review all Economy Act Work for Others orders greater than \$500,000 prior to sending the order to the funds certifier or issuing the Military Interdepartmental Purchase Request to the Department of Energy if DOE certifies compliance with section 801 requirements and continues to provide assisted acquisition support.

Response:

Concur. The Director, Defense Procurement and Acquisition Policy, issued a policy memorandum on September 24, 2010, which requires a DoD warranted contracting officer review any Work for Others projects in excess of \$100,000 prior to DoD sending the funds to DoE, regardless of whether or not DoE certifies in accordance with section 801 requirements.

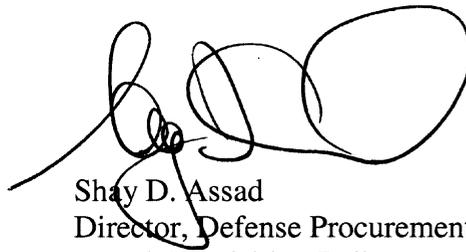
Recommendation B.1.:

We recommend that the Under Secretary of Defense for Acquisition, Technology, and Logistics initiate changes to the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement or both as appropriate to include guidance on the financing of all types of contracts with multiple-year appropriations. This should be coordinated with the DOD Comptroller's changes to the Defense Financial Management Regulation.

Response:

Concur: The Director, Defense Procurement and Acquisition Policy, in collaboration with the DoD Comptroller, will review the current FAR and DFARS to determine whether or not changes are necessary to address contract financing associated with multiple-year appropriations and to ensure consistency with the Department's Financial Management Regulations.

Please contact Mr. Michael Canales at Michael.canales@osd.mil or 703-695-8571 if additional information is required.



Shay D. Assad
Director, Defense Procurement
and Acquisition Policy

Attachments:
As stated

**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**

I. PURPOSE

The purpose of this Memorandum of Agreement (MOA) is to define the working relationship between the Department of Defense (DOD) and the Department of Energy (DOE) for the conduct of work undertaken in support of and directly funded by the DOD under the DOE Work for Others (WFO) program.

II. BACKGROUND

A large percentage of the U.S. research support relating to the defense sciences comes from funding originating within the DOD and the effectiveness of DOD's system for supporting this research and development is to a great degree the basis for their preeminence in related scientific areas. For many years DOE laboratories and facilities, through the DOE Work for Others (WFO) program, have undertaken research and development projects performed for and funded by the DOD. These facilities are managed and operated for DOE by universities, industrial concerns, and non-profit organizations under terms of individual contracts, as defined in Federal Acquisition Regulation (FAR) Subpart 17.6. All DOD funded work at the DOE laboratories and facilities will be subject to the terms and conditions of these contracts.

The mechanism used by DOD to place work at a DOE laboratory or facility is through an Interagency Agreement (IAA) and is managed under a program called Work for Others (WFO). The DOE WFO program requirements and practices are established to ensure compliance with Federal laws and regulations, and are promulgated in the Department of Energy Acquisition Regulations (DEAR) and further defined in DOE Order 481.1C, WORK FOR OTHERS (NON-DEPARTMENT OF ENERGY FUNDED WORK).

III. POLICY

The ability of DOD to have access to the unique facilities and special expertise of the DOE laboratories and facilities greatly assists DOD in meeting essential mission requirements and specific program goals and objectives. In addition, DOD WFO funding is vital to and clearly compliments and enhances the Department's own defense related and supporting science research programs at DOE laboratories and facilities.

This MOA is being established to promote and protect this longstanding, productive, and mutually beneficial relationship between DOD and DOE which has allowed each agency to more effectively meet their agency specific and national research mission and objectives.

IV. ADMINISTRATION

Each agency shall administer all WFO projects performed at the DOE laboratories and facilities directly funded by the DOD in accordance with the applicable statutes and regulations, and their standard policies and procedures, except as such policies and procedures may be amended by the provisions set forth below:

A. DOD will provide to DOE a copy of their signed Economy Act Determinations and Findings (D&F) or a Best Interest Determination for the specific WFO project. This will become a permanent part of the DOE project file.

B. For each WFO project, DOD will define any special or unique information requirements e.g., reporting. DOE will include associated costs in the DOE cost estimate for the requirements.

C. DOE will ensure that adequate pricing visibility is provided to support DOD's assessment of cost/price reasonableness and apply standard laboratory/facility rates used in pricing both DOE and non-DOE work. DOE will provide a breakout of direct costs while indirect costs will be provided at the summary dollar level only. The following is general list of standard cost elements to be utilized when providing DOD a WFO project proposal/cost estimate. While the cost estimate formats may vary, this level of cost detail is expected in order to provide DOD with sufficient information to ensure DOD has a thorough understanding of the proposed costs and that adequate funding has been secured for the project.

Cost Data Elements for each Project

Labor (including labor hours and skill mix)

Materials (including any equipment)

Travel

Other Direct Costs

Laboratory Directed Research and Development (if applicable)

Overhead

Federal Administrative Charge (if applicable)

Using this information, DOD will assess each project's cost proposal, and will ensure each DOD project file contains documentation indicating completion of the DOD assessment of cost/price reasonableness. DOD funding of a project will represent acceptance of cost/price reasonableness of a WFO project.

D. DOD recognizes that DOE operates on a fully reimbursable basis, that standard laboratory/facility rates are not negotiable, and that estimates are subject to change. Changes to cost estimates will be reported and managed through project reporting requirements established for each project by the DOD technical project manager.

E. DOD and DOE agree that oversight roles and requirements will be defined for each WFO project. At a minimum, DOD is responsible for technical project management and will identify in the interagency agreement a technical project manager/COR for each project. This DOD official shall monitor technical, cost, and schedule performance of the project, and notify the DOE contracting officer of any questioned costs or performance issues. DOD will provide written notification of any changes to project specific designated technical project managers. DOE is responsible for monitoring the performance of the contractor as a whole, and for issue resolution, as needed. This will be accomplished by the DOE Contracting Officer responsible for the DOE laboratory/facility.

F. DOD officials will have access to DOE laboratories and facilities as necessary to review and monitor project scope, scheduling, and funding. DOD will request approval for laboratory/facility access from the WFO project Principal Investigator (PI). The WFO PI shall notify the DOE contracting officer of pending on-site visits.

G. DOE and DOD will jointly develop standardized reporting requirements outside of FPDS-NG and DOE will commence standardized quarterly data reporting to DOD in support of Technical Project Manager functions.

H. DOD and DOE will conduct regularly scheduled meetings at the action officer and senior level to ensure emerging IA issues are addressed.

V. FUNDING

A. The details of the levels and support to be furnished by DOD will be specified in each WFO agreement. This MOA shall not be used or construed to obligate or commit funds or serve as the basis for the transfer of funds. All DOE provided cost data shall be considered business sensitive. DOE will be responsible for marking any other data as such when appropriate.

B. Project-specific information will normally be provided by the individual project Principal Investigators (PI). For more global information, involving multiple DOE facilities, DOD should make such a request through the DOE or NNSA Senior Procurement Executive, as appropriate.

C. In accordance with DOE policy, DOE will exercise funds control at the WFO project level. Upon notification by a DOD technical project manager, DOE will ensure funds provided by DOD are de-obligated and returned to DOD in a timely manner

VI. AUDIT

In accordance with standard DOE practice, the DOE IG will be responsible for DOE contract audits related to DOD work at the DOE laboratories/facilities, and any DOE IG audit findings will be resolved by DOE with the necessary coordination with DOD. Upon request by DOD, in coordination with the DOE-IG, the DOD-IG will be permitted to access DOE laboratories/facilities to evaluate DOD projects.

VII. RESPONSIBILITIES

As partners, DOD and DOE recognize the need to collaborate on Interagency Acquisition requirements. As individual organizations, each has specific responsibilities in all parts of this plan to ensure that all acquisitions are compliant with statute, regulation and applicable policy. Collectively, the two organizations have the ability and expertise to ensure that all contracting actions are done properly, in compliance with all applicable law, regulation and policy and are conducted in the best interests of the taxpayers. DOE values greatly the support that it provides to DOD and the tremendous additional leverage that DOD requirements add to DOE capabilities. DOD is committed to sound acquisition planning and to providing DOE with clear, specific, definite and certain directions regarding its requirements.

Attached is a Corrective Action Plan that more specifically addresses DOD's and DOE's respective roles and responsibilities in the process. DOD and DOE will collaborate on all action plan items. It is expected that this chart will be modified and updated over time but its changes do not impact the general agreement herein.

Both DOD and DOE will designate an office/division to function as the agency's point of contact to resolve particular problems or policy matters pertaining to DOD WFO at the DOE laboratories and facilities. These points of contact will consult with and obtain concurrence of affected elements within their organizations in accordance with internal requirements and responsibilities. DOD and DOE have designated the following office/division to serve this purpose:

DOD:

Office of the Under Secretary of Defense
Acquisition, Technology and Logistics
Defense Procurement and
Acquisition Policy/Contract Policy and
International Contracting

DOE:

Office of Management
Office of Procurement and Assistance
Management

NNSA:

National Nuclear Security Administration
Office of Acquisition and Supply
Management

VII. AUTHORITY

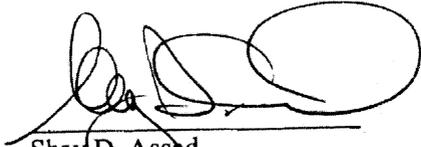
This MOA is carried out within the statutory guidelines in the Atomic Energy Act of 1954, as amended, the Economy Act, as amended, and related statutes.

VIII. EFFECTIVE DATE

This MOA shall become effective upon the latter date of the signature of the Director, Defense Procurement and Acquisition Policy, the DOE Senior Procurement Executive of the Office of Procurement Assistance and Management, and the NNSA Senior Procurement Executive of the Office of Acquisition and Supply Management. It shall remain in effect until amended or terminated by either party.

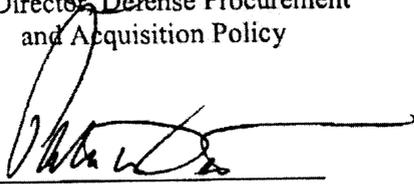
IX. AMENDMENTS

This MOA may be modified or amended only by mutual written agreement between DOD and DOE.



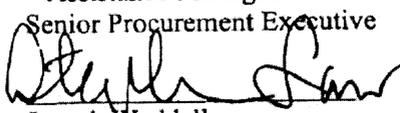
Shay D. Assad
Director, Defense Procurement
and Acquisition Policy

9/17/2003
Date



Patrick M. Ferraro
Acting Director
Office of Procurement and
Assistance Management
Senior Procurement Executive

9-16-10
Date



for Joseph Waddell
Director
Office of Acquisition and Supply Management
National Nuclear Security Administration
Senior Procurement Executive

9-16-10
Date



OFFICE OF THE UNDER SECRETARY OF DEFENSE

**3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000**

SEP 24 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 & LOGISTICS MANAGEMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING)
DIRECTORS, DEFENSE AGENCIES
DIRECTORS, DOD FIELD ACTIVITIES**

**SUBJECT: DoD-Wide Policy for Using the Department of Energy's (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 Department of Defense Inspector General (DoDIG) recently completed an audit of Department of Defense (DoD) Purchases Made Through the Department of Energy (DoDIG audit Project No. D2009-D000CF-0069-000). The audit was conducted in accordance with the requirements of section 801 of the 2008 National Defense Authorization Act (NDAA) as amended. Although the audit is not final, the DoDIG has provided the Department its findings and recommendations. As a direct result of the audit, and in response to those findings and recommendations, the following policy is imposed, effective October 1, 2010, when entering into Interagency Agreements with the Department of Energy.

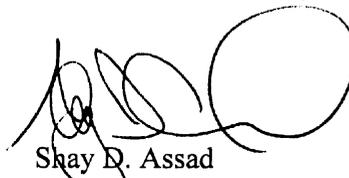
Each component will enter into and administer all DoD WFO projects performed at DoE facilities in accordance with existing statutes, regulation and policy consistent with their standards, policies and procedures except as such policies and procedures may be amended by the provisions set forth below, and:

- Ensure that a warranted DoD contracting officer reviews each requirement in excess of \$100K designated for performance by the Department of Energy. The warranted contracting officer will, at a minimum, ensure that supporting documents demonstrate that:
 - Sufficient market research has been completed and sufficient documentation exists that demonstrates that the specific DoE location/center is capable of performing the required tasks;
 - The description of the supplies and/or services to be provided are specific, definite and certain;

- Either an Economy Act D&F (FAR 17.5, DFARS 217.5) has been properly executed for the requirement, or, if the Economy Act is not the authority that DoE will be operating under when executing the requirement then the requirements of DFARS 217.7802(b) have been met and that a “Best Interest Determination” has been executed;
- An Interagency Agreement, in the general format prescribed by the Office of Federal Procurement Policy (OFPP) (June 2008) as amended, has been prepared and executed for the requirement.
- An assessment that the proposed cost/price is reasonable has been performed. At a minimum this will include: an independent government cost estimate (IGCE) prepared by DOD; detailed pricing information (proposal prepared by DoE) that has been reviewed by the cognizant DoD technical project manager/Contracting Officer Representative (COR) to ensure the hours and skill mix proposed are reasonable for the task(s) to be accomplished; an assessment that the quantity and type of materials proposed are necessary and reasonable.
- Each Interagency Agreement documents cost/price reasonableness.
- A qualified DoD technical project manager/COR has been identified and appointed, by a warranted contracting officer of the DoD requiring activity, to perform Contracting Officer Representative (COR) functions, including monitoring contractor performance, and reviewing contractor invoices.

You are also reminded that in accordance with FAR 17.502, “Interagency Acquisition Under the Economy Act,” the Economy Act may not be used by an agency to circumvent conditions and limitations imposed on the use of funds.

My POC for this is Mr. Michael Canales 703-695-8571 or via e-mail at michael.canales@osd.mil.



Shay D. Assad
Director, Defense Procurement
and Acquisition Policy