

THE DEPARTMENT OF ENERGY (DOE)
RESEARCH AND TECHNICAL ASSISTANCE PROGRAM
FOR OTHER FEDERAL AGENCIES AT OAK RIDGE, TENNESSEE¹

Legal Authority

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

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

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

The FAR provides options in solving issues early in a product or systems life cycle. A contract may not be suitable for these initial research efforts and prototype tests where mission feasibility is being established. The measures of achievement during this phase are subjective evaluations rather than the objective evaluation of criteria. At this research stage in the project life cycle, general performance specifications are the rule and cover the minimum essential requirements. The sponsor's performance specifications express the technical requirements in the form of output, function, or operation of items or equipment. Using this type of strategy resolves technical issues with the performance specifications and **promotes competition in the long run.**

The overall DOE Technology Complex has extensive unique research and manufacturing capabilities and unparalleled technology assets that are available to assist other federal agencies. An interagency acquisition may be more appropriate for prototype creation because this permits an unbiased technical approach to the design, fabrication, formulation, and production of the project prototypes. Using this strategy to involve DOE can rapidly resolve technical issues with the performance specifications. This gives the federal agency the detailed specifications for a workable prototype that ultimately shortens the acquisition life cycle and conserves funds. The proposed approach is consistent with U.S. Congressional direction and can effectively promote competition within the private section by providing workable specifications. Furthermore, mission risk to the federal agency is reduced during the critical and sensitive mission feasibility phase.

¹ Information current as of November 2, 2004

DOE Administrative Processing

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

DOE Relationships with its Performance-Based Contractors

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

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

Administrative Recovery of DOE Program Costs

All federal agencies doing interagency acquisitions are required to recover their administrative costs in managing Economy Act transactions. Based on Section 3137 of the Strom Thurmond National Defense Authorization Act of 1999 (Public Law 105-261), DOE is authorized to charge a flat 3% surcharge to cover DOE administrative processing and overhead costs. This surcharge is called the Federal Administrative Charge (FAC) and the FAC is charged on all non-DOE funded work. A limited set of FAC specific waivers exist, principally in the areas of national security or homeland security. Other than

the U.S. Congress-established criteria for administrative costs recovery (i.e., FAC), there is no other surcharge for WFO research and technical work performance.

The "committed" reimbursable funds from the federal agency become "obligated" reimbursable funds when an authorized DOE official signs the particular agency's funding document. Note that this is not a contract. DOE-ORO will obligate entirely the appropriation citation and return a signed certification to the other federal agency. *This meets the criteria in 31 U.S.C. 1501(a) for a recordable obligation.* DOE then determines the appropriate M&O contractor to perform the research or technical tasking and assigns the mission requirement to that M&O contractor for completion.

The tasking vehicle is by a written DOE-ORO letter to the M&O contractor and by forwarding funds (minus FAC if charged) to the ORNL M&O contractor. Funds will be then assigned on the monthly financial plan to the ORNL M&O contractor executing the task assignment. *Note that there is no separate contracting action involved.* As the technical project proceeds, DOE-ORO will invoice the requesting federal agency by showing the amount of "reimbursable funds earned" (that is, spent) plus FAC (if applicable) against the project on the requesting agency's appropriation. It is the responsibility of the requesting federal agency to pay that invoice.

DOE Guidance on Subcontracting

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

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

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