

Approved: 12-17-2014

SUBJECT: DOE's Policy Re Laboratories, Plants and Sites Engaging in Strategic Partnership Projects with Other Federal Agencies, Independent Organizations, and the Private Sector

BACKGROUND

Purpose and Scope. The purpose of this Policy is to set the context in which DOE and its laboratories, plants, and sites should pursue Strategic Partnership Projects (SPP) with other Federal government agencies, state and local institutions, universities, foreign entities and/or private companies. The Policy is applicable to the DOE laboratories, plants, and sites, and to the DOE programs that own them and facilitate their work.

Statutory Authorities. The SPP program (formerly Work for Others, or WFO) is based on statutory authorities found under the Atomic Energy Act of 1954, the Energy Reorganization Act of 1974, the Federal Nonnuclear Energy Research and Development Act of 1974, and the Economy Act of 1932. The Department of Energy defines SPP as fully-reimbursed research/work undertaken by a DOE national laboratory, facility, plant, or site (e.g., Sandia National Laboratories, Oak Ridge Institute for Science and Education or the National Security Campus) for a client other than DOE or the Department of Homeland Security (DHS)¹. SPP partners at the DOE laboratories, plants, and sites could include individuals, private companies, universities, other Federal government agencies, state and local institutions, and international entities. All SPP conducted by DOE laboratories, plants, and sites is subject to DOE policies and procedures and the DOE contract terms and conditions under which it is performed.

The Atomic Energy Act of 1954 provides the primary legal authority for DOE to make its facilities available to others, provided that private sector facilities are inadequate to the purpose (DOE facilities are not to be placed in direct competition with the domestic private sector). DOE requires that all SPP activities be performed consistent with the Federal Acquisition Regulation (FAR), the Department of Energy Acquisition Regulation (DEAR), and the terms and conditions of the facility contract. FAR and DEAR provisions² and DOE policy require that all work be performed on a non-interference basis with DOE mission-related work to ensure that DOE mission work is not negatively impacted.

DOE Requirements. Several DOE orders and financial policy documents have been issued specific to the SPP program. Details related to implementation of the SPP policy can be found in DOE Order 481.1C which establishes a DOE-wide framework based on a consistent set of requirements, standards, roles and responsibilities for the review, acceptance and performance of SPP activities. DOE Cognizant Secretarial Officers working with their respective field managers develop local procedures that are both compliant and responsive to partner needs. DOE laboratories, plants, and sites are authorized to perform SPP activities by including the standard SPP DEAR clause in their contracts. The clause provides DOE's authorization to perform SPP under the contract and establishes the requirements and standards by which

¹ While performed under most of the same policies and procedures that govern all other SPP, the Homeland Security Act of 2002 provided DHS with special access to DOE and NNSA facilities, most notably the non-interference clause is omitted and thus that DHS mission work is considered to have equal status with DOE mission work. Because of this special legal consideration, DHS work at DOE facilities is frequently not referred to as SPP.

² See FAR sections 35.017 and 17.5.

DOE laboratories, plants, and sites perform SPP. Under DOE O 481.1C and DEAR 970 5217-1, DOE Contracting Officers (COs) must approve individual SPP projects and are responsible for placing the work onto the DOE contract. Prior to approving a project, a CO must ensure DOE makes specific determinations regarding the work (see Policy Section, below, for enumeration of these) and provide his/her written certification of completion.

Responsibilities under SPP. In the case in which the SPP project is sponsored by a Federal agency, it is the responsibility of the sponsoring Federal agency to comply with Federal Acquisition Regulation (FAR) requirements for the sponsorship of an interagency acquisition, which includes making a determination that it is in the best interest of government to have the work performed by DOE and its laboratories, plants, and sites. It is DOE's responsibility as the performing organization to comply with FAR requirements and ensure that its facilities are appropriately made available to other agencies in order to avoid having to create duplicate federal facilities at taxpayer expense, and to ensure that use of these facilities by other federal agencies and the private sector does not impede the ability of the Department to accomplish its own mission.

Value of SPP. Both DOE programs and SPP partners have benefited substantially for many years from SPP conducted at DOE facilities. The DOE laboratories, plants, and sites are major national scientific and technical assets whose contributions to the United States at large, and in areas beyond the DOE missions, are significant and well-documented. Further, DOE believes that SPP, by virtue of exposing the laboratories, plants, and sites to the immediate and future needs of other agencies and the private sector, strengthens core capabilities at the laboratories, plants, and sites that, in turn, enable them to stay at the forefront of their fields and better serve the Department's missions. Examples of this include computational research and capacity at DOE laboratories funded by many other Federal agencies, national security work supporting the Department of Defense and the Intelligence Community, and the interaction with the private sector that ultimately allow DOE and its facilities to meet their technology transfer missions and strengthen U.S. competitiveness in a continuously more competitive global market. Further, SPP enables DOE to deliver its mission of technology transfer and research partnerships that result in commercialization and deployment, thus becoming a logical extension of programmatic work and enhancing the impact of the science and technology discoveries made at DOE facilities.

Historically, the laboratories, plants, and sites have made important contributions via SPP that range from providing instrumentation for lunar landing missions to state-of-the art security tools at national and international venues such as the Olympics to advances in biofuels and hydrogen storage (a partnership with private industry). SPP also provides necessary recruiting and retention opportunities due to the important, interesting, and challenging nature of the work. For all of these reasons, DOE is fully supportive of the SPP program and the use of its laboratories and facilities by SPP partners.

DOE is also aware of the potential negative impacts that SPP projects and programs can have on its laboratories, plants, and sites and recognizes the need for a collaborative, robust and flexible decision-making structure between DOE and its laboratories, plants, and sites. Potential areas of risk include:

- SPP projects that are not closely related to the central/core capabilities of the laboratory, plant, or site and thus divert key personnel from DOE missions and/or contribute to a "job shop" ethic at the laboratory.
- Large individual SPP projects whose abrupt termination could trigger significant staffing fluctuations and other disruptions in the laboratory/site and its local community.
- The potential for sites to utilize internal infrastructure investments (overhead dollars) to build capability already in existence at other laboratories/sites.
- Potentially hazardous activities undertaken for SPP partners.
- The creation of legacy issues, including financial and staffing burdens, resulting from SPP partners' use of space and/or facilities.

POLICY

The Department is committed to the maximum use of, and engagement with, the national assets at the DOE national laboratories, plants, and sites for the benefit of other Federal agencies, private companies, universities, state and local institutions, and international entities, within the limits set by aforementioned statutes, regulations, and DOE policy. These include the following four determinations that relevant COs must make before allowing such work to be placed on the contract: (1) the SPP work must be consistent with or complementary to missions of DOE and/or the facility to which the work is to be assigned; (2) it should enhance or make use of the core capabilities extant at the laboratory, plant, or site; (3) while the work must “be consistent with or complementary to missions of DOE and the facility to which the work is to be assigned,” it does not need to be within the specific mission space of the owning program; (4) the work must not adversely impact DOE programs assigned to the facility, place the facility in direct competition with the domestic private sector, and/or create a detrimental future burden on DOE resources.

DOE will pay close attention to the overall amount of SPP that its laboratories, plants, and sites expect to conduct in any given year relative to its total budget and to any exceedingly large or unusual projects, and should discuss the associated risks and benefits with its laboratories, plants, and sites on a regular basis. DOE will encourage its laboratories, plants, and sites to develop and maintain a strategic approach to their SPP portfolios to maximize their contributions to the core strengths of the performing laboratory, plant, or site, and thus strengthen the institution and its ability to contribute to DOE’s core mission responsibilities.

The Department believes and Federal regulations require that committing Federal resources under DOE contracts and making the determinations identified above are inherently governmental functions, and as such has assigned these responsibilities to DOE COs. The COs are expected to exercise reasonable judgment in their decisions, consistent with statute and regulation and with a view that DOE laboratories, plants, and sites are unique national resources and engines of economic development. DOE, through its COs, should actively use SPP to build and enhance core capabilities at its laboratories, plants, and sites, while avoiding projects that do not. Additionally, because the DOE laboratories, plants, and sites offer highly specialized or unique capabilities that are often critically needed by other agencies or urgently desired by the private sector, it is the policy of the department for COs to resolve questions of appropriate use of a laboratory, plant, or site as expeditiously as possible.

BY ORDER OF THE SECRETARY OF ENERGY:



ELIZABETH SHERWOOD-RANDALL
Deputy Secretary