

U.S. Department of Energy
Washington, DC

ORDER

DOE O 484.1

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Chg 1 (AdminChg): 3-14-11
Chg 2 (AdminChg): 6-30-14
Chg 3 (LtdChg): 3-21-23
Chg 4 (LtdChg): 10-28-24

**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 O 484.1 Chg. 3 (LtdChg), *Reimbursable Work for Department of Homeland Security*, dated 3-21-23. Cancellation of a directive does not, by itself, modify or otherwise affect any contractual or regulatory obligation to comply with the directive. Contractor Requirements Documents (CRDs) that have been incorporated into a contract remain in effect throughout the term of the contract unless and until the contract or regulatory commitment is modified to either eliminate requirements that are no longer applicable or substitute a new set of requirements.
3. DEPARTMENTAL APPLICABILITY.
 - a. Departmental Elements. Except for the exemptions in paragraph 3.c., this Order applies to all DOE elements.
 - (1) The Administrator of the National Nuclear Security Administration (NNSA) must ensure that NNSA employees comply with their responsibilities under this directive. Nothing in this directive will be construed to interfere with the NNSA Administrator's authority under section 3212(d) of Public Law (P.L.) 106-65 to establish Administration-specific policies, unless disapproved by the Secretary.
 - (2) 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. The Contractor Requirements Document (CRD), Attachment 1 must be included in all site/facility management contracts that authorize the contractor to perform reimbursable work for DHS unless an exemption in paragraph 3.c. applies.
 - c. Equivalencies/Exemptions for DOE O 484.1.
 - (1) Exemptions. This Order and the attached CRD do not apply to work performed for DHS under the following situations:

- (a) The work is performed on a reimbursable basis under DOE O 481.1, *Strategic Partnership Projects [Formerly Known as Work for Others (Non-Department of Energy Funded Work)]*, current version.
 - (b) The work is performed under an agreement with the private sector or other agencies, regardless of whether the funds originated with DHS.
 - (c) Work performed by the Bonneville Power Administration.
 - (2) Equivalency. In accordance with the responsibilities and authorities assigned by Executive Order 12344, codified at 50 USC sections 2406 and 2511 and to ensure consistency throughout the joint Navy/DOE Naval Nuclear Propulsion Program, the Deputy Administrator for Naval Reactors (Director) will implement and oversee requirements and practices pertaining to this Directive for activities under the Director's cognizance, as deemed appropriate.
4. REQUIREMENTS. It is Departmental policy that DOE resources will be made available to DHS consistent with the Homeland Security Act of 2002 (6 U.S.C. 189), 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).
- a. All DHS reimbursable work conducted under a DOE site/facility management contract requires the approval of a DOE Responsible Contracting Officer (RCO). Approval may not be delegated to the contractor.
 - b. The DOE/NNSA Program Secretarial Officer (PSO) or designee may approve work performed at Headquarters.
 - c. 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.
 - d. 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 site/facility management contracts and will be subject to other DOE approvals consistent with DOE work.
 - e. DHS is responsible for all 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.
 - f. 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.

- g. DHS reimbursable work must:
 - (1) be within the DOE site/facility 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.
- h. Work will be priced in accordance with DOE O 522.1, *Pricing of Departmental Materials and Services*, current version, and the pricing provisions applicable to DHS work, which includes the following:
 - (1) Costs charged to DHS will be consistent with similar work performed for DOE. DHS will receive an allocation of safeguards and security costs congruent with the cost accounting practices used to recover these costs from all reimbursable work customers (see Chapter 15.1 of the DOE Financial Management Handbook for additional guidance on the allocation of Safeguard and Security costs).
 - (2) The DOE Federal administrative charge will not be assessed for reimbursable work done directly for DHS.
 - (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 each laboratory's 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.
 - (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).

- i. Equipment acquired as part of a project must be accounted for in accordance with the DOE Financial Management Handbook 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.
- j. Special access program (SAP) work requires the approval of the DOE SAP Oversight Committee before the start of work at any DOE or NNSA site/facility. Intelligence-related SAPs will be reviewed and approved by the Director, Office of Intelligence and Counterintelligence.
- k. 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.
- l. Before initiating DHS construction exceeding the DOE approved minor construction threshold as referenced in the DOE Financial Management Handbook at a DOE site:
 - (1) Approval must be granted by the DOE Cognizant Secretarial Officer (CSO), 5.i.(2), and the DOE Chief Financial Officer, 5.b.(2). The CFO must be notified seven days in advance of approval of a construction project funded through a DHS agreement that exceeds \$1 million but is less than the DOE-approved minor construction limit.
 - (2) For an NNSA site, approval for DHS construction exceeding the DOE-approved minor construction limit must be granted by the Associate Administrator for Infrastructure, 6.c.; the Associate Administrator for Management and Budget, 6.b.(4); and the cognizant NNSA Deputy Administrator, 6.f.; and notification provided to the NNSA Director, Office of Deputy Associate Administrator for Budget, 6.b.(4), before work can begin.
 - (3) DOE's minor construction authority does not apply to DHS funding. DHS is responsible for determining that the requested construction represents a valid purpose of DHS funding.
 - (4) Projects must meet the following requirements:
 - (a) Construction projects must be performed according to requirements of DOE O 413.3, *Program Project Management for the Acquisition of Capital Assets*, current version.
 - (b) Upon completion, title to constructed assets must vest in DOE/NNSA unless otherwise approved by the Head of the Departmental Element, the CFO, and the Senior Real Property Officer or NNSA Real Estate Director.

- (c) Construction funded through DHS agreements must not supplement DOE-funded construction activities unless the DHS-funded portion of the construction effort is explicitly approved by the CFO.
- m. 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.
- n. 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 site/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.
- o. For DHS agreements defined by DHS as an Assisted Acquisition, the DHS must provide on or with the interagency agreement (e.g., General Terms & Conditions or Funding Order) the following statement:

The DHS, as the requesting agency, has determined that this transaction is an Assisted Acquisition as described in FAR Subpart 17.5. DHS, as the requesting agency, and DOE, as the servicing agency, will ensure compliance with FAR 17.5 and applicable Assisted Acquisition provisions by applying their respective policies and procedures with other federal agencies, including DOE Order 484.1, Reimbursable Work for the Department of Homeland Security. DHS work will be conducted under the terms and conditions of the DOE site/facility contract on a reimbursable basis, consistent with 6 U.S.C § 189. DOE contractors must comply with applicable requirements in their site/facility contracts when performing such work. The DOE will perform work by and through its site/facility management contractor. Prior to executing a site/facility management contract, DOE complies with all the acquisition requirements for such contracts, (e.g., market research, acquisition plans) and will not reexamine those matters for individual interagency agreements. The DOE Responsible Contracting Officer may, at the request of the

DHS, negotiate additional terms and conditions only when (1) such requests are not in conflict with the DOE site/facility contract and (2) all costs are recovered from DHS. By signing the interagency agreement, both parties certify compliance with their respective duties and obligations under FAR 17.5.

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. Director, Office of Management.
 - (1) Establishes DOE DHS Reimbursable Work policies, in conjunction with Cognizant Secretarial Officers (CSO) and NNSA officials.¹
 - (2) Approves requests for excluding DHS projects from requirements of this Order [for NNSA exclusions see paragraph 6.b.(5)].
 - b. Chief Financial Officer.
 - (1) Establishes and maintains DOE financial policies and procedures.
 - (2) Concurs on construction projects funded by a DHS reimbursable agreement that exceed the DOE-approved minor construction limits, see section 4.1.
 - (3) Prepares financial information on DHS reimbursable work and financial reports as required.
 - c. Director, Office of Acquisition Management. Conducts periodic reviews of implementation of this Order by Secretarial Officers and heads of field organizations as required.
 - d. 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.

¹ NNSA officials whose responsibilities parallel those of DOE Secretarial Officers are Deputy Administrators and Assistant Deputy Administrators.

- (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.
- e. 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.
- f. DOE Director, Office of Intelligence and Counterintelligence.
 - (1) Manages, reviews, and approves proposed DHS intelligence and intelligence-related work including intelligence SAPs pursuant to 4.j., in coordination with the appropriate field office manager or designee.
 - (2) Coordinates program review of DHS intelligence and intelligence-related work with the participation of appropriate Field Intelligence Elements (defined in paragraph 8.e.) and Field Office Manager or designee.
 - (3) Reviews DHS intelligence and intelligence-related work for duplication of effort if duplication is not requested by the sponsor.
 - (4) Serves as central point of contact for coordination with DHS intelligence and intelligence-related work.
 - (5) Informs, if applicable, the Cognizant Secretarial Officer, e.g., the Director of Science of issues with DHS intelligence and intelligence-related work.
- g. Director, Office of Enterprise Assessments. Provides for conducting independent evaluations to assess the effectiveness of environment, safety, health, and safeguards and security of DHS reimbursable work.
- h. Program Secretarial Officers.
 - (1) Accept Headquarters DHS agreements in accordance with the requirements of paragraph 4. Once accepted, forward copies of all information to the RCO to approve placement of work and funding onto the contract where the work will be performed. For work accepted and performed at Headquarters copies of all information and decision documentation should be maintained and available by the accepting office.
 - (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.

- (3) Provide written delegations of authority for approving Headquarters accepted agreements consistent with paragraph 4.

i. Cognizant Secretarial Officers.

- (1) Recommend changes in policies on reimbursable work for DHS to the Director, Office of Management.
- (2) After obtaining concurrence from the Office of the Chief Financial Officer, approve site/facility construction that exceeds the DOE-approved minor construction limit, see section 4.1.
- (3) 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 5.j.(3)].

j. 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, counterintelligence 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 4.j. and 4.l.).
- (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.

- k. Responsible Contracting Officers.
 - (1) Approve placement of DHS work into their site/facility management contract.
 - (2) Once notified by the head of the DOE field organization, incorporate the CRD into the local site/facility management contract.
- 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 Budget.
 - (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) Approves site/facility construction that exceeds the minor construction threshold, see section 4.1.
 - b. NNSA Deputy Associate Administrator for Budget.
 - (1) Conducts periodic reviews of the implementation of this Order by NNSA Headquarters and Heads of NNSA Field Elements.
 - (2) Develops and maintains financial information on DHS reimbursable work and prepares financial reports as necessary.
 - (3) Coordinates with responsible Deputy Administrators (DAs) to ensure the availability of funds for DHS agreements accepted and performed at Headquarters.
 - (4) Provides notification to the Cognizant NNSA Deputy Administrator on construction projects that exceed the DOE-approved minor construction limit, see section 4.1.
 - (5) Approves requests to exclude DHS projects from the requirements of this Order including in cases of national emergency in coordination with the DOE Director, Office of Management.
 - c. NNSA Associate Administrator for Infrastructure. Concurs on and notifies the NNSA Deputy Associate Administrator for Budget about site/facility construction that exceeds the DOE-approved minor construction limit.

- d. 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 Assistant General Counsel for Technology Transfer.
 - (3) Advises on patent and technical data clauses in coordination with the DOE Assistant General Counsel for Technology Transfer.
 - (4) Coordinates the approval of waiver patent rights with the DOE Assistant Office of General Counsel for Technology Transfer.
- e. DOE Director, Office of Intelligence and Counterintelligence.
 - (1) Manages, reviews, and approves proposed DHS intelligence and intelligence-related work including intelligence SAPs pursuant to 4.j., in coordination with the appropriate Field Office Manager or designee.
 - (2) Coordinates program review of DHS intelligence and intelligence-related work with the participation of appropriate Field Intelligence Elements (defined in paragraph 8.e.) and field office manager or designee.
 - (3) Reviews DHS intelligence and intelligence-related work for duplication of effort if duplication is not requested by the sponsor.
 - (4) Serves as central point of contact for coordination with DHS intelligence and intelligence-related work.
 - (5) Informs, if applicable, the Cognizant Secretarial Officer, e.g., the Director of Science of issues with DHS intelligence and intelligence-related work.
- f. NNSA Assistant Deputy Administrator for Defense Nuclear Nonproliferation Research and Development. DHS agreements involving projects for detecting nuclear proliferation and nuclear detonations and provides comments to the NNSA Office of Strategic Partnership Programs for possible action in coordination with the relevant field office.
- g. NNSA Deputy Administrator for Defense Programs. Responsible for oversight of DHS reimbursable agreements at NNSA sites through the NNSA Office of Strategic Partnership Programs. Responsibilities include the following and may be further delegated:
 - (1) Develop and recommend changes in DHS policies to the NNSA Associate Administrator for Management and Budget.

- (2) Accepts Headquarters accepted DHS agreements in accordance with the requirements of paragraph 4.c. for NNSA. Once accepted, copies of all information should be forwarded to the cognizant RCO to approve placement of work and funding onto the contract where the work will be performed. For work performed at Headquarters, copies of all information and decision documentation should be maintained and available.
- (3) Ensure work performed at Headquarters involving human or animal subjects complies with established Federal regulations and NNSA directives/requirements for the protection of these subjects.
- (4) Notify appropriate Secretarial Officers of significant or sensitive DHS agreements.
- (5) For NNSA facilities:
 - (a) Approve or designate the head of the Field element to approve annual DHS levels and requests for increases to approved levels.
 - (b) Conduct periodic reviews of site office DHS agreement review and approval systems using a risk based management approach. The approach shall ensure that:
 - 1 An approved risk-based schedule is established that ensures sites are reviewed no less than every five years;
 - 2 Sites with higher levels of identified risk will be reviewed more frequently; and
 - 3 Reviews include assessment of review and approval procedures to ensure compliance with DOE-wide DHS policies and procedures.
 - (c) Approves requests for excluding non-NNSA DHS agreements from requirements of this Order including in cases of national emergency for NNSA sites.
- h. NNSA Office of Counterterrorism and Counterproliferation. Reviews and provides concurrence on DHS agreements involving improvised nuclear devices (IND), radiological dispersal devices (RDDs), radiological exposure devices (REDs) to the NNSA Office of Strategic Partnership Programs for action.
- i. NNSA Office of Strategic Partnership Programs.
 - (1) Establishes DOE DHS policies with the Office of Management and Cognizant Secretarial Officers.

- (2) Ensures that DHS work performed involving human subjects, including their identified data and bio-specimens, is compliant with established Federal regulations and DOE directives/requirements for protection of these subjects, working closely with NNSA's Human Subjects Research Program Manager and the DOE Institutional Official for the Protection of Human Subjects in Research.
 - (3) Provides copies of approved annual DHS levels to other program organizations as requested.
 - (4) Concurs on work that involves research, development or production of radioisotope or fission systems or their components as described in 4.m. when performed at an NNSA site/facility in coordination with the Office of Nuclear Infrastructure Programs (NE-3) and provides notification to the Office of Nuclear Infrastructure Programs (NE-3) of any accepted work described above.
 - (5) Concurs on work that involves the research, development, or discussion of improvised nuclear devices, both systems and components unless otherwise restricted by applicable program guidance or DOE Orders.
 - (6) Annually reviews the DHS program for efficiencies, duplication of effort, and other improvement measures.
 - (7) Concurs on work involving research and development projects for detecting nuclear proliferation and nuclear detonations, including nuclear fuel-cycle-related and potential dual-use technologies, radiation and radionuclide detection technologies, technologies for detecting weaponization, nuclear forensics, and explosion monitoring.
- j. Cognizant NNSA Deputy Administrator. After obtaining notification from the Deputy Associate Administrator for Budget, approve site/facility construction that exceeds the minor construction threshold.
- k. NNSA Field Office Managers.
- (1) Responsible for oversight and management of all DHS activities conducted at their sites.
 - (2) Develop and implement procedures for DHS review, acceptance, authorization, monitoring, and closeout, consistent with NNSA policies and procedures.
 - (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 Principal Deputy Administrator of DHS reimbursable work projects that involve sensitive subjects.
- (8) Ensure that NNSA and/or Site/Facility Management Contractors review proposed DHS agreements involving human, including their identified data and bio-specimens, or animal subjects for compliance with established Federal regulations and NNSA directives/requirements for protecting these subjects.
- (9) Ensure that DHS reimbursable work projects under their purview are protected in accordance with applicable NNSA security, safeguards, counterintelligence, 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 4.g. and 4.i.) with the NNSA Office of Strategic Partnership 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.
- (18) Provide notification of DHS agreements involving nuclear nonproliferation detection technology projects to the NNSA Assistant Deputy Administrator, Office of Defense Nuclear Nonproliferation Research and Development.

l. Responsible Contracting Officers.

- (1) Approve placement of DHS work onto their site/facility management contract.
- (2) Once notified by the head of the DOE field organization, incorporate the CRD into the local site/facility management contract.

7. REFERENCES.

- a. 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.
- b. 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.
- c. The National Environmental Policy Act of 1969 (P.L. 91-190), which encourages efforts to prevent or eliminate damage to the environment.
- d. The National Nuclear Security Administration Act (P.L. 106-65), which establishes NNSA responsibilities.
- e. 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.

- f. 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.
- g. 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.
- h. FAR 35.017, "Federally Funded Research and Development Centers," which establishes Government-wide policies for review and termination of FFRDCs.
- i. 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.
- j. 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.
- k. DOE O 241.1, *Scientific and Technical Information Management*, current version, which establishes requirements and assigns responsibilities to ensure that scientific and technical information emanating from DOE research is appropriately identified, processed, disseminated, and preserved.
- l. DOE O 413.2, *Laboratory Directed Research and Development*, current version, which establishes DOE requirements for laboratory directed research and development while providing laboratory director broad flexibility for program implementation.
- m. DOE O 413.3, *Program and Project Management for the Acquisition of Capital Assets*, current version, which establishes requirements and responsibilities for the acquisition of capital assets.
- n. DOE O 430.1C, *Real Property Asset Management*, current version, which establishes a data-driven, risk-informed, performance-based approach to the life-cycle management of real property assets.
- o. DOE O 443.1, *Protection of Human Subjects*, current version, which establishes the procedures and responsibilities for implementing the policy and requirements set forth in 10 CFR Part 745.

- p. DOE O 457.1, *Nuclear Counterterrorism*, current version, supports DOE activities for health, safety, and common defense by reducing the threat of inadvertent or unauthorized disclosure of sensitive improvised nuclear device (IND) information.
- q. DOE O 470.4, *Safeguards and Security Program*, current version, which provides requirements for registering SSP activities in DOE's Safeguard and Security Information Management System.
- r. DOE O 471.1, *Identification and Protection of Unclassified Controlled Nuclear Information*, current version, which provides requirements and responsibilities for identifying Unclassified Controlled Nuclear Information and protecting it from unauthorized dissemination
- s. DOE O 471.5, *Special Access Programs*, current version, which delineates policies, responsibilities, and procedures for SAP projects.
- t. DOE O 475.1, *Counterintelligence Program*, current version, which establishes DOE counterintelligence requirements and responsibilities.
- u. DOE O 475.2, *Identifying Classified Information*, current version, which specifies responsibilities, authorities, policies, and procedures for management of the DOE Classification System.
- v. DOE O 481.1, *Strategic Partnership Projects [Formerly known as Work for Others (Non-Department of Energy Funded Work)]*, current version, which establishes policy, requirements, and responsibilities for approval and performance of work for non-DOE/NNSA entities by DOE/NNSA and contractor personnel and for the use of DOE/NNSA facilities that is not directly funded by DOE/NNSA appropriations.
- w. DOE O 522.1, *Pricing of Departmental Materials and Services*, current version, 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.
- x. *Department of Energy Financial Management Handbook*, current version, Chapter 13.1, "Reimbursable Work and Interagency Agreements," 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).
- y. *Department of Energy Financial Management Handbook*, current version, Chapter 15.1, "DOE Application of Cost Accounting Standards," which provides guidance for the proper allocation of Safeguards and Security costs to reimbursable work for DHS.

- z. "DOE Procedures for Intelligence Activities," 1992, which provides supplemental guidance/requirements for the conduct of reimbursable intelligence work for the Department of Homeland Security.
 - aa. Secretary of Energy Delegation of Authority to the Director, Office of Intelligence and Counterintelligence.
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). The cognizant DOE/NNSA RCO is the federal official authorized to accept and place DHS work on their Site/Facility Management Contract.
 - b. Cognizant Secretarial Officers/NNSA Principal Deputy Administrator. Headquarters Assistant Secretaries, Deputy Administrator, and Directors responsible for oversight or institutional management of DOE/NNSA facilities.
 - c. DOE/NNSA Responsible Contracting Officer. A DOE/NNSA official with responsibility for administering the contract for the operation of a DOE/NNSA research or production site/facility.
 - d. DOE/NNSA Site/Facility Management Contractors. Operate and maintain Government-owned facilities under contract with and for the benefit of DOE/NNSA.
 - e. Field Intelligence Element (FIE). An intelligence component of the DOE-IN Field Intelligence Enterprise, which includes DOE/NNSA Site/Facility management Contractors and subcontractor employees located at DOE/NNSA facilities that provide products and services to DOE, the Intelligence Community (IC), and non-IC Federal agencies. FIE Directors are approved by the Director of DOE-IN and have responsibility for compliance and oversight of all intelligence and intelligence-related DHS work at the DOE/NNSA site/facility in coordination with the field office manager.
 - f. 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. NNSA FOMs serve as line management, site-level mission integrators, and as the authorizing officials for activities at the site on behalf of the Administrator.
 - g. Human Subjects. Living individuals about whom a researcher obtains data through intervention or interaction with the individual, or through or identifiable information.
 - h. Intelligence and Intelligence-Related Work (IW).

- (1) Intelligence projects are sponsored by an organization identified in Executive Order 12333 as an element of the Intelligence Committee and funded by either the National Intelligence Program or the Military Intelligence Program and within the authorities of that organization in accordance with Executive Order 12333, applicable U.S. laws, other Executive Orders, Presidential Directives, Intelligence Community Directives, and DOE Procedures for Intelligence Activities.
 - (2) Intelligence-related projects are sponsored by non-Intelligence Community Federal agencies, regardless of appropriation type, utilizing DOE's authorities under Executive Order 12333 applicable U.S. laws, other Executive Orders, Presidential Directives, Intelligence Community Directives, and DOE Procedures for Intelligence Activities.
 - (3) Activities for which the cognizant technical DOE Headquarters official is the Director, Office of Intelligence and Counterintelligence.
 - i. Interagency Agreement. Provides the statement of work, terms and conditions, funding, billing, and payment data in support of a DHS reimbursable agreement. The format of a DHS interagency agreement is acceptable if it contains the appropriate elements as outlined in this Order.
 - j. 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.
 - k. Reimbursable Agreement. An agreement to perform work or provide a service to DHS on a reimbursable basis.
 - l. Research. Systematic investigation, research development, testing, and evaluation designed to expand or contribute to general knowledge.
 - m. 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.
 - n. Sponsor. An entity that provides work for others funding.
 - o. 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 the DOE Office of Acquisition Management at 202-287-1507, or the NNSA Office of Strategic Partnership Programs at 202-586-1444.

BY ORDER OF THE SECRETARY OF ENERGY:



DAVID M. TURK
Deputy Secretary

ATTACHMENT 1
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 site/facility contract scope.
 - b. Planned to avoid DOE contractor-incurred costs or long-term liabilities that create an unfunded burden on DOE facilities and resources.
 - c. Consistent with applicable laws and regulations.
 - d. Priced in accordance with DOE O 522.1, *Pricing of Departmental Materials and Services*, current version, and provisions applicable to DHS work, which include the following:
 - (1) Costs for the DOE Federal administrative charge will not be assessed for directly funded DHS work.
 - (2) DOE must recover an applicable share of site safeguards and security expenses from non-DOE customers, including DHS, unless such recoveries have been deemed immaterial in accordance with the procedures specified in Chapter 15.1 of the DOE Financial Management Handbook.

- (3) 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.
 - e. 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.

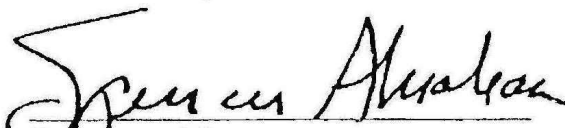
Counterintelligence: DHS will comply with the counterintelligence protections and requirements currently in place at DOE sites for any facilities at DOE sites where DHS may locate personnel pursuant to this agency agreement.

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.

ATTACHMENT 3
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."