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Department of Energy
Acquisition Regulation

No. AL 2012-09
June 22, 2012

ACQUISITION LETTER

This Acquisition Letter is issued under the authority of the Senior Procurement Executives of DOE and NNSA. It is intended for use by procurement professionals of DOE and NNSA, primarily Contracting Officers, and other officials of DOE and NNSA that are involved in the acquisition process. Other parties are welcome to its information, but definitive interpretations of its effect on contracts, and related procedures if any, may only be made by DOE and NNSA Contracting Officers.

Subject: Guidance for Fast-Track Cooperative Research And Development Agreement (CRADA) Programs at DOE Facilities.

References:

DOE Cooperative Research And Development Agreements Order	DOE O 483.1
DOE Cooperative Research And Development Agreements Manual	DOE M 483.1
Stevenson-Wydler Technology Innovation Act	15 U.S.C. § 3710a
FFRDCs	48 CFR 35.017
Technology Transfer	48 CFR 970.2770
Technology Transfer Mission	48 CFR 970.5227-3
Federal Laboratory	15 U.S.C. § 3703(6)

When Is this Acquisition Letter (AL) Effective?

This AL is effective immediately upon issuance.

When Does this AL Expire?

This AL remains in effect until superseded or canceled.

Who Is the Intended Audience For this AL?

Department of Energy (DOE) and NNSA M&O Contracting Officers are the audience for this AL. (for purposes of this AL use of the acronym DOE includes (NNSA)

Who Is the Point of Contact For this AL?

Contracting Officers may contact John Lucas, Assistant General Counsel for Technology Transfer in the Office of the General Counsel by phone at (202) 586-2939 or by email at john.lucas@hq.doe.gov.

Need More Information on ALs?

Visit the website at http://energy.gov/management/office-management/operational-management/procurement-and-acquisition/guidance-procurement for information on Acquisition Letters and other policy issues.

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What Is the Purpose Of this AL?

The purpose of this AL is to provide implementation guidance to Contracting Officers on Fast-Track CRADA Programs at DOE contractor operated facilities.

What Types of Actions Are Affected by this AL?

This AL applies to DOE CRADAs.

What Is the Background Of this AL?

This AL provides guidance for implementing a new Fast Track CRADA Program (Fast Track or Fast Track Program) at DOE Facilities (i.e., National Laboratories, single-purpose research facilities, and other Department facilities) (Facilities) that streamlines the execution of Cooperative Research and Development Agreements (CRADAs) across the DOE complex.[1]

Under 15 U.S.C. § 3710a (a), directors of Government-owned, contractor-operated laboratories may enter into CRADAs to the extent provided in an agency-approved joint work statement (JWS)[2], or if permitted by the agency, in an agency-approved annual strategic plan (ASP). The current practice across the DOE Laboratory system is for local Site Office Contracting Officers to perform comprehensive reviews and approve both the terms and conditions and the Statement of Work (SOW) contained in the proposed CRADA agreement and JWS respectively, and before the Facility Contractor may sign the agreement. This AL provides guidance on establishing and utilizing a Fast Track Program that enables DOE Facilities to streamline the execution of CRADAs by simplifying the DOE Site Office involvement in individual CRADA "transactions" using contractor assurances. Although streamlined, the Fast Track Program ensures the Department receives adequate disclosure[3] of DOE Contractor activities and continues to be involved in a significantly reduced but critical contract management role when making government resources available to non-DOE entities. The authority for the Fast Track Program is based upon amendments to the Stevenson-Wydler Act[4] (Stevenson-Wydler) that grant Federal agencies certain flexibilities in approving CRADA documents, including: (1) the use of an ASP in lieu of an agency approved JWS for each CRADA and (2) the authority to waive the review and approval of individual CRADA instruments under certain circumstances. Although the Stevenson-Wydler Act does not address delegations of contracting authority for placing work onto government contracts, the Fast Track CRADA Program takes full advantage of the approval authority provided under the Act. The process also provides an opportunity to use Contractor-provided assurances in satisfying DOE's contract management responsibilities. This significantly reduces DOE's role to confirming contractor assurances related to an ASP and/or when standard terms and conditions are being used.

[1] Implementation of Fast Track CRADA programs are encouraged; however, local DOE Contracting Officers in coordination with their Cognizant Secretarial Officer (CSO) shall have discretion in determining whether a Fast Track Program is necessary and/or appropriate at a particular Facility.

[2] Under 15 U.S.C. § 3710a (d)(3), the term "joint work statement" means "a proposal prepared for a Federal agency by the director of a Government-owned, contractor-operated laboratory describing the purpose and scope of a proposed cooperative research and development agreement, and assigning rights and responsibilities among the agency, the laboratory, and any other party or parties to the proposed agreement." Depending on the local Site Office requirements, Joint Work Statements across the DOE system typically contain identification information about the participants, funding information, benefits to a DOE/NNSA mission, background intellectual property (IP), U.S. competitiveness, security considerations, and other items required by the Site Office.

[3] See FAR 35.017(a) (2), which states a "FFRDC is required to . . . have full disclosure of its affairs to the sponsoring agency."

[4] See Stevenson-Wydler Technology Innovation Act of 1980, as amended, and codified at 15 U.S.C. § 3710a.

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Based on the flexibilities provided by these statutory amendments DOE Site Offices and Facility Contractors are provided two new options (see, options A and B described below) that can be used in place of traditional DOE CRADA review and approval. The availability of either Fast Track option is contingent upon the requirements described this AL.

Under Fast Track Option A, DOE's standard comprehensive CRADA review and approval is replaced by the use of an ASP and a streamlined Fast Track CRADA package that is reviewed by DOE against the ASP within 10 business days. Under Option A, *no* formal DOE review or approval of either a JWS or the proposed CRADA instrument is required since the proposed SOW has already been pre-approved since it fits under the ASP scope of work, and because the Facility Contractor is utilizing pre-approved terms and conditions. Instead, Option A uses a streamlined Fast Track CRADA package which is reviewed within 10 business days by the DOE Site Office that confirms the contractor assurances.

Integral to Option A is the Contracting Officer's reliance on Facility Contractor assurances that a proposed CRADA meets the Fast Track criteria set forth in this AL and the applicable ASP. The Contracting Officer may use his/her discretion to rely on the Facility Contractor's assurances that a proposed CRADA is eligible for the Fast Track Program and that: (1) the Contractor has performed all required reviews (e.g., fairness of opportunity, security review) listed in the ASP; (2) the proposed SOW falls within the general scope(s) of approved research areas within the ASP; and (3) the CRADA uses standard, pre-approved terms and conditions without substantive modification. A substantive modification is defined as: any change to language requiring DOE HQ approval pursuant to the DOE Order 483.1 or any substantive changes to the other provisions.

Fast Track Option B provides an alternate process for CRADAs having SOWs that fall outside of the scope of an ASP, or where no ASP has been approved for the Facility. Like the first option, Option B requires Facility Contractors to provide an assurance that preapproved terms and conditions are being used, so DOE's review and approval of the CRADA instrument is unnecessary and DOE's responsibility would be limited to confirming assurances. However, unlike Option A, since CRADAs submitted under Option B are not covered by an ASP, DOE standard approval of a suitable JWS is necessary to meet statutory requirements.

Facility Contractors in conjunction with their local DOE Site Offices and the Cognizant Secretarial Officer (CSO) may decide to implement Fast Track Option A, Fast Track Option B, or both at a particular facility. Where CRADAs involve DOE Program funding, the funding Program may require separate review and approval of proposed CRADA packages.

The Contracting Officer, or designee, will periodically assess Contractor performance and reliability in preparing Fast Track CRADA documents, as well as periodic reviews of the Facility's overall CRADA program.

What Guidance is Included in this AL?

1. Prerequisites for utilizing the Fast Track Program:

DOE Site Offices are authorized to utilize the Fast Track CRADA Program under the following conditions:

- ❒ The CRADA has less than a total of $3,000,000 of funds-in contribution or less than $1,000,000 per year;

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- ❒ The CRADA has less than a total of $3,000,000 of government contributions or less than $1,000,000 per year;

- ❒ There is no foreign interest in or control or influence of the Participant, as defined under the DOE Order 483.1 ;

- ❒ The Contractor is using the DOE-approved model CRADA, or the proposed CRADA only contains minor modifications that do not substantively modify the standard terms and conditions provided under the DOE Order 483.1 which governs CRADAs, or other terms and conditions previously approved in a current DOE-approved model CRADA. A substantive modification is defined as: (1) any change to language requiring HQ approval pursuant to the DOE Order 483.1 or (2) any substantive changes to the other provisions.

- ❒ The CRADA does not create a perceived or actual organizational conflict of interest between the Contractor and the Participant. This includes, but is not limited to, CRADAs with the Facility Contractor's parents, members, subsidiaries, or affiliates.

2. Fast Track Option A – DOE Review of Fast Track CRADAs under an ASP

Under Fast Track Option A, traditional DOE review and approval of a JWS and CRADA instrument is replaced by the use of an ASP and Fast Track CRADA package. Although Stevenson-Wydler does not describe the specific requirements of an ASP, the utilization of an ASP will serve as a suitable substitute for reviewing an individual JWS, and, as such, should ensure that the Contractors and DOE have a common understanding of the scope of work to be performed under CRADAs. Guidelines for developing and implementing a Fast Track Program using an ASP are described below.

a. Guidelines for developing an Agency-Approved Annual Strategic Plan (ASP)

DOE Site Offices that implement Option A of the Fast Track Program must ensure that a satisfactory contractor developed ASP is subsequently approved by the CO. The DOE Site Office must also develop procedures to implement a streamlined review of Fast Track CRADA packages submitted under Option A in ten (10) business days and identify a single point of contact within the Site Office that will be responsible for receiving and reviewing Fast Track CRADA packages. The ASP submitted by the contractor must at a minimum, provide/identify a description of the Fast Track CRADA program at the Facility, including a scope of work that is defined as specific preapproved research areas allowable under Option A of the program and a list of required reviews that the Facility contractor must perform prior to executing a Fast Track CRADA under Option A. The ASP should also address any additional Program concurrence or approval, if required, for proposed CRADAs involving DOE Program funding. To the extent possible, the ASP scope of work should provide with reasonable specificity a description of the collaborative research and development projects (suitable for performance under a CRADA) that the Contractor and Site Office anticipate will be funded during the Fiscal Year. The descriptions of the areas of collaborative research in the ASP should provide an understanding between DOE and the Contractor of the anticipated collective scope of work to be performed at the Facility under CRADAs. The ASP must be approved annually by the cognizant DOE Contracting Officer in consultation with the CSO.

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b. Contents of a Fast Track CRADA Package

A Fast Track CRADA package is intended to be a short (e.g., 1-2 pages) document that contains at minimum the following information:

- ❒ Basic information regarding the CRADA (e.g. identity of the CRADA participant(s), estimated project funding, project schedule, a list of expected deliverables, background IP)
- ❒ A description indicating how the proposed SOW for the CRADA falls within the general scope(s) of approved research areas within the ASP.
- ❒ A written assurance from the Facility Contractor that: the proposed CRADA meets the Fast Track criteria in this AL and the applicable ASP; the Contractor has diligently performed all required reviews described in the locally approved ASP; and the CRADA uses preapproved terms and conditions without any substantive modifications (as previously defined).[5]

c. 10-Day Review of Fast Track CRADAs under an ASP

Upon receipt of the Fast Track package, the Contracting Officer will review the package to confirm that the Facility Contractor provided assurances for the SOW and terms and conditions are consistent with the pre-approved ASP scope of work and pre-approved terms and conditions. [6]

The cognizant DOE Site Office will have 10 business days from receipt of a Fast Track package to perform a review and provide the Facility Contractor notice (1) that specific modifications of the package are necessary; (2) that the package has been rejected; or (3) that the package is approved and to sign the agreement. If the Site Office does not approve, request modification, or disapprove the Fast Track Package within 10 business days, the Facility Contractor may notify its CSO to expedite review and approval. Once signed, the Contracting Officer using his/her warranted contracting authority will place the work and funding onto the contract.

If the Department requests modification to the Fast Track CRADA package, the 10-day cycle will reset when a revised package is submitted to the Site Office for review.

3. Fast Track Option B - DOE Approval of proposed CRADAs not covered under an ASP

CRADAs with SOWs that are not covered under a DOE approved ASP, or where no ASP has been approved for the facility but which otherwise meet the criteria described in Section 1 of this AL, require review and approval of a standard JWS by the DOE Site Office prior to the agreement being executed by the Facility Contractor. Thus under Fast Track Option B, Facility Contractors must submit, a standard JWS for approval along with a assurance that (1) the proposed CRADA meets the criteria described in Section 1 of this AL and (2) that the CRADA uses pre-approved terms and conditions without any substantive modifications.

[5] The Facility Contractor shall promptly notify the DOE Site Office of any irregularities discovered during the review process.
[6] Any substantive modifications (as previously defined) to pre-approved terms and conditions will require the Contracting Officer to approve the CRADA.

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Upon receipt of the proposed JWS and an assurance as described above, the cognizant DOE Site Office will use reasonable best efforts to perform a standard comprehensive review and approve, request specific modifications to, or disapprove the JWS within 10 business days. If the Site Office does not approve, request modification, or disapprove the JWS within 10 business days, the Facility Contractor may notify its CSO to expedite review and approval.

If the Department requests modification of the JWS, the 10-day cycle will reset when a revised JWS is submitted to the Site Office for review.

4. DOE Review of proposed CRADAs over the funding limits

The Contracting Officer may, by written approval, allow a Facility Contractor to utilize either option under the Fast Track CRADA Program on a case-by-case basis when other Fast Track prerequisites are met, but the anticipated funding is above the funding limits described in Section 1. The CO shall provide notification of these actions to the CSO for informational purposes only.

5. Fast Track CRADA Amendments

DOE Site Offices will make reasonable best efforts to review and provide confirmation, request modifications to, or reject amendments to Fast Track CRADAs authorized under this AL within 10 business days. Modifications that increase contributions above the funding limits described in Section 1 of this guidance may be approved by the Contracting Officer. CO's shall notify their CSO of proposed increases to contribution limits prior to approval.

6. Annual Performance Assessments

Annually, DOE Site Office CO will assess the success of the Fast Track CRADA Program to determine if changes or discontinuation is warranted. COs should provide the results of their assessments to their CSO.

Conclusion

DOE is committed to improving its technology transfer policies and procedures, and issues this guidance with the goal of maximizing flexibilities provided by statute for streamlining the execution of CRADAs across the DOE complex. This AL makes full utilization of contractor assurances for executing CRADAs and reducing DOE review and approval requirements while ensuring DOE's technology transfer activities are executed in a manner that ensure adequate disclosure to the Department within DOE contracting authorities. As noted above, DOE will periodically reexamine and revise this guidance as appropriate to ensure these goals are being achieved.