



POLICY FLASH 2009-09

DATE: November 20, 2008

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, MA-611
Office of Procurement and Assistance Management

SUBJECT: Department of Homeland Security (DHS) Standard Terms and Conditions for a Reimbursable Work Agreement with the Department of Energy (DOE)

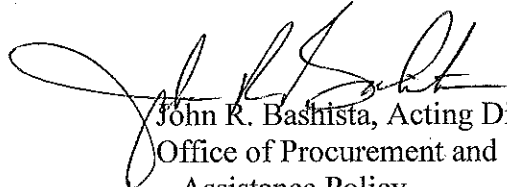
SUMMARY: Section 309 of the Homeland Security Act of 2002 provides DHS special access to DOE and its national laboratories and other facilities in accomplishing the DHS homeland security mission. On February 28, 2003, the two agencies negotiated a Memorandum of Agreement, signed by their respective Secretaries that established conditions for the interaction of the two agencies when providing DHS access to DOE's national laboratories and other facilities. DOE, in collaboration with DHS, developed and implemented internal procedures for review, approval and monitoring of DHS reimbursable work with the issuance of DOE Order 484.1, REIMBURSABLE WORK FOR THE DEPARTMENT OF HOMELAND SECURITY, dated August 17, 2006. Subsequently, DOE and DHS identified the need for development and use of standardized formats and pre-approved terms and conditions for reimbursable work, which would improve cycle times and simplify interagency contracting practices.

This Policy Flash transmits the Master Interagency Agreement (MIA) between DOE and DHS. Also included are standardized terms and conditions for reimbursable agreements, and a statement of work template, which Contracting Officers shall use for future Interagency Agreements with DHS for work to be performed by DOE national laboratories.

This MIA, the standardized terms and conditions, and the statement of work template will be incorporated into the DOE Acquisition Guide and the STRIPES library.

This Flash will be available online within a day, at the following website:
http://www.management.energy.gov/policy_guidance/policy_flashes.htm .

Questions relating to this Flash may be directed to Andrew "Scott" Geary at (202) 287-1507, or Andrew.Geary@hq.doe.gov.



John R. Bashista, Acting Director
Office of Procurement and
Assistance Policy

Attachments

MASTER INTERAGENCY AGREEMENT

No. HSHQDC-09-X-00011

BETWEEN

THE DEPARTMENT OF ENERGY AND THE DEPARTMENT OF HOMELAND SECURITY RELATING TO A STANDARD SET OF TERMS AND CONDITIONS FOR USE IN ALL SUBSEQUENT INTERAGENCY AGREEMENTS BETWEEN THE TWO AGENCIES.

Whereas the Department of Energy (DOE) oversees a complex of national laboratories and other facilities with special and unique capabilities in pursuit of research and development;

Whereas Section 309 of the Homeland Security Act of 2002 provides the Department of Homeland Security (DHS) special access to DOE and its national laboratories and other facilities in accomplishing the DHS homeland security mission;

Whereas the two agencies negotiated a Memorandum of Agreement, signed by their respective Secretaries, dated February 28, 2003, which Memorandum of Agreement implements the interaction of the two agencies regarding DHS access to the capabilities of DOE's national laboratories and other facilities;

Whereas DOE has institutionalized that Memorandum of Agreement and its implementing internal procedures in DOE Order 484.1; and

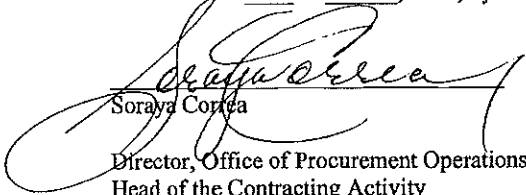
Whereas in order to simplify and streamline the DHS's issuance of interagency agreements, the two agencies have agreed that the use of the terms and conditions appended to this Master Interagency Agreement as Appendix A in subsequent interagency agreements will achieve those purposes;

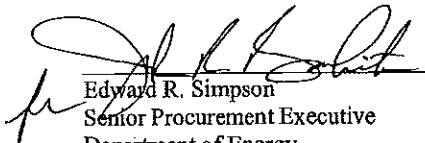
Now therefore, the DHS and DOE agree that interagency agreements between the two agencies for work to be performed by DOE's national laboratories or other facilities will take the following form:

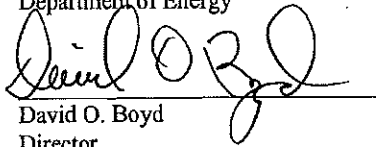
1. The Science and Technology Directorate or other DHS component, using these terms and conditions, shall draft the proposed interagency agreement comprising:
 - a. A face page and continuation sheet, including the estimated cost, the funds obligated, and the performance period, with other necessary information, including the incorporation by reference of the terms and conditions appended to this Master Interagency Agreement as Appendix A.

- b. A statement of work that includes the description of the work to be performed, identification of the deliverables, the schedule for delivery, a funding time-line, and the points of contact and other contact information for that individual interagency agreement.
2. Both agencies have determined that the terms and conditions in Appendix A will serve as the preferred terms and conditions in the execution of DOE/DHS interagency agreements and will be amended only with the agreement of both agencies.

Executed this ____ of ____, 2008, by:


Soraya Correa
Date 10/16/08
Director, Office of Procurement Operations
Head of the Contracting Activity
Department of Homeland Security


Edward R. Simpson
Date 10/8/2008
Senior Procurement Executive
Department of Energy


David O. Boyd
Date Oct 9, 2008
Director
Office of Acquisition and
Supply Management
National Nuclear Security Administration

Department of Homeland Security (S&T)
Standard Terms and Conditions for a
Reimbursable Work Agreement with the
Department of Energy

Standard Terms and Conditions

1. Servicing Agency. For the purposes of the interagency agreements (IAs) for the Science and Technology Directorate (S&T) of the Department of Homeland Security (DHS), reference to the "Servicing Agency" means Department of Energy (DOE) and, when appropriate, DOE's component organization the National Nuclear Security Administration (NNSA). DHS S&T is directing its IAs to DOE, not the facility management contractors. The work described in the attached Statement of Work (SOW) will be performed for the Department of Homeland Security, pursuant to

- § 309(a)(1)(C) of the Homeland Security Act of 2002, Pub. L. 107-296 (116 Stat. 2135 (2002)),
- Memorandum of Agreement between DOE and DHS (February 28, 2003), and
- DOE Order 484.1, *Reimbursable Work for the Department of Homeland Security* (August 17, 2006), including its attachments.

Performance of work described in the attached SOW will be conducted under the terms and conditions of the DOE facility management contract number DE-AC-xxxxxxx (facility management contract). DHS acknowledges that DOE facility management contractors are prohibited from performing reimbursable work that conflicts with the terms and conditions (T&Cs) of the facility management contract. DOE acknowledges that these T&Cs do not conflict with DOE-approved facility management contract T&Cs. In the case of conflict between these T&Cs and the facility management contract, the facility management contract prevails.

2. Statement of Work.

- a. The SOW negotiated between DHS and the DOE facility management contractor is included as an attachment.
- b. Changes and/or modifications to this Agreement shall be in writing and approved by the cognizant DHS Contracting Officer and DOE Contracting Officer. No oral statement by any person shall be interpreted as modifying or otherwise affecting the terms of this agreement.
- c. The DHS S&T Technical Representative identified in the Points of Contact section of this agreement is responsible for the technical administration of this Agreement. The DHS S&T Technical Representative is not authorized to make any changes that impact the cost, schedule or performance of this Agreement without a properly

executed change or modification to this Agreement in accordance with paragraph b above.

- d. DHS and DOE recognize that certain communications and direction between the DHS and the DOE facility management contractor to meet the requirements identified in the attached SOW may occur. DHS acknowledges that direction to DOE facility management contractors will be limited to day-to-day decisions directly related to performance of work identified in the attached DOE-approved SOW. DHS and the facility management contractor may discuss changes to the requirements in the SOW that modify the scope, cost, or delay delivery of the product, however, any such changes must be approved in writing by the cognizant DOE contracting officer.

3. Period of Performance. The period of performance negotiated between DHS and the DOE facility management contractor for the IA is specified in the attached SOW. The period of performance starts on the date of execution of the IA by both the DHS and the DOE contracting officers. The end date is identified in the attached SOW and the funding document.

4. Financial Terms.

- a. Estimated cost. The estimated cost for the performance of the work is described in the attached SOW (estimated cost includes, among other things, all direct and indirect costs). The costs charged to DHS will be the same as the costs that would have been charged to DOE for the performance of the work. DHS reimbursable work is performed on a full cost recovery basis. DHS shall be responsible for all costs required to restore the work site environment to its prior form or previous condition after all DHS work under this IA is completed.
- b. Amount Obligated. DHS obligates the total dollar amount identified in the IA for the performance of work described in the SOW. Full funding shall be provided for work to be completed within one fiscal year. For work that transcends fiscal years, full funding for the remainder of the current fiscal year plus the first three months of the following fiscal year is required. DHS may request the DOE Contracting Officer (CO) approve an exception to full funding requirement on a case-by-case basis. To the extent that this obligation is less than the total estimated cost, DOE shall ensure facility management contractors provide sixty (60) days notice of the need for additional DHS funds for continuation of the work. DOE facility management contractors will perform work and incur costs only when funding for the requirements described in the SOW has been provided by DHS. In the absence of such funding, work on this DHS project will cease.
- c. Billing Instructions. DHS reimbursement of costs incurred in the performance of work described in the SOW will be made via the U.S. Treasury Inter-government Payment and Collection System (IPAC).

- d. Laboratory Directed Research and Development (LDRD). LDRD costs shall be identified and charged in accordance with the DOE/DHS MOU and DOE policies and procedures delineated in DOE Order 484.1.

Attachment 4 of DOE Order 484.1, Reimbursable Work for the Department of Homeland Security states, "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."

5. **Place of Performance.** The cognizant DOE Contracting Officer will authorize performance of the work at the DOE facility described in the SOW. If the work is to be performed at multiple sites under the IA, the DHS has specifically identified in the attached SOW what work will be performed at each site.

6. **Travel.** Domestic travel costs required to perform this work will be reimbursed consistent with the T&Cs of the DOE facility management contract. DOE will provide 30-day advance notification for all foreign travel to DHS and obtain the S&T Technical Representative's approval prior to approving travel.

7. **DHS-Furnished Information and Property.**

- a. DHS will provide to DOE any DHS information, materials, or forms that are unique to DHS to support tasks under the IA. Such forms and other documentation (e.g., approval requests for foreign travel) may require input from the DOE and/or the DOE facility management contractor. This information is considered part of the DHS Reimbursable Work agreement and of a routine nature (i.e., not overly burdensome or resource-intensive and consistent with regular DOE requirements). However, costs for unusual, non-routine, or resource-intensive transactions (in excess of regular DOE requirements) specified in the attached SOW or subsequent to the work being approved will be reimbursed by DHS.
- b. The DHS S&T Technical Representative identified in the IA will be the point of contact (POC) for identification of any required information to be supplied by DHS.
- c. **DHS-Furnished Property.** DHS will provide property to DOE only when specifically identified in the IA or modification to this IA subsequent to approval of the IA.

8. Acquisition of Property under the IA

- a. DOE is authorized to purchase all property specifically identified in the SOW.
- b. DOE may acquire property not identified in the SOW when cost are less than \$5,000 and the acquisition is required in the performance of the work under the IA. All property acquisitions in excess of \$5,000 shall be identified in the SOW.
- c. DOE shall obtain written approval of the DHS S&T Contracting Officer prior to purchasing any property not identified in the SOW with associated costs in excess of \$5,000.
- d. Property costing \$5,000 or more shall upon its purchase become the property of DHS. Such items will be accounted for in accordance with DOE approved property accountability procedures used by the DOE facility management contractor in the performance of DOE work.

9. Property Disposition. The DHS Contracting Officer shall provide written instructions to DOE regarding the disposition of property that costs \$5,000 or more and sensitive property (see DOE Order 580.1) regardless of value. DHS will reimburse the costs of property disposition or pay transportation costs to a DHS facility. DOE will retain ownership or dispose of property (except sensitive property) costing less than \$5,000 according to the procedures approved by DOE for use by the DOE facility management contractor.

10. Deliverables.

- a. Program Status Report: The DOE facility management contractor will provide program status reports to the DHS consistent with direction provided in the SOW. Reports should be provided to the DHS CO, S&T Technical Representative and DHS S&T Resource Manager and contain metrics pertaining to financial, schedule, and performance information, risk information, a summary of expected deliverables and milestones for the effort, and an assessment of performance of all work performed under the IA.
- b. All other deliverables identified in the attached SOW will be sent directly to the DHS S&T Technical Representative, with a copy of the transmittal letter to the DOE and DHS Contracting Officers (the executing authorities for the IA).

11. Acceptance Criteria. Deliverables shall be subject to testing, review, and acceptance by DHS to verify that each deliverable satisfies DHS's applicable acceptance criteria. The DOE facility management contractor will perform the IA work in a manner consistent with its subject matter expertise. "Acceptance Criteria" mean the criteria developed by DHS to determine whether a deliverable is ready for acceptance by DHS and may include, without limitation, requirements that the applicable deliverable: (i) has been completed and delivered/achieved according to the SOW; (ii) meets or exceeds the identified requirements in the SOW, including but not limited to technical specifications and performance standards; and (iii) complies with

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such other criteria as may be developed and agreed on by DHS and DOE. DHS will identify in the attached SOW any Acceptance Criteria specific to the IA requirements.

12. **Correction of Nonconformities.** If a deliverable fails to meet the Acceptance Criteria (each failure will be referred to as a "Nonconformity"), the DHS CO will provide written notification to the DOE of such failure. Upon receiving such notice, DOE will inform DHS in writing of the costs and proposed actions to mitigate the nonconformity. Corrective actions will not be undertaken until DHS provides approval in writing on what actions are to be taken and provides funding to support such actions. The corrected Nonconformity will be delivered to DHS, which will then confirm in writing whether the redelivered deliverable satisfies the applicable Acceptance Criteria. The process described in this paragraph may be repeated until all Nonconformities are corrected and the deliverable satisfies the IA Acceptance Criteria or until either party determines that continued efforts would be unsuccessful. DHS will reimburse DOE for all costs associated with these corrective actions.

13. **DOE Facility Contractor's Performance.** As requested, annually and at completion of performance, DHS shall provide the DOE Contracting Officer with a written evaluation of the DOE facility management contractor's performance.

14. **Security Requirements.**

- a. All work performed under the IA is unclassified unless otherwise specified by DHS.
- b. Performance of work under the IA may require access by DOE and/or DOE's facility management contractor to information that is sensitive but unclassified, e.g., Official Use Only or other designations that can qualify as Freedom Of Information Act exemptions and/or classified (e.g., Confidential, Secret, or Top Secret, and if classified, at categories of National Security Information, Restricted Data, or Formerly Restricted Data). If sensitive but unclassified or classified work is required under the IA, DHS will provide specific guidance to DOE as to which work will be subject to treatment as sensitive but unclassified and/or classified and at which classification level. If DHS guidance appears to conflict with DOE or other applicable Government guidelines, DHS and DOE will negotiate the treatment of the data in a manner that best satisfies the requirements of both agencies, and DOE will assure the facility management contractor will adhere to the result.

15. **Intellectual Property.**

- a. The work described in the SOW is sponsored by DHS. The intellectual property rights under this agreement, including rights to patents conceived or first reduced to practice or the rights in scientific and technical data or computer software first produced, including the right to assert copyright, are governed by the DOE facility management contract. The additional conditions listed below are necessary to assure that those intellectual property rights are exercised in consonance with the programmatic objectives of the DHS sponsorship of the work under this agreement.

- b. In authorizing the facility management contractor to perform work under the IA, DOE shall require that any publication of scientific and technical data or computer software *first produced* under this agreement will contain the following legend or equivalent reflecting DHS sponsorship of the work:

"The Department of Homeland Security sponsored the production of this material under DOE Contract Number XXXX for the management and operation of << insert facility management contractor's name, organization, and/or laboratory>>."

- c. Where the terms of the DOE facility management contract require DOE authorization, DOE will not authorize the facility management contractor to retain or exercise any intellectual property rights not specifically granted under the DOE facility management contract, such as the right of the facility management contractor to assert its copyright in scientific or technical data or computer software *first made or produced* under this agreement, without consulting with and receiving the concurrence of the DHS Intellectual Property Counsel, specified below, or his/her designee. This requirement does not affect the right of the facility management contractor to assert copyright in scientific and technical journals as provided under the DOE facility management contract.

- d. The DOE facility management contract provides that the facility management contractor shall not include in any items delivered to the Government material that is copyrighted by third parties without the prior approval of DOE, unless such material is subject to the contractually specified Government license. DOE shall not approve any such request under the IA without consulting with and receiving the concurrence of the DHS Intellectual Property Counsel or his/her designee.

- e. In authorizing the DOE facility management contractor to perform the work described in the SOW, DOE shall require that, whenever the facility management contractor makes a request to DOE relating to intellectual property matters or provides invention disclosures, the facility management contractor provide a copy of all such requests or invention disclosures to the DHS Intellectual Property Counsel.

- f. The facility management contractor's merely providing copies of requests or invention disclosures to DHS Intellectual Property Counsel, as provided in paragraph 14c., d., or e., does not in any way obviate the obligations of the facility management contractor to make invention disclosures, submit requests for permission to assert copyright, or provide any other intellectual property notices or requests to DOE Patent Counsel pursuant to the terms and conditions of the DOE facility management contract.

g. DHS Intellectual Property Counsel:

Assistant General Counsel for Intellectual Property
Department of Homeland Security
245 Murray Lane
Washington, D.C. 20825

Or S&T_OGC_IP@hq.dhs.gov

16. Termination.

a. The IA may be terminated by mutual agreement of DOE and DHS, documented in a bilateral modification. The IA may also be unilaterally suspended by either party upon 30 days' advance written notice to the other party. In the event of a termination of this Agreement, no future work may be performed against it. Incurred costs and associated termination costs, including payment for any outstanding commitments related to the SOW shall be paid by DHS. After payment of those costs, DOE shall return any remaining funds to DHS.

b. Upon termination, DOE will assure that the facility management contractor provides all completed deliverables and the most current version of data relating to any incomplete deliverables. DOE will provide DHS with an accounting of the IA costs and any termination costs.

17. Points of Contact.

- a. The DOE Contracting Officer is the executing authority for the IA on behalf of DOE.
- b. The DOE point of contact for a DHS reimbursable agreement shall be identified in the attached statement of work.
- c. DOE will notify DHS of any changes to the Contracting Officer executing this agreement. DOE will identify other points of contact as necessary.
- d. Except for Intellectual Property Counsel as provided above under paragraph 14(g) of the standard terms and conditions, the DHS POCs are as follows:
 - DHS-S&T Technical Representative – this person is identified in the attached SOW.
 - DHS-S&T Resource Manager – this person is also identified in the attached SOW.
 - DHS-S&T Contracting Officer – this person is the executing authority for this IA on behalf of the Requesting Agency.

DHS S&T may change the individuals designated as these POCs upon written notice to DOE of such a change.

Attachment: Statement of Work for
<<insert Title Description of work>>

Conducted by
<<insert name of performer -- the DOE national lab/site>>
for
Directorate of Science and Technology
U.S. Department of Homeland Security
<<Insert S&T Office/Division name>>

I. Background

Describe the mission requirements within S&T. The following is an example.

The U.S. Department of Homeland Security (DHS) is committed to using cutting-edge technologies and scientific talent in its quest to make America safer. The DHS Directorate of Science and Technology (S&T) is tasked with researching and organizing the scientific, engineering, and technological resources of the United States and leveraging these existing resources into technological tools to help protect the homeland. The <<insert portfolio/Division/program/office/project name>> supports this effort through <<insert how this DHS entity does this>>.

Include program/project requirements.

Include special legislative, legal, or regulatory authority, if applicable.

This statement of work (SOW) is issued pursuant to the DOE facility management contract between the Department of Energy (DOE) and <insert Performer name> for research, testing, evaluation, and/or development activities and pursuant to Section 309(a)(1)(c) of the Homeland Security Act of 2002 (Public Law 107-296) which authorizes DHS to utilize the DOE national laboratories and sites on a "work for others" basis.

II. Scope of Work and Specific Deliverables

<<insert performer name>> shall perform the tasks described in this SOW:

- A. List tasks to be accomplished (what is desired, not how to do the work).
- B. Should have 4-6 tasks listed in priority order, use subtasks if required.

Example:

| Program Element / Project | Major Tasks | Key Milestones and Deliverables |
|--|--|---|
| | | <i>Required time periods are measured from the contract award date</i> |
| <Program Name>: The goal of this program element is to ... | <ul style="list-style-type: none"> • Example: • 0-6 months – Establish ... • 3-12 months – Develop & utilize ... | <ul style="list-style-type: none"> • 6 months – Interim report ... • 12 months – Summary report ... |

List Deliverables desired – describe in sufficient details.
Provide Due dates/milestones for tracking

[Guidance in filling out Section II: The S&T Program should describe the task, deliverables, acceptance criteria, in such a manner that a lay reader can gain some understanding of the nature of the work and the basis under which the deliverables will be evaluated. Provide a clear summary description of the technical work desired by DHS. This should be detailed enough for contracting purposes, to specify the type of work desired. Specify objectives, funding, timeframe for results, and deliverables (e.g., a report summarizing technical findings of the investigations). DHS acceptance criteria that will be used to evaluate deliverables should be included.]

III. Other Contract Details

1. **Place(s) of Performance.** For the purposes of Article 5 of the terms and conditions of this IA, the work described in the SOW shall be performed at the following location(s).
2. **Period of Performance.** For the purposes of Article 3 of the terms and conditions of this IA, the period of performance is for <<insert months>> from the date of execution of this IA to <<insert date>>. DHS may give subsequent extension notices to DOE in writing for further performance in accordance with the terms of this approved SOW.
3. **Funding Requirements:**
 - (a) For the purposes of Article 4a. of the terms and conditions of this IA, the estimated cost over the term of the period of performance is \$ _____.
 - (b) For the purposes of Article 4b. of the terms and conditions of this IA, DHS obligates \$ _____ for performance of this IA until _____.

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4. DHS will provide funding in accordance with DHS's appropriations and available funds pursuant to the estimated costs allocation outlined below:

(Provide quarterly breakdown of estimated costs by project cost element, in the standard format that the DOE facility/site uses for work proposals to DOE sponsors, either embedded or as an attachment, or via either of the tabular formats below.)

| | | 1 st Quarter | 2 nd Quarter | 3 rd Quarter | 4 th Quarter | FY 2008 |
|------------------------|--------------------------------|----------------------------|----------------------------|----------------------------|----------------------------|------------|
| Direct Costs: | | | | | | |
| | Salaries | | | | | |
| | Travel/Per Diem | | | | | |
| | Equipment/Materials | | | | | |
| | Other non-labor as appropriate | | | | | |
| Indirect Costs: | | | | | | |
| | Overhead | | | | | |
| | Other as appropriate | | | | | |
| TOTAL COSTS | | | | | | |
| | | | | | | |
| Other | Estimated Labor Hours | | | | | |
| | Average cost per labor hour | | | | | |

OR

| Program Element / Project | Program Element Funding | Labor | M&S | Capital Equipment | Travel | Indirects |
|---------------------------|-------------------------|-------|------|-------------------|--------|-----------|
| <Program Element> | \$\$\$ | \$\$ | \$\$ | \$ | \$\$ | \$\$ |
| <Program Element> | \$\$\$ | \$\$ | \$\$ | \$ | \$\$ | \$\$ |

| Program Element / Project | Program Element Funding | Labor | M&S | Capital Equipment | Travel | Indirects |
|-----------------------------|-------------------------|-------|-----|-------------------|--------|-----------|
| | | | | | | |
| | | | | | | |
| | | | | | | |
| Subtotal for <Program> | \$\$\$ | \$ | \$ | \$ | \$ | \$ |
| Totals | \$\$\$ | \$ | \$ | \$ | \$ | \$ |
| Estimated Labor Hours | | | | | | |
| Average Cost per Labor Hour | | | | | | |

4. **DHS Furnished Information and Property.** DHS will furnish the information and property listed in Attachment 1 of the SOW. Unless otherwise instructed by DHS, DOE shall retain all information and property provided by DHS consistent with DOE and DHS standard terms and conditions. (See paragraph 9 Property Disposition).

IV. Special Requirements

IV. *[Include here any special or unique requirements that bear mentioning as important terms and conditions for the performer's successful conduct and completion of this work for DHS. To determine whether special conditions, terms, or requirements are warranted, review the agreement standard terms and conditions paragraphs 1-16. In particular, are there any unusual places of performance, unusual DHS-furnished information, or property, costly property to acquire, specific acceptance criteria for deliverables, or unusual security requirements? If so, describe. If not, state "None" here.]*

V. Points of Contact

<<Insert performer's name>> Points of Contact (POCs) are as follows:

- Technical POC(s) – <<provide name, address, e-mail, phone>>
- Financial POC(s) – <<provide name, address, e-mail, phone>>

<<Insert performer's name>> may change the individual designated as a POC upon notice to DHS S&T and DOE contracting officer of such change.

The DHS POCs are as follows:

- DHS S&T Technical Representative – <<provide name, address, e-mail, phone>>
- Financial Manager <<provide name>>
Department of Homeland Security
ATTN: Science and Technology Directorate/<<insert Office, Resource manager name>>
Washington, DC 20528
<<Insert Resource Manager's phone number>>
<<Insert Resource Manager's e-mail >>

DHS S&T may change the individual designated as a POC upon notice to <<insert performer's name>> and the DOE contracting officer of such change.

VI. Applicable Documents

[Reference all documents attached to the SOW.]

Instructions for this SOW Attachment: This template is a tool to assist program managers and support personnel in formulating a precise and concise statement of work (SOW) for U.S. Department of Energy (DOE) laboratories or sites. These instructions should be deleted once the SOW is drafted.

- *Text in black represents standard SOW language that could/should be incorporated verbatim.*
- *Text in red bold italics represents areas where specific input is required. This text should be deleted once the information has been added.*

Some general instructions on completing the template:

- *Spell out the first use of an acronym and show the acronym in parentheses, for example, Lawrence Livermore National Laboratory (LLNL).*
- *Always use the performer's name or acronym rather than "we" or "the contractor" or "the national laboratory." Consistently use the same term for the performer.*
- *Avoid the passive tense, which causes confusion when multiple laboratories or entities are performing a project and it is unclear which entity is responsible for which obligation. For example, instead of writing "research will be performed by LLNL," write "LLNL will perform the research." The doer of the action should always be clearly identified.*
- *Use the verb "shall" or "will" rather than "would," "should," or "is expected" because the SOW contains firm obligations on the part of the performer.*

Department of Homeland Security (S&T)
Standard Terms and Conditions for a
Reimbursable Work Agreement with the
Department of Energy

Standard Terms and Conditions

1. **Servicing Agency.** For the purposes of the interagency agreements (IAs) for the Science and Technology Directorate (S&T) of the Department of Homeland Security (DHS), reference to the "Servicing Agency" means Department of Energy (DOE) and, when appropriate, DOE's component organization the National Nuclear Security Administration (NNSA). DHS S&T is directing its IAs to DOE, not the facility management contractors. The work described in the attached Statement of Work (SOW) will be performed for the Department of Homeland Security, pursuant to

- § 309(a)(1)(C) of the Homeland Security Act of 2002, Pub. L. 107-296 (116 Stat. 2135 (2002)),
- Memorandum of Agreement between DOE and DHS (February 28, 2003), and
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2. **Statement of Work.**

- a. The SOW negotiated between DHS and the DOE facility management contractor is included as an attachment.
- b. Changes and/or modifications to this Agreement shall be in writing and approved by the cognizant DHS Contracting Officer and DOE Contracting Officer. No oral statement by any person shall be interpreted as modifying or otherwise affecting the terms of this agreement.
- c. The DHS S&T Technical Representative identified in the Points of Contact section of this agreement is responsible for the technical administration of this Agreement. The DHS S&T Technical Representative is not authorized to make any changes that impact the cost, schedule or performance of this Agreement without a properly executed change or modification to this Agreement in accordance with paragraph b above.

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- d. DHS and DOE recognize that certain communications and direction between the DHS and the DOE facility management contractor to meet the requirements identified in the attached SOW may occur. DHS acknowledges that direction to DOE facility management contractors will be limited to day-to-day decisions directly related to performance of work identified in the attached DOE-approved SOW. DHS and the facility management contractor may discuss changes to the requirements in the SOW that modify the scope, cost, or delay delivery of the product, however, any such changes must be approved in writing by the cognizant DOE contracting officer.

3. Period of Performance. The period of performance negotiated between DHS and the DOE facility management contractor for the IA is specified in the attached SOW. The period of performance starts on the date of execution of the IA by both the DHS and the DOE contracting officers. The end date is identified in the attached SOW and the funding document.

4. Financial Terms.

- a. Estimated cost. The estimated cost for the performance of the work is described in the attached SOW (estimated cost includes, among other things, all direct and indirect costs). The costs charged to DHS will be the same as the costs that would have been charged to DOE for the performance of the work. DHS reimbursable work is performed on a full cost recovery basis. DHS shall be responsible for all costs required to restore the work site environment to its prior form or previous condition after all DHS work under this IA is completed.
- b. Amount Obligated. DHS obligates the total dollar amount identified in the IA for the performance of work described in the SOW. Full funding shall be provided for work to be completed within one fiscal year. For work that transcends fiscal years, full funding for the remainder of the current fiscal year plus the first three months of the following fiscal year is required. DHS may request the DOE Contracting Officer (CO) approve an exception to full funding requirement on a case-by-case basis. To the extent that this obligation is less than the total estimated cost, DOE shall ensure facility management contractors provide sixty (60) days notice of the need for additional DHS funds for continuation of the work. DOE facility management contractors will perform work and incur costs only when funding for the requirements described in the SOW has been provided by DHS. In the absence of such funding, work on this DHS project will cease.
- c. Billing Instructions. DHS reimbursement of costs incurred in the performance of work described in the SOW will be made via the U.S. Treasury Inter-government Payment and Collection System (IPAC).
- d. Laboratory Directed Research and Development (LDRD). LDRD costs shall be identified and charged in accordance with the DOE/DHS MOU and DOE policies and procedures delineated in DOE Order 484.1.

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Attachment 4 of DOE Order 484.1, Reimbursable Work for the Department of Homeland Security states, "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."

5. Place of Performance. The cognizant DOE Contracting Officer will authorize performance of the work at the DOE facility described in the SOW. If the work is to be performed at multiple sites under the IA, the DHS has specifically identified in the attached SOW what work will be performed at each site.

6. Travel. Domestic travel costs required to perform this work will be reimbursed consistent with the T&Cs of the DOE facility management contract. DOE will provide 30-day advance notification for all foreign travel to DHS and obtain the S&T Technical Representative's approval prior to approving travel.

7. DHS-Furnished Information and Property.

- a. DHS will provide to DOE any DHS information, materials, or forms that are unique to DHS to support tasks under the IA. Such forms and other documentation (e.g., approval requests for foreign travel) may require input from the DOE and/or the DOE facility management contractor. This information is considered part of the DHS Reimbursable Work agreement and of a routine nature (i.e., not overly burdensome or resource-intensive and consistent with regular DOE requirements). However, costs for unusual, non-routine, or resource-intensive transactions (in excess of regular DOE requirements) specified in the attached SOW or subsequent to the work being approved will be reimbursed by DHS.
- b. The DHS S&T Technical Representative identified in the IA will be the point of contact (POC) for identification of any required information to be supplied by DHS.
- c. DHS-Furnished Property. DHS will provide property to DOE only when specifically identified in the IA or modification to this IA subsequent to approval of the IA.

8. Acquisition of Property under the IA

- a. DOE is authorized to purchase all property specifically identified in the SOW.

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- b. DOE may acquire property not identified in the SOW when cost are less than \$5,000 and the acquisition is required in the performance of the work under the IA. All property acquisitions in excess of \$5,000 shall be identified in the SOW.
- c. DOE shall obtain written approval of the DHS S&T Contracting Officer prior to purchasing any property not identified in the SOW with associated costs in excess of \$5,000.
- d. Property costing \$5,000 or more shall upon its purchase become the property of DHS. Such items will be accounted for in accordance with DOE approved property accountability procedures used by the DOE facility management contractor in the performance of DOE work.

9. Property Disposition. The DHS Contracting Officer shall provide written instructions to DOE regarding the disposition of property that costs \$5,000 or more and sensitive property (see DOE Order 580.1) regardless of value. DHS will reimburse the costs of property disposition or pay transportation costs to a DHS facility. DOE will retain ownership or dispose of property (except sensitive property) costing less than \$5,000 according to the procedures approved by DOE for use by the DOE facility management contractor.

10. Deliverables.

- a. Program Status Report: The DOE facility management contractor will provide program status reports to the DHS consistent with direction provided in the SOW. Reports should be provided to the DHS CO, S&T Technical Representative and DHS S&T Resource Manager and contain metrics pertaining to financial, schedule, and performance information, risk information, a summary of expected deliverables and milestones for the effort, and an assessment of performance of all work performed under the IA.
- b. All other deliverables identified in the attached SOW will be sent directly to the DHS S&T Technical Representative, with a copy of the transmittal letter to the DOE and DHS Contracting Officers (the executing authorities for the IA).

11. Acceptance Criteria. Deliverables shall be subject to testing, review, and acceptance by DHS to verify that each deliverable satisfies DHS's applicable acceptance criteria. The DOE facility management contractor will perform the IA work in a manner consistent with its subject matter expertise. "Acceptance Criteria" mean the criteria developed by DHS to determine whether a deliverable is ready for acceptance by DHS and may include, without limitation, requirements that the applicable deliverable: (i) has been completed and delivered/achieved according to the SOW; (ii) meets or exceeds the identified requirements in the SOW, including but not limited to technical specifications and performance standards; and (iii) complies with such other criteria as may be developed and agreed on by DHS and DOE. DHS will identify in the attached SOW any Acceptance Criteria specific to the IA requirements.

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12. **Correction of Nonconformities.** If a deliverable fails to meet the Acceptance Criteria (each failure will be referred to as a "Nonconformity"), the DHS CO will provide written notification to the DOE of such failure. Upon receiving such notice, DOE will inform DHS in writing of the costs and proposed actions to mitigate the nonconformity. Corrective actions will not be undertaken until DHS provides approval in writing on what actions are to be taken and provides funding to support such actions. The corrected Nonconformity will be delivered to DHS, which will then confirm in writing whether the redelivered deliverable satisfies the applicable Acceptance Criteria. The process described in this paragraph may be repeated until all Nonconformities are corrected and the deliverable satisfies the IA Acceptance Criteria or until either party determines that continued efforts would be unsuccessful. DHS will reimburse DOE for all costs associated with these corrective actions.

13. **DOE Facility Contractor's Performance.** As requested, annually and at completion of performance, DHS shall provide the DOE Contracting Officer with a written evaluation of the DOE facility management contractor's performance.

14. **Security Requirements.**

- a. All work performed under the IA is unclassified unless otherwise specified by DHS.
- b. Performance of work under the IA may require access by DOE and/or DOE's facility management contractor to information that is sensitive but unclassified, e.g., Official Use Only or other designations that can qualify as Freedom Of Information Act exemptions and/or classified (e.g., Confidential, Secret, or Top Secret, and if classified, at categories of National Security Information, Restricted Data, or Formerly Restricted Data). If sensitive but unclassified or classified work is required under the IA, DHS will provide specific guidance to DOE as to which work will be subject to treatment as sensitive but unclassified and/or classified and at which classification level. If DHS guidance appears to conflict with DOE or other applicable Government guidelines, DHS and DOE will negotiate the treatment of the data in a manner that best satisfies the requirements of both agencies, and DOE will assure the facility management contractor will adhere to the result.

15. **Intellectual Property.**

- a. The work described in the SOW is sponsored by DHS. The intellectual property rights under this agreement, including rights to patents conceived or first reduced to practice or the rights in scientific and technical data or computer software first produced, including the right to assert copyright, are governed by the DOE facility management contract. The additional conditions listed below are necessary to assure that those intellectual property rights are exercised in consonance with the programmatic objectives of the DHS sponsorship of the work under this agreement.
- b. In authorizing the facility management contractor to perform work under the IA, DOE shall require that any publication of scientific and technical data or computer software *first produced* under this agreement will contain the following legend or equivalent reflecting DHS sponsorship of the work:

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"The Department of Homeland Security sponsored the production of this material under DOE Contract Number XXXX for the management and operation of << insert facility management contractor's name, organization, and/or laboratory>>."

- c. Where the terms of the DOE facility management contract require DOE authorization, DOE will not authorize the facility management contractor to retain or exercise any intellectual property rights not specifically granted under the DOE facility management contract, such as the right of the facility management contractor to assert its copyright in scientific or technical data or computer software *first made or produced* under this agreement, without consulting with and receiving the concurrence of the DHS Intellectual Property Counsel, specified below, or his/her designee. This requirement does not affect the right of the facility management contractor to assert copyright in scientific and technical journals as provided under the DOE facility management contract.
- d. The DOE facility management contract provides that the facility management contractor shall not include in any items delivered to the Government material that is copyrighted by third parties without the prior approval of DOE, unless such material is subject to the contractually specified Government license. DOE shall not approve any such request under the IA without consulting with and receiving the concurrence of the DHS Intellectual Property Counsel or his/her designee.
- e. In authorizing the DOE facility management contractor to perform the work described in the SOW, DOE shall require that, whenever the facility management contractor makes a request to DOE relating to intellectual property matters or provides invention disclosures, the facility management contractor provide a copy of all such requests or invention disclosures to the DHS Intellectual Property Counsel.
- f. The facility management contractor's merely providing copies of requests or invention disclosures to DHS Intellectual Property Counsel, as provided in paragraph 14c., d., or e., does not in any way obviate the obligations of the facility management contractor to make invention disclosures, submit requests for permission to assert copyright, or provide any other intellectual property notices or requests to DOE Patent Counsel pursuant to the terms and conditions of the DOE facility management contract.
- g. DHS Intellectual Property Counsel:

Assistant General Counsel for Intellectual Property
Department of Homeland Security
245 Murray Lane
Washington, D.C. 20825

Or S&T_OGC_IP@hq.dhs.gov

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16. Termination.

a. The IA may be terminated by mutual agreement of DOE and DHS, documented in a bilateral modification. The IA may also be unilaterally suspended by either party upon 30 days' advance written notice to the other party. In the event of a termination of this Agreement, no future work may be performed against it. Incurred costs and associated termination costs, including payment for any outstanding commitments related to the SOW shall be paid by DHS. After payment of those costs, DOE shall return any remaining funds to DHS.

b. Upon termination, DOE will assure that the facility management contractor provides all completed deliverables and the most current version of data relating to any incomplete deliverables. DOE will provide DHS with an accounting of the IA costs and any termination costs.

17. Points of Contact.

- a. The DOE Contracting Officer is the executing authority for the IA on behalf of DOE.
- b. The DOE point of contact for a DHS reimbursable agreement shall be identified in the attached statement of work.
- c. DOE will notify DHS of any changes to the Contracting Officer executing this agreement. DOE will identify other points of contact as necessary.
- d. Except for Intellectual Property Counsel as provided above under paragraph 14(g) of the standard terms and conditions, the DHS POCs are as follows:
 - DHS-S&T Technical Representative – this person is identified in the attached SOW.
 - DHS-S&T Resource Manager – this person is also identified in the attached SOW.
 - DHS-S&T Contracting Officer – this person is the executing authority for this IA on behalf of the Requesting Agency.

DHS S&T may change the individuals designated as these POCs upon written notice to DOE of such a change.

Attachment: Statement of Work for
<<insert Title Description of work>>

Conducted by
<<insert name of performer -- the DOE national lab/site>>
for
Directorate of Science and Technology
U.S. Department of Homeland Security
<<Insert S&T Office/Division name>>

I. Background

Describe the mission requirements within S&T. The following is an example.

The U.S. Department of Homeland Security (DHS) is committed to using cutting-edge technologies and scientific talent in its quest to make America safer. The DHS Directorate of Science and Technology (S&T) is tasked with researching and organizing the scientific, engineering, and technological resources of the United States and leveraging these existing resources into technological tools to help protect the homeland. The <<insert portfolio/Division/program/office/project name>> supports this effort through <<insert how this DHS entity does this>>.

Include program/project requirements.
Include special legislative, legal, or regulatory authority, if applicable.

This statement of work (SOW) is issued pursuant to the DOE facility management contract between the Department of Energy (DOE) and <insert Performer name> for research, testing, evaluation, and/or development activities and pursuant to Section 309(a)(1)(c) of the Homeland Security Act of 2002 (Public Law 107-296) which authorizes DHS to utilize the DOE national laboratories and sites on a "work for others" basis.

II. Scope of Work and Specific Deliverables

<<insert performer name>> shall perform the tasks described in this SOW:

- A. List tasks to be accomplished (what is desired, not how to do the work).
- B. Should have 4-6 tasks listed in priority order, use subtasks if required.

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Example:

| Program Element / Project | Major Tasks | Key Milestones and Deliverables |
|--|--|---|
| | | <i>Required time periods are measured from the contract award date</i> |
| <Program Name>: The goal of this program element is to ... | <ul style="list-style-type: none"> • Example: • 0-6 months – Establish ... • 3-12 months – Develop & utilize ... | <ul style="list-style-type: none"> • 6 months – Interim report ... • 12 months – Summary report ... |

List Deliverables desired – describe in sufficient details.
Provide Due dates/milestones for tracking

[Guidance in filling out Section II: The S&T Program should describe the task, deliverables, acceptance criteria, in such a manner that a lay reader can gain some understanding of the nature of the work and the basis under which the deliverables will be evaluated. Provide a clear summary description of the technical work desired by DHS. This should be detailed enough for contracting purposes, to specify the type of work desired. Specify objectives, funding, timeframe for results, and deliverables (e.g., a report summarizing technical findings of the investigations). DHS acceptance criteria that will be used to evaluate deliverables should be included.]

III. Other Contract Details

1. **Place(s) of Performance.** For the purposes of Article 5 of the terms and conditions of this IA, the work described in the SOW shall be performed at the following location(s).
2. **Period of Performance.** For the purposes of Article 3 of the terms and conditions of this IA, the period of performance is for <<insert months>> from the date of execution of this IA to <<insert date>>. DHS may give subsequent extension notices to DOE in writing for further performance in accordance with the terms of this approved SOW.
3. **Funding Requirements.**

(a) For the purposes of Article 4a. of the terms and conditions of this IA, the estimated cost over the term of the period of performance is \$_____.

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(b) For the purposes of Article 4b. of the terms and conditions of this IA, DHS obligates \$ _____ for performance of this IA until _____.

4. DHS will provide funding in accordance with DHS's appropriations and available funds pursuant to the estimated costs allocation outlined below:

(Provide quarterly breakdown of estimated costs by project cost element, in the standard format that the DOE facility/site uses for work proposals to DOE sponsors, either embedded or as an attachment, or via either of the tabular formats below.)

| | | 1 st Quarter | 2 nd Quarter | 3 rd Quarter | 4 th Quarter | FY 2008 |
|------------------------|--------------------------------|----------------------------|----------------------------|----------------------------|----------------------------|------------|
| Direct Costs: | | | | | | |
| | Salaries | | | | | |
| | Travel/Per Diem | | | | | |
| | Equipment/Materials | | | | | |
| | Other non-labor as appropriate | | | | | |
| Indirect Costs: | | | | | | |
| | Overhead | | | | | |
| | Other as appropriate | | | | | |
| TOTAL COSTS | | | | | | |
| | | | | | | |
| Other | Estimated Labor Hours | | | | | |
| | Average cost per labor hour | | | | | |

OR

| Program Element / Project | Program Element Funding | Labor | M&S | Capital Equipment | Travel | Indirects |
|---------------------------|-------------------------|-------|-----|-------------------|--------|-----------|
| <Program Element> | \$\$\$ | \$ | \$ | \$ | \$ | \$ |
| <Program Element> | \$\$\$ | \$ | \$ | \$ | \$ | \$ |
| | | | | | | |

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| Program Element / Project | Program Element Funding | Labor | M&S | Capital Equipment | Travel | Indirects |
|-----------------------------|-------------------------|-------|------|-------------------|--------|-----------|
| | | | | | | |
| | | | | | | |
| Subtotal for <Program> | \$\$\$ | \$\$ | \$\$ | \$ | \$\$ | \$\$ |
| Totals | \$\$\$ | \$\$ | \$\$ | \$ | \$\$ | \$\$ |
| Estimated Labor Hours | | | | | | |
| Average Cost per Labor Hour | | | | | | |

5. DHS Furnished Information and Property.

DHS will furnish the information and property listed in Attachment 1 of the SOW. Unless otherwise instructed by DHS, DOE shall retain all information and property provided by DHS consistent with DOE and DHS standard terms and conditions. (See paragraph 9 Property Disposition.)

IV. Special Requirements

[Include here any special or unique requirements that bear mentioning as important terms and conditions for the performer's successful conduct and completion of this work for DHS. To determine whether special conditions, terms, or requirements are warranted, review the agreement standard terms and conditions paragraphs 1-16. In particular, are there any unusual places of performance, unusual DHS-furnished information, or property, costly property to acquire, specific acceptance criteria for deliverables, or unusual security requirements? If so, describe. If not, state "None" here.]

V. Points of Contact

<<Insert performer's name>> Points of Contact (POCs) are as follows:

- Technical POC(s) – <<provide name, address, e-mail, phone>>
- Financial POC(s) – <<provide name, address, e-mail, phone>>

<<Insert performer's name>> may change the individual designated as a POC upon notice to DHS S&T and DOE contracting officer of such change.

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The DHS POCs are as follows:

- DHS S&T Technical Representative – <<provide name, address, e-mail, phone>>
- Financial Manager <<provide name>>
Department of Homeland Security
ATTN: Science and Technology Directorate/<<insert Office, Resource manager name>>
Washington, DC 20528
<<Insert Resource Manager's phone number>>
<<Insert Resource Manager's e-mail >>

DHS S&T may change the individual designated as a POC upon notice to <<insert performer's name>> and the DOE contracting officer of such change.

VI. Applicable Documents

[Reference all documents attached to the SOW.]

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Instructions for this SOW Attachment: This template is a tool to assist program managers and support personnel in formulating a precise and concise statement of work (SOW) for U.S. Department of Energy (DOE) laboratories or sites. These instructions should be deleted once the SOW is drafted.

- *Text in black represents standard SOW language that could/should be incorporated verbatim.*
- *Text in red bold italics represents areas where specific input is required. This text should be deleted once the information has been added.*

Some general instructions on completing the template:

- *Spell out the first use of an acronym and show the acronym in parentheses, for example, Lawrence Livermore National Laboratory (LLNL).*
- *Always use the performer's name or acronym rather than "we" or "the contractor" or "the national laboratory." Consistently use the same term for the performer.*
- *Avoid the passive tense, which causes confusion when multiple laboratories or entities are performing a project and it is unclear which entity is responsible for which obligation. For example, instead of writing "research will be performed by LLNL," write "LLNL will perform the research." The doer of the action should always be clearly identified.*
- *Use the verb "shall" or "will" rather than "would," "should," or "is expected" because the SOW contains firm obligations on the part of the performer.*

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