

## CHAPTER 13.1

### REIMBURSABLE WORK

#### **1. INTRODUCTION**

##### **a. PURPOSE AND SCOPE**

This chapter (Chapter 13.1) provides the financial policies and procedures for reimbursable work and revenue programs, specifically:

- (1) Reimbursable Work Financial Transactions (Section 2 of the policy)
- (2) Reimbursable Work for Federal Customers (Section 3 of the policy)
- (3) Reimbursable Work for Non-Federal Customers (Section 4 of the policy)
- (4) Emergency Reimbursable Work (Section 5 of the policy)
- (5) Agreements for Commercializing Technology (Section 6 of the policy)
- (6) Reimbursable Personnel Details (Section 7 of the policy)

The Department of Energy (DOE) performs reimbursable work that is funded by other Federal and non-Federal entities. The execution, acceptance, or modification of a reimbursable work agreement shall be consistent with Departmental Orders pertaining to reimbursable work and relevant procurement policies and DOE financial policy specified in this chapter (Chapter 13.1).

##### **b. EXCLUSIONS**

**This chapter (Chapter 13.1) does not:**

- (1) Provide policy for work performed by other entities, including Federal entities, and reimbursed by DOE (i.e., any work in which DOE is the customer).
- (2) Provide policy for transactions between DOE entities, including DOE site/facility management contractors where Chapter 12, “Inter-Entity Work Between DOE Organizations,” applies.
- (3) Supersede provisions of Departmental Orders pertaining to reimbursable work performed by DOE, including DOE Order 481.1E, *Strategic Partnership Projects [Formerly Known as Work for Others (Non-Department of Energy Funded Work)]*; DOE Order 484.1, *Reimbursable Work for the Department of Homeland Security*; and DOE Order 483.1B, *DOE Cooperative Research and Development Agreements*.
- (4) Establish procurement policies. Procurement policies are established by the Federal Acquisition Regulation (FAR); the DOE Acquisition Regulation (DEAR); DOE Directives; Acquisition Letters; and other policies issued by the DOE Office of Management (MA).

- (5) Establish policy for pricing reimbursable work or revenue programs. The pricing policy for reimbursable work is specified in DOE Order 522.1A, *Pricing of Departmental Materials and Services*.
- (6) Establish policy or requirements for receivables relating to reimbursable work and revenue programs. Financial policy relating to receivables is contained in Chapter 8 of the DOE Financial Management Handbook.

**c. APPLICABILITY**

- (1) Departmental elements performing reimbursable work and revenue programs, including NNSA and the Power Marketing Administrations.
- (2) Site/facility management contractors that perform reimbursable work for non-DOE entities, as specified.

**d. DEFINITIONS**

- (1) **Acceptance.** The official signing of a reimbursable agreement by a cognizant DOE/NNSA Contracting Officer or a Federal official with delegated authority to commit DOE/NNSA and/or their contractors to perform reimbursable work.
- (2) **Advance Payments.** Advance payments made to DOE are amounts of money paid to DOE before the Department provides goods, services, or other assets to others.
- (3) **Budgetary Resources.** For Federal customers, the reimbursable agreement provides the budgetary resource. For non-Federal customers, the reimbursable agreement and the advance payment(s) received for unfilled orders provide the budgetary resource.
- (4) **Emergency Work.** Any situation involving the protection of life, Federal lands, buildings, or equipment; law enforcement; disaster assistance; and the production and maintenance of the power distribution system. Section 5 of the chapter provides specific policies for conducting emergency work.
- (5) **Funding.** A term used throughout the chapter to describe the level of budgetary resources required from Federal and non-Federal customers.
- (6) **Reimbursable Agreement.** A written agreement required to perform work or provide a service for another Federal agency (including the Department of Homeland Security) or a non-Federal customer. Types of reimbursable work agreements include:
  - (a) **Interagency Agreement.** A written agreement entered into by DOE and another Federal agency to furnish goods or accomplish a specific task in support of the other agency's mission. The interagency agreement will provide funding, billing, and payment data in support of the reimbursable work, and specify the period of

performance and the work to be performed. Interagency Agreements shall be executed using Treasury form 7600 or equivalent.

*The Treasury Form 7600 includes two parts—The General Terms and Conditions (GT&C) (e.g., Part A, 7600A, or GT&C) and an Order Requirements and Funding Information (e.g., Part B, 7600B, Order, DD448 MIPR). Strategy Partnership Projects with accompanying Interagency Agreements with other Federal entities to perform work are executed under the provisions of DOE Order 481.1E, Strategic Partnership Projects, or a successor policy.*

- (b) **Strategic Partnership Project Agreements with Non-Federal Sponsors.** Agreements with non-Federal entities to perform work that are executed under the provisions of DOE Order 481.1E, *Strategic Partnership Projects*, or a successor policy.
- (c) **Agreements for Commercializing Technology.** Work performed at a DOE lab, site, or facility for a non-Federal entity on a reimbursable basis. Work performed under such agreements is a type of reimbursable work for which the sponsoring entity is the site, plant, or facility operating contractor.
- (d) **Contributed Funds-in Agreement.** An agreement between the Federal government and a public or private sector participant to perform projects in accordance with the authority granted under 42 USC 7278. 42 USC 7278 provides Government-Owned, Government-Operated (GOGO) labs or other DOE Federal organizations with a means to accept and retain funds from a public or private source in order to perform projects in cooperation with other Federal, State, or private entities. However, this authority does not provide GOGO labs with any specific authority to negotiate rights to intellectual property developed under the agreement. Contributed Funds-in Agreements are subject to the same budgetary resource and advance-payment requirements as other reimbursable agreements. These agreements follow the accounting requirements in Paragraphs: 2.c; 2.e -2.f; excluding direct references to DOE O 481.1E.
- (e) **Cooperative Research and Development Agreement (CRADA).** Any agreement between one or more Federal facilities and one or more non-Federal parties under which the Government (through its facilities) provides personnel, services, facilities, equipment, intellectual property, or other resources with or without reimbursement (but not funds to non-Federal parties) and the non-Federal parties provide funds, personnel, services, facilities, equipment, intellectual property, or other resources toward the conduct of specified research or development efforts which are

consistent with the mission of the facility. The authority for CRADAs is the Stevenson-Wydler Technology Innovation Act of 1980, Public Law 96-480 (15 U.S.C. 3701 et seq.). Additional DOE policy for CRADAs is specified in DOE Order 483.1B, *DOE Cooperative Research and Development Agreements*, or a successor policy.

- (f) **Homeland Security Agreement.** An agreement for reimbursable work conforming to the requirements specified in DOE Order 484.1, *Reimbursable Work for Department of Homeland Security*, or a successor policy.

- (7) **Reimbursable Authority.** Authority to incur obligations in accomplishing reimbursable work when a valid budgetary resource (either a reimbursable agreement from a Federal customer or an advance from a non-Federal customer) is available. Reimbursable authority is acquired by obtaining an apportionment from the Office of Management and Budget (OMB) and a subsequent allotment from the DOE Chief Financial Officer (CFO) consistent with current Administrative Control of Funds policy contained in Chapter 2 of the Financial Management Handbook.

- (8) **Reimbursable Work.** Work or services performed for another Federal or non-Federal customer, with the cost of performing the work reimbursed by the customer. DOE is compensated by a specific type of offsetting collection known as a reimbursement, which may be credited as authorized by law to the appropriation or DOE fund account. The reimbursable work or services performed by DOE and/or their contractors are financed by the funds of the ordering Federal customer, or by advances from a non-Federal customer. Reimbursable work performed by DOE for others is considered to be part of the customer's direct mission responsibility and not the Department's.

## 2. REIMBURSABLE WORK FINANCIAL TRANSACTIONS

### a. EXECUTION AND CONTROL OF REIMBURSABLE WORK

Departmental Elements shall use the following guidelines to ensure that reimbursable work is accomplished in accordance with established laws, regulations, and provisions of the respective reimbursable agreement(s):

- (1) **Financial Provisions for Acceptance of Reimbursable Agreements.**
- (a) DOE must obtain reimbursable authority in advance of performing reimbursable work. Reimbursable authority is obtained through an apportionment from the OMB. Consistent with the provisions of DOE Order 130.1A (*Budget Planning, Formulation, Execution, and Departmental Performance Management*) or a successor

policy, allotments of reimbursable authority are provided to the cognizant Designated Financial Officer (DFO) by the CFO.

The CFO Office of Budget provides annual guidance on the process and requirements for requesting apportionments of reimbursable authority. As specified in the annual guidance, the type of apportionment requested may vary depending on the authority governing the anticipated reimbursable work agreements. Additional requirements relating to apportionments of reimbursable authority is contained in Section 3.b.2 of this policy.

- (b) Expenditures for a project shall not exceed the limits established by the reimbursable agreement. Funding provisions specified in the reimbursable agreement determine the administrative funds controls that must be followed. Specifically, each reimbursable agreement accepted by DOE shall be managed and accounted for in accordance with the funding limitations and other provisions of the agreement.
- (c) All documents authorizing the performance of tasks that include reimbursable work shall clearly identify reimbursable funding. Furthermore, the DOE element performing the work shall identify and maintain file documents pertaining to the reimbursable work agreement, consistent with applicable document retention requirements. Please see DOE Order 243.1B, *Records Management Program*, or a successor policy for requirements regarding retention requirements.
- (d) Reimbursable agreements with Federal entities are subject to the provisions of 31 U.S.C. 1501, *Documentary Evidence Requirements for Government Obligations and Procurement Guidance*. Reimbursable or other type of work agreements must provide a specific statement of work to represent a valid obligation.
- (e) The reimbursable agreement shall specify that the customer is responsible and accountable for any financial consequences associated with the termination of work.
- (f) Departmental elements accepting reimbursable and other type of work agreements shall establish cutoff dates prior to the end of the fiscal year to provide ample time to review, accept, obligate, distribute, and record reimbursable and other type of work agreements.

- (2) **Obligational Authority for Reimbursable Work.**
- (a) An obligation may be recorded for a reimbursable agreement when DOE receives a budgetary resource as defined in 1.d.(3) and sufficient reimbursable authority is available within the allotment.
  - (b) The DFO, or their designee, shall certify obligational authority for reimbursable agreements, consistent with local procedures.
- (3) **Restrictions on the Use of Funds.** 31 USC 1301 states an appropriation may only be used for the purposes contained in the appropriation. As such, unless provided for by law, DOE may not finance reimbursable work from its appropriations. Additionally, DOE shall not finance reimbursable work from another customer's fund.
- Funds provided under reimbursable agreements are to be used solely for the purpose specified in the reimbursable agreement.
- (4) **Control of Funds for Reimbursable Work.**
- (a) Departmental offices and contractors managing reimbursable work shall maintain an appropriate management control environment to provide sufficient advance notification of potential funding shortfalls to obtain additional funds or begin project termination.
  - (b) Obligations, costs, and expenditures for each reimbursable agreement shall not exceed the amount specified in the reimbursable agreement.
  - (c) Contractors shall not begin any reimbursable work for non-DOE customers until they have obtained authorization from the responsible DOE Contracting Officer.
  - (d) No costs shall be incurred for performance of reimbursable work beyond the period of performance specified in the reimbursable agreement.

**b. RECORDING**

- (1) **Unfilled Orders and Obligations.** Accepted reimbursable agreements shall be controlled by the following budgetary standard general ledger accounts: Unfilled Customer Orders; Undelivered Orders – Obligations Unpaid; and Delivered Orders – Obligations (paid and unpaid). The balances of these accounts represent the ceilings for costs, obligations, and uncotted obligations, respectively.
- (a) Source Document for Unfilled Customer Orders. The source for recording unfilled orders is the reimbursable work agreement, along with evidence that the reimbursable agreement was accepted in accordance with established DOE policies.

- (b) Source Document for Undelivered Orders – Obligations Unpaid and Delivered Orders – Obligations (paid and unpaid). For work performed by a DOE contractor, the source document for recording obligations is either the executed contract or a contract modification. For work performed by DOE personnel, source documents for obligations include travel authorizations; time and attendance documents; and purchase requests.
- (2) **Cash Advances.** Cash advances received for reimbursable or other type of work shall be recorded as unearned revenue. A liability shall be established, which shall be reduced by accrued cost.
- (3) **Work Performed by Contractors.** If reimbursable or other type of work is to be performed by a contractor, the Contracting Officer or DFO may assign all collection and accounting activities for the work to the contractor, when consistent with contract requirements. Otherwise, the contractor may transfer the amount to DOE accounts, in which case the DOE element shall perform the collection and accounting activities.
- (4) **Reimbursements.**
  - (a) With the exception of the Federal Administrative Charge (FAC), reimbursements shall be recorded in the appropriation and fund type in which the costs were recorded.
  - (b) The portion of the reimbursement that represents the FAC shall be deposited into the Departmental Administration appropriation special receipt account. DOE Order 522.1A, *Pricing of Departmental Materials and Services*, provides policy for the application of the FAC to reimbursable work.
  - (c) Collections shall be recorded as a debit to the Reimbursements & Other Income Earned - Collected general ledger account. The balance of that account will represent the cumulative collections for reimbursable or other type of work for the fiscal period. Balance sheet codes and illustrative entries for recording collections are presented in the Department's standard general ledger account codes and definitions and related financial codes maintained by the CFO Office of Finance and Accounting.
- (5) **Billing.**
  - (a) Billings shall be consistent with the total amount authorized by the agreement, including any amendments. The agreement should include funds for any requirements resulting from the final closeout process. If a funding increase is required, an amendment should be agreed upon with the customer before incurring any additional costs.

- (b) Billings based on accrued and recorded costs will be issued monthly or in accordance with reimbursable or other type of work agreements and will include the date that the reimbursable or other type of work was provided, in addition to the as-of billing date. Customer billings should contain appropriate cost detail at the major element level.
- (c) For foreign sponsors making payments in foreign currencies, the DFO shall consult with the CFO on the transfer of funds on a project-by-project basis. The Department shall use the Federal Reserve Bank of New York to process the collection.

**c. CLOSEOUT OF REIMBURSABLE AGREEMENTS**

The process of closing out reimbursable work agreement will commence upon completion of the work or when the period of performance specified in the reimbursable work agreement ends, whichever comes first.

At closeout, the performing office or contractor shall notify the customer and provide an estimate of the costs incurred. When the final costs are known, the performing office or contractor shall provide a final invoice and, if applicable, return unused funds to the customer.

**3. REIMBURSABLE WORK FOR FEDERAL CUSTOMERS**

**a. AUTHORITIES**

**(1) DOE Authority to Perform Reimbursable Work**

The Economy Act provides broad authority to Federal agencies to request and perform reimbursable work with other Federal agencies. While the Economy Act provides broad authority to DOE, it applies to DOE reimbursable work agreements only when more specific authorities are not relevant. The Federal Acquisition Regulations (48 C.F.R. 17.502-2(b)) notes that “The Economy Act applies when more specific statutory authority does not exist.” This principle is consistent with the guidance of the Department of Justice Office of Legal Counsel (6 Op. Off. Legal Counsel 464 [1982]) and the Comptroller General (e.g., 44 Comp. Gen. 683 [1965]; B-301561, June 14, 2004).

DOE has numerous specific legal authorities to perform reimbursable work for other Federal entities (see Appendix to this chapter for identified applicable authorities), and most DOE reimbursable work is performed under these more specific authorities. Consistent with past Comptroller General decisions (e.g., B-285451.3/B-285451.4), the most specific legal authority applies to an agreement even if the authority is not specified in the agreement itself or by the Federal agencies that are party to the agreement.

(2) Application Guidance

(a) Acceptance of Agreements

Funds in reimbursable agreements are typically initiated by the ordering Federal agency. Frequently, the agreements and orders initiated by other Federal agencies cite the Economy Act, consistent with the procedures of the ordering agency. DOE may accept agreements and orders citing the Economy Act without affecting the actual legal authority under which the work is performed. To provide greater transparency to DOE and the ordering agency, DOE officials accepting agreements and orders for reimbursable work should include a note detailing the specific legal authority under which DOE will perform the work. The sample language below should be used on the applicable parts of the interagency agreement form, Treasury Form 7600 parts A and B.

**Part A, Box for “Additional Agency Information”:** *(Federal site) manages the (laboratory) which is operated by the (contractor). All work described in this agreement will be performed by (contractor name) in accordance with the interagency agreement and consistent with the (Contract and web site for the contract) terms and conditions.*

**Part B, Box for “Comments”:** *DOE/NNSA’s authority to obligate funding and perform reimbursable work, as noted in the contract, is the **Atomic Energy Act of 1946** as amended (42 U.S.C. 2011 et seq) [or other specific authority]. Funding will be obligated and performed under the terms of the DOE/NNSA contract in accordance with the Department of Energy Acquisition Regulation (DEAR).*

(b) Implementation of Orders Citing Multiple Authorities

Consistent with the legal principles discussed in Section 3.a.(1) of this policy, the most specific authority will apply to each interagency agreement. But as noted in Section 3.a.(2) of this policy, agreements accepted by DOE may list multiple authorities if the ordering agency did not cite the most specific applicable authority when initiating the order. When this occurs, DOE personnel accepting the interagency agreement should be aware that the ordering agency may take actions consistent with the authority cited by the ordering agency.

A typical situation would be when another Federal agency cites the Economy Act as the authority for the reimbursable work order, but DOE determines that the Atomic Energy Act is the more specific applicable authority for the requested work. This scenario may

create risks for DOE when accepting orders at the end of a fiscal year because of differences in the way that funds are obligated under the different authorities. If DOE accepts such an agreement in one fiscal year but obligates funds on a DOE contract in the following fiscal year, DOE officials should communicate clearly with the ordering agency on the execution of the agreement to ensure that the funds are not de-obligated by the ordering agency.

**b. BUDGETARY AND FINANCIAL REQUIREMENTS**

- (1) **General.** The reimbursable work that DOE provides for a customer is part of the customer's mission and not DOE's direct mission. The Department does not receive appropriated funds for such work or services; instead, they are financed by the funds of the Federal agency ordering the work.
- (2) **Reimbursable Authority.**
  - (a) General Requirement. DOE must obtain reimbursable authority in advance of performing reimbursable work through an apportionment. The type of apportionment requested may vary depending on the authority governing the anticipated reimbursable work agreements, as described in this section and the annual guidance provided by the CFO Office of Budget.
  - (b) Reimbursable Authority for Economy Act Transactions. OMB Circular A-11, Section 130 provides specific requirements for the apportionment of reimbursable authority performed under the provisions of the Economy Act. For work DOE performs under the authority of the Economy Act, A-11 generally requires apportionments to be provided in a Treasury Appropriation Funds Symbol (TAFS) that does not exceed the period of availability of the funds provided by the ordering agency. Depending on the ending period of availability of the ordering agency's TAFS, DOE may need to establish a separate TAFS for reimbursable work for Economy Act transactions. Offices should follow annual guidance provided by the CFO Office of Budget when requesting reimbursable authority for Economy Act transactions.

While a time-limited TAFS for reimbursable work may be established with a zero-fund balance, outlays may be made from these accounts if the outlays are supported by a receivable from another Federal agency associated with a reimbursable agreement. While this may result in a temporary negative fund balance with Treasury due to timing differences, this temporary negative balance would not cause an over-expenditure or over-obligation of funds at the Federal entity level.

- (c) Reimbursable Authority for non-Economy Act transactions. OMB Circular A-11 does not provide specific requirements for the apportionment of reimbursable authority performed under non-Economy Act authorities. Offices should follow the annual guidance provided by the CFO Office of Budget when requesting reimbursable authority for non-Economy Act transactions.
- (d) Reimbursable Authority for transactions under the Foreign Assistance Act (FAA). When cited in the agreement, the specific provisions of the FAA of 1961, as amended, and the Department of State's annual appropriations serve to extend the period in which DOE can incur valid obligations to implement FAA-reimbursable work agreements. Specifically, the period of availability of funds may be extended by four years when the Department of State enters into a reimbursable work agreement with DOE.

The FAA provision may also allow for the extension of the period of performance—and DOE's obligational authority—for FAA agreements for an additional five years beyond the expiration of the period of availability. Thus, it may be appropriate for DOE to request reimbursable authority for FAA-reimbursable work transactions in TAFS that extend up to nine years beyond the year in which the FAA transaction is accepted by DOE. DOE should follow OMB's interim guidance on reimbursable authority for FAA transactions (available on the CFO Financial Policy iPortal page) until section 130 of OMB Circular A-11 is updated to provide specific guidance relating to FAA transactions.

- (3) **National Institutes of Health (NIH) Grant Funding.** In accordance with the terms of the Department's 1998 MOU with NIH, DOE laboratories may respond to NIH grant solicitations. When laboratories are awarded NIH grants, funding is provided to DOE by the NIH and executed as reimbursable work.
- (4) **Construction.** Agencies requesting that DOE perform construction activities are responsible for ensuring that the construction activity is consistent with the purpose of the requesting agency's funds. Other Federal agencies cannot utilize DOE's minor construction authority, which applies only to DOE appropriations.
- (5) **Bona Fide Need and Severability Determinations.** The ordering agency is responsible for making a determination on whether a requested reimbursable work agreement, and the specific period of performance specified in the agreement, meets the *bona fide* needs of the period of availability of the ordering agency's appropriation. This includes a determination by the ordering agency of whether the requested work is severable or non-severable as required.

- (6) **Cancellation of Ordering Agency Funds.** Generally, Federal appropriated funds are cancelled and unavailable for expenditures five years after the period of availability for incurring obligations, per 31 U.S.C. 1552 and 31 U.S.C. 1553a.

It is the responsibility of the ordering agency to define a period of performance for the requested reimbursable work that is consistent with the agency's authority to expend its appropriated funds. DOE contractors and officials are responsible for executing the reimbursable agreement consistent with the period of performance defined in the agreement. The period of performance defined in the agreement is consistent with the time limitations and authority of the requesting agency's funds, as determined by the requesting agency.

When an agency's funds are cancelled, they may no longer be cited as a funding source. For any amounts owed and unpaid when the original funds are cancelled, the ordering agency shall be requested to provide funds from a currently available appropriation. The cancellation of customer funds does not relieve the customer agency of obligations to pay amounts owed to DOE. The canceled funds must be de-obligated.

- (7) **Monitoring Execution of Reimbursable Work Agreements.** DOE officials and contractors executing Federal reimbursable agreements must monitor and perform work within the period of performance defined by the reimbursable work agreement. The period of performance must be determined by the ordering agency to be consistent with the ordering agency's funds availability, including the *bona fide* needs determination made by the ordering agency.

Executing customer time-limited funds in a DOE no-year account does not change the period of availability of the customer funds. For example, if DOE and another agency enter into a reimbursable agreement with one-year money from the customer and DOE applies the work to reimbursable authority in a no-year account, the period of availability does not change and the funding must be treated as one-year funding by DOE.

If DOE officials identify concerns relating to the period of availability or *bona fide* needs of a requested reimbursable work agreement, DOE officials may request a written *bona fide* needs determination from the ordering agency prior to approving DOE's performance of the reimbursable work agreement.

- (8) **Financing Work for Other Federal Agencies.**

- (a) **Budgetary Resource.** A valid reimbursable agreement constitutes the budgetary resource. For work that requires an advance, the advance should be collected prior to recording the obligation for the reimbursable work agreement (see paragraph 3.b.(8)(b) below).

- (b) Advance Payments. Advance payments are generally not required when DOE performs work for other Federal agencies.

Advance payments are permitted when DOE performs work for other Federal agencies under the Economy Act. However, advance payments should be limited in usage and requested only if the interests of DOE are best served by obtaining one. The DFO should make the determination that an advance is necessary. When an advance is required, the obligation should not be recorded until the advance is provided. Any requirement for advance payments from other Federal agencies must be described in the reimbursable agreement, along with the authority that permits advance payments.

Advance payments are required as a matter of DOE policy for work performed under the authority of the FAA of 1961 as amended.

- (c) Amount of Required Funding. The ordering agency is responsible for making a *bona fide* need determination for the provided funding, including considerations of severability of the requested work. However, when possible, DOE should request sufficient funding to avoid disruptions to reimbursable work activities and minimize the administrative burden of incremental funding actions. Generally, the reimbursable work agreement should provide full funding if the work is to be completed in the current fiscal year. For work that begins in one fiscal year but continues into the subsequent fiscal year, full funding for the current fiscal year plus the first three months of the following fiscal year is recommended, if permitted.

**(9) De-obligation of Funds for Work Accepted under the Authority of the Economy Act.**

The Economy Act requires that DOE obligate funds provided to DOE for reimbursable work prior to the expiration of the period of availability of those funds as specified by the appropriation of the ordering agency. Funds not obligated by DOE prior to the expiration of the period of availability must be de-obligated by the ordering agency.

DOE shall provide timely notification to the ordering agency regarding the amount of funds to be de-obligated.

## 4. REIMBURSABLE WORK FOR NON-FEDERAL CUSTOMERS

### a. AUTHORITIES

Authorities for DOE to perform reimbursable work for non-Federal customers are listed in the appendix.

Funds-in CRADAs are subject to the same financial requirements as other non-Federal reimbursable work.

### b. BUDGETARY AND FINANCIAL REQUIREMENTS

- (1) **General.** The reimbursable work that DOE provides for a customer is part of the customer's mission and not DOE's direct mission. Reimbursable work for non-Federal entities must be financed by advance payments from the customer except as provided by Paragraph 4.b.(6). The advance payments constitute the budget resource for performing the work to ensure that DOE funds are not used to support a non-DOE mission.

Non-Federal entities requesting work from DOE that is partially or wholly funded through a DOE or other Federal agency contract or financial assistance agreement are considered non-Federal customers for the purposes of this policy. Such customers must follow all requirements for advance payments specified in this chapter and other applicable requirements.

- (2) **Reimbursable Authority.** DOE must obtain reimbursable authority in advance of performing reimbursable work. Reimbursable authority is obtained through an apportionment from OMB. Consistent with the provisions of DOE Order 130.1A, allotments of reimbursable authority are provided to the cognizant DFO by the CFO. The CFO Office of Budget provides annual guidance on the process and requirements for requesting apportionments of reimbursable authority.

- (3) **Budgetary Resource.** For non-Federal customers, a budgetary resource is provided by the reimbursable agreement and the advance payment(s) received for unfilled orders.

- (4) **Full Funding Requirement Threshold.** Full funding is required before beginning work on reimbursable agreements that have an estimated cost of \$25,000 or less or that will be completed in 60 days or less. Advance payment collections are to be processed in accordance with cash collection requirements as prescribed in Chapter 6 of DOE's Financial Management Handbook.

- (5) **Funding for Reimbursable Work over Threshold.** For reimbursable agreements that have an estimated cost greater than \$25,000 and whose period of performance exceeds 60 days:

- (a) DOE shall obtain, prior to performing any work, reimbursable authority and a budgetary resource (advance payments, with exceptions noted in Paragraph 4.b.(6)) sufficient to cover the anticipated work that will be performed during the first billing cycle. A billing cycle is the period of time between billings, usually 30 days. The billing cycle is complete when the customer is billed for services rendered.
- (b) The Department shall also obtain, prior to performing any work, 60 days of additional funding to ensure that funds remain available for the project during subsequent billing cycles. To the extent allowed by the billing and collection procedures of individual DOE contractors, the DFO can approve exceptions to this requirement with the goal of reducing the advance payments required by non-Federal customers.
- (c) DFOs may require additional advance payment amounts to account for estimated termination costs or other costs as appropriate for individual agreements.

(6) **Exceptions to the Requirement for Advances from Non-Federal Customers:**

- (a) The DFO may approve exceptions to the normal advance funding requirement. These exceptions could include a blanket waiver for a contractor or waivers for individual projects. For all such waivers, the cognizant DFO must (a) certify that billing and payment procedures are adequate to allow for a shorter advance requirement without costs exceeding available budgetary resources and (b) provide the HQ CFO with a 10 business day advance notification, using the templates included as Attachments 13.1-1 and 13-2 to this chapter.

All exceptions granted by DFOs shall be reviewed annually and recertified as applicable. DFOs shall notify the HQ CFO Office of Financial Policy and Audit Resolution (CF-20) of recertification decisions no later than November 1<sup>st</sup> of each new fiscal year.

- (b) The contractor performing reimbursable work for DOE may choose to provide DOE with corporate funds to meet the customer's advance payment requirements.
- (c) When permitted by specific law. This covers reimbursable work deliveries without advance payment as directed by specific laws or executive orders. An example is the detail of employees to states and political subdivisions according to 5 U.S.C. 3373 and the detail of employees to international organizations according to 5 U.S.C. 3343.

- (d) If a State or local government has a statute or another legal requirement prohibiting advancing funds for reimbursable work, the Cost of Work for Others Program under the Departmental Administration appropriation may be used for required advance payments. The CFO Office of Budget provides annual guidance on the process and requirements for requesting apportionments for the Cost of Work for Others Program. The availability of the Cost of Work for Others funds is dependent upon the request, OMB apportionment, and DOE allotment.
  - (e) With work funded by Small Business Innovative Research (SBIR) or Small Business Technology Transfer (STTR) Awards described under 4.c. of this chapter, the maximum funding that can be collected from the sponsor may not exceed 30 days of work to be performed under the contract.
  - (f) If the contract so provides, or if the Contracting Officer authorizes, contractors may continue work on a project for a limited time without an advance from the customer to maintain project continuity if the contractor chooses to provide interim funding from the contractor's corporate funds. All the following conditions must be met for such arrangements: (1) the sponsor provides assurance of funding within a specific time; (2) the contractor provides the funds for the work and assumes liability for any costs (including overruns) should funds not be received from the customer; and (3) the contractor retroactively charges the costs of such work to the sponsor. The Contracting Officer shall document the file evidencing agreement to these conditions.
- c. **Specific Requirements for Work Funded through Small Business Innovative Research (SBIR) or Small Business Technology Transfer (STTR) Awards**
- (1) **Legal Restriction on Advance Payments for work funded by SBIR and STTR awards.** Notwithstanding the other advance payment requirements specified in this chapter, the Department is prohibited from charging SBIR and STTR recipients an advance payment amount that exceeds the amount necessary to pay for 30 days of work if the work to be performed is part of the scope of the SBIR or STTR award. (Section 9 of the Small Business Act (15 U.S.C. 638), *Advance Payment*)
  - (2) **Required Advanced Payment Procedures for work funded by SBIR and STTR awards.** Despite the legal restriction on collecting advance payments from SBIR and STTR recipients, the general prohibition against using DOE funds to pay for work performed for third parties remains. Thus, DOE offices and contractors that accept work sponsored by SBIR and STTR recipients must have procedures in place that:

- (a) Identify sponsors who are paying for work performed with SBIR or STTR awards made by any Federal agency;
  - (b) Ensure that advance payments received from such sponsors do not exceed an amount necessary to pay for 30 days of work performed under the agreement with DOE; and
  - (c) Ensure that no DOE funds are used to pay for third party work performed at the labs (except for the Cost of Work for Others funding as described below).
- (3) **Responsibility.** The cognizant DFO for any contractor or office accepting work from SBIR or STTR recipients is responsible for ensuring that payment and collection procedures meet all of these requirements.
- (4) **Use of the Cost of Work for Others Funding.** Available funds under the Cost of Work for Others program under the Departmental Administration appropriation may be used for work funded by SBIR and STTR grants.

## 5. EMERGENCY REIMBURSABLE WORK

### a. OVERVIEW

This section provides guidance on procedures and authorities that may be used for performance of reimbursable work under emergency circumstances.

### b. AUTHORITY

- (1) National Emergencies declared by the President consistent with the provisions of 50 USC 1431. 50 U.S.C. 1431-1435 grants to the President the authority to authorize any agency which exercises functions in connection with the national defense to enter into contracts or into amendments or modifications of contracts without regard to other provisions of law relating to the making, performance, amendment, or modification of contracts.
- (2) 42 U.S.C. 5121-5206, Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), which provides authority for the Federal Emergency Management Agency (FEMA) to request work from DOE to address national emergencies.
- (3) General reprogramming authority provided to the Department through annual appropriation acts. The general reprogramming authority permits the Department to use current appropriations to conduct emergency work for non-Federal entities before the President declares an emergency in certain situations.

c. **BUDGETARY AND FINANCING REQUIREMENTS**

- (1) **Emergency Work Performed for FEMA.** Reimbursement may be provided from the FEMA Disaster Relief Fund for Stafford Act Emergencies. The Director of FEMA, acting for the President, is authorized by statute to coordinate the Federal government's disaster relief efforts (42 U.S.C. 5170). Like other work performed for Federal sponsors, no advance payment is required for work performed for FEMA.
- (2) **Emergency Work Performed for Non-Federal Entities.** Available budget authority under the Cost of Work for Others Program under the Departmental Administration appropriation may be used for required advance payments when performing emergency reimbursable work for non-Federal entities. The emergency requiring use of the Cost of Work for Others Program must be documented in writing by the DFO.
- (3) **Emergency Work Conducted under DOE Reprogramming Authority.** This process will be used when no other authority is provided for emergency reimbursable work.
  - (a) Emergency work will require approval by the Office of General Counsel (GC) and the CFO Office of Budget. The Head of a Departmental Element, DFO, or Site Office Manager must initiate the request to allow the use of DOE funds to support the emergency work.
  - (b) Once approval is provided, emergency work may begin immediately while the formal written request is prepared. The formal written notification of the emergency request must be provided by the Site Office, DFO, or Head of a Departmental Element to the CFO Office of Budget within two days after work begins. The formal notification must include a description of the circumstances that caused the emergency and information used to determine that the occurrence meets the definition of Emergency Work.
  - (c) Additionally, offices must follow up by completing normal reprogramming procedures (internal or formal) consistent with current CFO reprogramming guidance. Even though the Department has general authority to conduct reprogramming for emergencies, each year different thresholds are usually provided for reprogramming that can be conducted internally within DOE versus those that require Congressional approval.

## 6. AGREEMENTS FOR COMMERCIALIZING TECHNOLOGY

### a. OVERVIEW

Agreements for Commercializing Technology (ACT) differ from other types of reimbursable work as they allow DOE contractors to execute agreements with third parties in the contractor's private capacity for work to be performed at a DOE site or laboratory. For such agreements, the contractor may assume financial and performance risk in return for financial consideration from the third-party sponsor of the work. This financial consideration (contractor margin) is individually negotiated between the contractor and the third-party sponsor.

ACT work may be performed pursuant to the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.) with the approval of the Department. Not all DOE sites or laboratories are participating in the ACT program. ACT work is limited to sites and laboratories with contracts that include the ACT clause.

### b. COSTS

(1) **General.** Under ACT, the Department is not a party to any agreements between the contractor and the third-party sponsor of the work. Thus, from the perspective of the Department, the contractor is the sponsor of the work and is solely responsible for payments to cover costs of the work.

Generally, ACT costs include all direct and properly allocated indirect costs incurred by the contractor in support of the ACT project but exclude contractor margin(s). All ACT costs will be paid by the contractor through normal DOE payment procedures but must be pre-funded by the contractor according to the procedures set out in this chapter.

(a) **Unique Costs for ACT Projects.** The cost of ACT projects may include direct costs unique to ACT projects that would not be incurred for other non-Federal reimbursable work, such as taxes and insurance. These costs can be paid through DOE contracts for approved ACT projects.

(b) **Allocation of Indirect Costs.** All costs normally allocable to non-Federal reimbursable work (except for contract award fees) are allocable to ACT projects, including all allocable indirect site expenses and Lab, Site, or Plant-directed research and development (LDRD, SDRD, or PDRD). When allocating site indirect costs to ACT projects, all ACT costs, (including those uniquely associated with ACT projects) must be included in the allocation base for indirect cost pools in accordance with disclosed cost accounting practices.

(c) **FAC.** Consistent with full-cost recovery, FAC applies to all ACT work. FAC will be applied as cost is incurred to ACT work with collections remitted to the Treasury according to normal FAC

collection procedures monthly. The basis for calculating the FAC is the total ACT cost excluding contractor margin.

- (d) Costs not Payable Under the DOE Contract
  - 1 Contractor Margin. Contractor margin includes any financial consideration provided to the contractor by the third-party sponsor of the ACT work that is in excess of the costs incurred under the DOE contract. The contractor margin is not considered a cost for purposes of the DOE contract and is not part of the cost base used for calculating FAC or allocating indirect costs.
  - 2 The Contractor's Assumption of Financial and Performance Risk. Any expenses incurred by the contractor resulting from the contractor's decision to assume financial and performance risk for ACT work shall be borne solely by the contractor and are not payable under the DOE contract. Such expenses may include the contractor's cost of capital for advance funding, defaults and late payments by third-party ACT sponsors, contract costs that exceed the amount of fixed-price ACT agreements (between the contractor and a third party), and the cost of repair to equipment or facilities damaged during the performance of ACT work (unless pre-funded by the contractor).

**c. REIMBURSABLE BUDGETARY RESOURCES AND OBLIGATIONAL AUTHORITY**

- (1) General. Funds-in ACT are subject to the same budgetary resource (advance payment) and reimbursable authority requirement as other non-Federal reimbursable work, recognizing that the ACT Program is considered one reimbursable program with the contractor as the sponsor. No DOE funds shall be used (even on a temporary basis) to record obligations or cover cost outlays (payments) for ACT projects. No ACT projects can begin without both a budgetary resource and reimbursable authority.
- (2) Initial Requirements. Before ACT work can begin, funds must be obligated through a contract modification against a valid budgetary resource (advance payment from contractor), and obligational authority must be provided through an allotment. A valid budgetary resource exists only when the contractor has provided an advance payment. At no time will the cost of ACT work exceed funds obligated for that work.
- (3) Advance Payment Requirement. The contractor must maintain an advance payment amount equal to 60 days of anticipated costs for ACT work, in accordance with normal requirements for non-Federal reimbursable work,

unless approved for excepted advance payment procedures by the cognizant DFO. Because the contractor provides the advance directly, there is no separate invoice cycle for ACT work. Thus, there is no requirement for an additional advance payment amount to cover costs incurred during the first invoice cycle as it exists for other non-Federal reimbursable work.

- (4) Excepted payment procedures for individual contractors. The contractor can propose alternative advance payment processes for approval by the cognizant DFO. For such exceptions, the cognizant DFO must certify that the contractor's payment procedures are adequate to ensure that no ACT project costs will be paid from the site/facility management contractor's payment cleared funding account (letter of credit) or any other form of appropriated funds before the contractor provides sufficient advance funding to cover the payments. Any alternate advance payment process must ensure that DOE does not spend its appropriated funds for ACT work, even on a temporary basis.

When providing authorization for excepted payment procedures, the DFO must provide the Office of the CFO with a 10 business day advance notification using the templates in Attachment 13-2 of this chapter. All waivers granted by cognizant DFOs shall be reviewed annually and recertified as applicable. DFOs shall notify the HQ CFO Office of Financial Policy and Audit Resolution of recertification decisions no later than November 1<sup>st</sup> of each new fiscal year.

**d. ACCOUNTING FOR ACT OBLIGATIONS, COSTS, AND PAYMENTS**

Given the nature of ACT agreements - that is that they are agreements between a contractor and a third party, the budgetary and accounting treatment should provide a reasonable balance of risk between the level of budgetary controls and the accounting effort needed to maintain these controls.

- (1) The contractor must ensure that all costs and payments associated with ACT projects, including all costs unique to ACT work, are segregated and allocated appropriately to obligations made for ACT work.
- (2) Obligations to support ACT work should be made in aggregate for individual contractors in accordance with the legal obligation control point for this type of activity. All costs and payments should be incurred against this aggregate obligation. All accounting transactions related to ACT work must be recorded using the appropriate fund code and a unique WFO code designated for each contractor, as determined by the CFO STARS team to track ACT Work. A unique WFO code is not required for each ACT agreement. A unique ACT fund code will be established for each Treasury Account Fund Symbol.

- (3) Although a unique WFO code is not required for each ACT agreement, should a contractor request otherwise (including separate memorandum reporting), meeting this request is at the discretion of the relevant DFO.
- (4) **Reporting.** Applicable reporting requirements are included in the ACT contract provisions. Contractors will provide information on ACT projects to their cognizant DFO as necessary to facilitate monitoring and oversight.

## 7. REIMBURSABLE PERSONNEL DETAILS

### a. AUTHORITIES

- (1) Title 31, U.S.C., section 1535 (the Economy Act), shall be cited when DOE Federal employees are detailed on temporary assignment to other Federal agencies.
- (2) Title 5, U.S.C., sections 3371-3376 (Intergovernmental Personnel Act of 1970, as amended), provides for the assignment of personnel between Federal, State, local, and Indian tribal governments; institutions of higher education; and other approved and eligible organizations.
- (3) Title 5, Code of Federal Regulations, part 334 (Temporary Assignment of Employees Between Federal Agencies and State, Local, and Indian Tribal Governments, Institutions of Higher Education, or Other Approved Eligible Organizations) establishes policies and procedures for the Intergovernmental Personnel Act (IPA) Program.
- (4) 5 USC 3343 - Sec. 3343 establishes authorities for detailing employees to approved international organizations where it is determined to be in the national interest.

### b. FINANCIAL POLICY

Collections received for the following shall be returned to DOE and treated as reimbursements to the appropriation(s) bearing the expense: personnel detailed on temporary assignment to other Federal agencies; State, local, and Indian tribal governments; institutions of higher education; and other approved eligible organizations.

Reimbursements received for contractors operating Federally Funded Research and Development Centers (FFRDCs) eligible to participate under the authority of the IPA should be returned to DOE or to the entity that authorized the expense for credit as reimbursements to the appropriation(s) bearing the expense.

Reimbursable personnel details authorized by the Intergovernmental Personnel Act shall conform with DOE M 321.1-1, *Intergovernmental Personnel Act Assignments*. Overseas assignments shall conform with DOE O 313.1, *Management and Funding of the Department's Overseas Presence*:

**Appendix: Identified DOE Reimbursable Work Authorities**

<b>Authority</b>	<b>Scope of Work</b>	<b>Type of Customer</b>
Atomic Energy Act of 1954 42 U.S.C. 2053	“Research and development or training activities and studies” as implemented in DOE Order 481.1E, or successor policy.	Federal and Non-Federal Entities
Economy Act 31 U.S.C. 1535	Broad authority for agencies to place order with other agencies when “ordered goods or services cannot be provided by contract as conveniently or cheaply by a commercial enterprise.”	Federal Entities
Department of Energy Organization Act of 1977 42 U.S.C. 7256	Authority “to enter into and perform such contracts, leases, cooperative agreements, or other similar transactions with public agencies and private organizations and persons”	Federal and Non-Federal Entities
Intergovernmental Personnel Act of 1970 5 U.S.C. 3371-3376	Assignment of Federal personnel to Universities, State and Local Governments, Nonprofit organizations, and Federally-Funded Research and Development Corporations (FFRDCs), as implemented by DOE Manual 321.1-1, or successor policy.	Universities, State and Local Governments, Nonprofit organizations, and Federally-Funded Research and Development Corporations (FFRDCs)
The Intergovernmental Cooperation Act of 1968 31 U.S.C. 6505	“Statistical and other studies and compilations, development projects, technical tests and evaluations, technical information, training activities, surveys, reports, documents, and other similar services that an executive agency is especially competent and authorized by law to provide”	State or Local Government
Contributed Funds Act of 1921 for the Western Area Power Administration 43 U.S.C. 395	Applies only to the Western Area Power Administration	Non-Federal Entities

<b>Authority</b>	<b>Scope of Work</b>	<b>Type of Customer</b>
Foreign Assistance Act of 1961 22 U.S.C. 2357	Permits DOE to “furnish services and commodities on an advance-of-funds or reimbursement basis to friendly countries, international organizations, the American Red Cross, and voluntary nonprofit relief agencies registered with and approved by the Agency for International Development.”	Department of State and the U.S. Agency for International Development (USAID)
Homeland Security Act of 2002 6 U.S.C. 189	Work performed by DOE “national laboratories and sites” for the Department of Homeland Security, as implemented by DOE Order 484.1, or a successor policy.	Department of Homeland Security
Contributed Funds Agreements for Government-operated facilities 42 U.S.C. 7278	Provides authority to accept and retain funds from a public or private source in order to perform projects in cooperation with other Federal, State or private entities. The authority is cited by the National Energy Technology Laboratory (NETL) for its reimbursable work.	Federal & Non-Federal Entities
Stevenson-Wydler Technology Innovation Act of 1980 15 U.S.C. 3710	Authority applicable to Cooperative Research and Development Agreements (CRADAs), as implemented by DOE Order 483.1B, or a successor policy.	Non-Federal Entities

**Attachment 13.1-1**

**Notification of Waiver of Normal Advance Payment Requirements for an Individual Customer or Project**

DOE Organization/Site Office: \_\_\_\_\_

Site/Facility Operating Contractor: \_\_\_\_\_

Customer Name: \_\_\_\_\_

Reimbursable Agreement/ CRADA Number	Total Value of Reimbursable Agreement/ CRADA	Approved Number of Advance Days	Advance Collected	*Prepayment Amount for First Billing Cycle	Estimated Closeout Costs Collected (If required)
	\$		\$	\$	\$

Please provide an attachment explaining the justification for this exemption from normal advance payment requirements that includes the following:

- A description of how the advance amount was calculated for this customer
- A description of the site/operating contractor's billing process for this customer
- A description of site/facility operating contractor's procedures to ensure that work on this project will be terminated before the advance funding is exhausted

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Designated Financial Officer

Date

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Site Contracting Officer

Date

\*Prepayment Amount – funds needed to cover costs incurred for the first billing cycle. This includes costs from the inception of the project up to the time the first bill is prepared.

**Attachment 13.1-2**

**Site & Facility Management Contractor**

**Notification of Blanket Waiver of Normal Advance Payment Requirements**

DOE Organization/Site Office: \_\_\_\_\_

Site/Facility Operating Contractor: \_\_\_\_\_

Please provide an attachment that incorporates the following elements:

- The estimated number of projects to be included within the blanket waiver per year
- The estimated total dollar value of the projects included within the blanket waiver
- Available electronic records of reimbursable and CRADA agreements executed over the past year, including the value and advance amount collected for each agreement, if available.
- A listing of the agreement type(s) (e.g., reimbursable agreements, CRADAs, or both) included within the waiver
- A description of any exclusions from the waiver
- A description of the approved advance payment procedures to be utilized for non-Federal work performed by the site/operating contractor, including a description of the manner in which the advance payment is calculated
- A description of the site/operating contractor's billing process; please include a description of the timeline associated with the site/operating contractor's billing cycle
- A description of the contractor's procedures to ensure that work on individual projects within the waiver will be terminated before that project's advance funding is exhausted

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Designated Financial Officer

Date

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Site Contracting Officer

Date

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Field/Operating Contractor CFO

Date