

PART III - SECTION J

APPENDIX N

TECHNOLOGY COMMERCIALIZATION

- (a) Purpose. The Technology Commercialization (TC) Program described in this Appendix supports, in part, other contract conditions as they relate to:
- (1) The transfer of new and emerging technologies between the Laboratory and private industry to enhance the Laboratory's ability to meet mission requirements and improve the economic environment in which the Laboratory operates and further the industrial competitiveness of the United States; and
 - (2) The development of improved mechanisms for the utilization of Laboratory technologies to stimulate new business startups, attract entrepreneurs, create alternative job opportunities, and attract businesses and capital to the region while also continuing to serve the nation as a whole.
- (b) TC Program Description.
- (1) Commercialization of Laboratory technology is to be promoted nationally and within northern New Mexico through the following mechanisms:
 - (i) Research, technology development, and technical assistance efforts by the Laboratory for entities other than the federal government;
 - (ii) Efforts that support the deployment of technology consistent with the objectives of this Appendix and complementary to the missions of the Laboratory;
 - (iii) Access to Laboratory facilities, equipment, and intellectual property through Designated User Facilities, Technology Deployment Centers, and licenses or other NNSA-authorized agreements;
 - (iv) Support new and small business enterprises within northern New Mexico utilizing Laboratory technology, including those enterprises formed by current Laboratory employees, in accordance with, and consistent with conflict of interest requirements as described in this Appendix; and
 - (v) Provide special assistance to those persons interested in commercializing Laboratory technologies with the greatest market-place potential. This special assistance will include such activities as market analyses of the technologies and services of Laboratory-supported business consultants.

- (2) The activities listed above will be performed and may require oversight by NNSA, DOE or other Federal Government directed funded work of the Laboratory. All activities must be within the general scope of work of the Contract's Statement of Work, and in accordance with the terms of the Contract.
- (c) TC Program administration. The Contractor will maintain a Technology Commercialization Office (TCO) at the Laboratory to support and promote industrial partnering activities.
- (1) TC Program Manager. The Laboratory Director is responsible for appointing a Technology Commercialization Program Manager who will be responsible for day to day operations and the conduct of the TC Program in accordance with this Appendix and assuring that the TCO has access to resources that include qualified, experienced professionals in the fields of contract administration, marketing, R&D program management, and technology and intellectual property licensing.
 - (2) Technology Commercialization Advisory Board. The Laboratory Director is responsible for appointing a Technology Commercialization Advisory Board, and its chair, representing both national and regional interests, and which will draw upon experts from the fields of finance, manufacturing, business, academia and government. The Technology Commercialization Advisory Board will advise the Program Manager in setting objectives, goals, and priorities for the TCO. The Technology Commercialization Advisory Board will be invited to participate in program reviews of the TCO.
 - (3) Technology Development Investment.
 - (i) NNSA has agreed to allocate as an item of Laboratory overhead \$1,000,000 annually, which in addition to any funds from external sponsors, will fund TC Program activities. In the event the technology commercialization program generates revenues, those revenues may be deposited to the indirect account originally charged for the program, or otherwise handled as a miscellaneous receipts and deposited with the U.S. Treasury.
 - (ii) The Contractor may also use its own funds for non-federal work, either as advance funding or for continuation of work should a non-federal work for others sponsor fail to fully fund its project. However, such a circumstance is limited to the term and scope of the original work for others agreement. Such Contractor funds are in addition to, and not limited by, the annual NNSA allocation stated above.
- (d) Coordination with NNM RDC. The Northern New Mexico Regional Development Corporation (RDC) was established to help minimize social and economic impacts on north central New Mexico resulting from Laboratory downsizing. The Contractor will cooperate with the RDC on strategies to reduce the dependence of the region on the Laboratory, support regional economic diversification, and build valued partnerships

with surrounding communities. The RDC will be invited to designate a representative to be a member of the Technology Commercialization Advisory Board.

- (e) Third Party Agreements. The TCO may utilize external firms and consultants with recognized experience in new business formation, marketing, finance, and licensing to assist in executing the responsibilities of the TCO. To the extent permitted by law and the terms of this Contract, such firms may be retained on a profit-sharing or commission basis to provide commercial market incentives to successful commercialization of Laboratory technologies.
- (f) Pricing.
 - (1) The Laboratory's methodology for determining cost charged for research and technical consulting efforts funded from non-federal sources located in northern New Mexico (which includes Taos, Santa Fe, Rio Arriba, Sandoval, Mora, San Miguel, and Los Alamos Counties, and eight Pueblos of Nambe, Picuris, Pojoaque, San Ildefonso, San Juan, Santa Clara, Taos, and Tesuque) will ensure that this work is not unduly burdened with overhead costs incurred for the primary benefit of Government programs. "Non-federal sources" excludes non-federal entities using federal procurement contract funds (as the term "procurement contract" is described in 31 U.S.C. § 6303), except as approved by the Contracting Officer.
 - (2) For private businesses located in northern New Mexico, the Laboratory will ensure that each business has: (i) a New Mexico tax number, (ii) a *bona fide* northern New Mexico place of business, and (iii) certifies that the results of the work are expected to aid in retaining or creating employment in northern New Mexico.
 - (3) Pricing of work with public sector entities under this section will be limited to state agencies; local government agencies and tribal governments located in northern New Mexico; and school districts located in northern New Mexico.
 - (4) The amount of overhead cost not related to the scope of work for these efforts will be taken into consideration in determining the appropriate overhead rates applied to such work. Such overhead rates are subject to review by NNSA.
- (g) Litigation, Claims and Indemnification. The operations of the TCO will be subject to the same terms and conditions as other operations of the Contractor under this Contract.
- (h) Intellectual Property. In addition to the provisions of the Contract's Section I Clauses entitled "Technology Transfer Mission" and "Patent Rights – Management and Operating Contracts", the following are supplemental provisions for the purpose of this Appendix:
 - (1) Retention of Title. The Contractor will assign or retain title to intellectual property generated by Laboratory employees in the course of non-federal work, in accordance with Class Waiver provisions and guidance provided by the NNSA

Patent Counsel, and based on the best interests of the technology transfer program of NNSA and the Laboratory.

- (2) Equity Participation. Equity may be accepted in lieu of license royalties or fees in accordance with published Contractor policies governing such acceptance. Such policies shall be provided to the NNSA Patent Counsel before they are to be issued or modified for concurrence.

(i) Entrepreneurial Leave of Absence.

The authorization of entrepreneurial leave is subject to the Contractor's "Leave Without Pay" policies.

(j) Conflicts of Interest.

- (1) The participation of Laboratory employees in the process of technology transfer and commercialization is essential to meeting the mission objectives of both the Contractor and NNSA. It is acknowledged that it is reasonable for Laboratory employees to participate in such activities in both their official capacity as Laboratory employees and in their private capacity, subject to appropriate policy limitations. These policy limitations naturally prohibit an employee from participating, actively or through substantial financial interest, in a business which utilizes a Laboratory technology or receives a Laboratory intellectual property license related to the employee's Laboratory duties.
- (2) Credibility and public trust require that any conflict of interest issues that arise be managed so as to enable successful technology commercialization while also protecting legitimate interests of NNSA and the Contractor. To this end, the Contractor will implement a Laboratory-wide Conflicts of Interest Compliance Plan in accordance with Contract's Section H clause entitled "Conflicts of Interest Compliance Plan" that will require disclosure of conflicts of interest and potential conflicts of interest in all technology commercialization activities, and will implement institutional mechanisms to independently identify and mitigate or eliminate apparent, actual or potential conflicts. NNSA and the Contractor explicitly recognize that potential conflicts can arise.
- (3) The Contracting Officer will work with the Contractor in such instances to assure that beneficial collaborations between the Laboratory and the private sector are accomplished so long as potential conflicts are fully disclosed and are

appropriately managed to avoid apparent conflicts, where possible, and to avoid actual conflicts of interest.

- (4) Potential conflicts can usually be adequately managed through the Contractor applying a Laboratory-wide Conflicts of Interest Compliance Plan, in addition to other requirements of this Contract, in connection with:
- (i) Laboratory employee ownership of equity interests in companies with which the Laboratory has a partnership agreement;
 - (ii) Laboratory employee ownership of interests in companies based on Laboratory technologies, where the Laboratory technologies are unrelated to the employee's job assignments or responsibilities;
 - (iii) Laboratory employees consulting or working for others in their private capacities, outside of their employment with the Laboratory;
 - (iv) Laboratory employees receiving royalties from the Contractor's licenses of Laboratory intellectual properties; and
 - (v) Laboratory employees retaining title to Laboratory intellectual property through waiver or election.
- (k) Annual Program Review. A program review involving the Laboratory, the Technology Commercialization Advisory Board and recognized experts on economic development and technology commercialization programs will be conducted annually and will seek, among other things, to set performance targets for the technology commercialization. A copy of the Annual Program Review will be sent to the Contracting Officer. The following indicators will be included in the annual review to assess the strategic direction of the program:
- (1) Number of companies established as a result of TC Program activities.
 - (2) Number of licenses executed with companies as a result of TC program activities.
 - (3) Number of start-ups by Laboratory employees on entrepreneurial leave.
 - (4) An impact assessment of TC Program activities, addressing the following:
 - (i) jobs created as a result of TC Program activities;

- (ii) startup business status after one, two, and three years of business activity;
and
 - (iii) overall economic impact of CT Program on the region.
- (5) Survey of customers and stakeholders, e.g., regional community leaders, NNSA program managers, and national leaders, to determine satisfaction with the TC Program.
- (6) Data on the numbers of employees taking entrepreneurial leave and the costs of such leave, including the cost of benefits provided, and an analysis of the effectiveness of such leave on promoting technology commercialization.