

## Department of Energy (DOE) Work For Others (WFO) Information Distribution Policies

October 4, 2010

1. References. See Appendix A.
2. General.

DOE encourages its National Laboratories and Technology Centers to present scientific and technical information to actual or potential customers,<sup>1</sup> either federal or non-federal. This collaborative policy maximizes the synergistic benefits of sharing technology and research findings throughout the U.S. government and U.S. commercial industry in order to solve national problems while conserving technical and financial resources.

DOE authorizes the management and operating (M&O) contractors of its laboratories (such as UT-Battelle which manages Oak Ridge National Laboratory [ORNL]) to enter into direct discussions on research and technical assistance with both federal and non-federal customers.<sup>2</sup> DOE also permits its laboratories to respond to federal agency Broad Agency Announcements (BAAs) and research-oriented financial assistance solicitations. The BAA-type criterion is similar for non-federal entities proposing research solicitations.<sup>3 4</sup>

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<sup>1</sup> For purposes of clarity, customers, as used in this document, include federal agencies, federal government corporations, independent federal entities, State and local governments, U.S. private sector companies, and foreign entities.

<sup>2</sup> Clause I.130 of DOE Contract DE-AC05-00OR22725 of the DOE and UT-Battelle contract authorizes this action. This clause implements DOE Acquisition Regulation (DEAR) subpart 970.5217-1 Non-DOE Funded Work.

<sup>3</sup> As non-federal solicitations are seldom labeled as a BAA, DOE Oak Ridge Office (DOE-ORO) recommends Oak Ridge National Laboratory (ORNL) to have a DOE-ORO contracting officer review the solicitation first to see if it is a BAA-type solicitation before ORNL can submit a response.

<sup>4</sup> From DOE Order 481.1C, Paragraph 4:

REQUIREMENTS. It is Departmental policy that DOE/NNSA resources are made available to non-DOE/non-NNSA entities. Requirements of DOE/NNSA directives, applicable regulations, and the following requirements must be satisfied before work is performed.

a. In operating DOE/NNSA Federally Funded Research and Development centers (FFRDCs) or other facilities, a contractor may not respond to Requests For Proposals (RFPs) or other solicitations from another Federal agency or non-Federal entity that involves head-to-head competition as an offeror team member, or subcontractor to an offeror.

b. When these requirements are met and following notification to the cognizant field office, a DOE/NNSA site/facility management contractor operating an FFRDC or other DOE/NNSA facility may respond to Broad Agency Announcements, financial assistance solicitations, Program Research and Development Announcements, and similar solicitations from other Federal agencies or non-Federal entities that do not result in head-to-head competition, subject to the requirements of this Order. These solicitations must meet the following requirements.

(1) The solicitation must be a general research announcement used for the acquisition of basic or applied research

3. Responding to Federal Agency Requests for Proposal (RFP).

ORNL, under its DOE M&O contract, **may not respond** to any U.S. Government RFP or Request for Quotations (RFQ). As discussed below, this restriction includes a prohibition against being a member of team that submits a proposal in response to a RFP or RFQ. Once a legal entity wins a proposal, however, ORNL certainly can furnish specialized assistance or research in meeting the proposal's deliverables after a DOE Oak Ridge Office (ORO) approval.

Customers cannot be furnished any detailed, specific information by ORNL as a DOE M&O contractor that will either (1) indicate involvement by DOE or its M&O contractor in preparing a response to an RFP, or (2) materially assist a customer in the submission of a response to a fixed statement of work under an RFP. Specific information means any deliberate writing of scientific or technical data geared to respond to RFP criteria and the furnishing of cost data necessary to support that RFP submission. ORNL personnel cannot write a response to, nor actively participate in, any customer submission to any federal agency RFP or other equivalent competitive document that has a fixed statement of work.

4. Basic Information Restrictions

Customers must be notified that any actual or potential work to be done by a DOE M&O contractor must be authorized in advance by a cognizant DOE contracting officer on a full-cost-recovery basis.

DOE classified, sensitive unclassified information, or intellectual property (IP), will not be given to customers unless authorized by the appropriate Laboratory or contracting official.

ORNL under its DOE M&O contract, generally has broad authority to receive and to share scientific, technical, and business information with sponsors and potential sponsors. This type of information exchange usually is conducted pursuant to a Non-Disclosure Agreement between the parties, or pursuant to a work agreement, such as an approved WFO agreement where proprietary information is involved.

However, there are limitations on the authority to disclose sensitive information. Export control laws may limit disclosures in certain circumstances, and technical or research information that is not in the public domain must be reviewed for compliance prior to disclosure. There are stringent DOE rules to preclude furnishing personally identifiable information (PII) to

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to further advance scientific knowledge or understanding rather than focus on a specific system or hardware solution.

(2) Evaluation and selection is performed through a merit or peer review process using pre-established general selection criteria.

(3) The primary basis for selection is technical approach, importance to the Agency, and funds availability.

unauthorized parties.<sup>5</sup>

5. Information Supplied Prior to an Agreement in Place between the Customer and ORNL

Customers may receive information on DOE research and technical capabilities through any or all of the following open-source methods:

- peer-reviewed publications, such as refereed scientific, technical, or engineering journals,
- publicity announcements and press releases,
- technical brochures and/or technical presentations,
- publicly available technical capability statements or White Papers covering ORNL's unique expertise and specialized facilities available,
- electronic announcements via the Internet,
- annual or periodic formal publications, such as the R&D 100 Awards list,
- distribution of customers' literature, reports, and analyses, as authorized,
- providing Rough Order of Magnitude (ROM) of actual or projected costs,
- scientific abstracts based on previously conducted work or speculative concepts based on existing or evolving scientific theory, and
- researcher-supplied resumes or Curriculum Vitae.

6. After an Agreement is in Place Between the Customer and ORNL

Customers may receive information on ORNL's research and technical capabilities through any or all of the methods listed in Section 5 above. Customers also may request specific and detailed information from UT-Battelle about the specific research capabilities or unique facilities available at ORNL. This information can be supplied at no cost to the customer as a general information request or it can be done under a full-cost-recoverable policy. Unless otherwise directed by cognizant DOE authority, ORNL will make the determination to charge costs back to the customer or to not charge costs on any standard or detailed information request.

DOE-approved work will be done on an advance-payment basis. Work will be accomplished in accordance with the approved statement of work incorporated into either the federal interagency

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**Definition of PII**

PII: Any information about an individual maintained by an agency, including but not limited to, education, financial transactions, medical history, and criminal or employment history and information which can be used to distinguish or trace an individual's identity, such as their name, social security numbers, date and place of birth, mother's maiden name, biometric records, etc., including any other personal information which is linked or linkable to an individual.

agreement or the scope of work in the DOE-approved subcontract, as appropriate.

7. Information Submission, Distribution, or Attribution Parameters

- A DOE M&O contractor cannot actively participate in, nor have the appearance of active involvement in, any U.S. federal agency RFP bid submitted by a U.S. private sector company.<sup>6,7</sup>
- IP of all parties involved will be protected.
- Inventions made in performance of any DOE-approved work may fall within the DOE-issued Class Patent Waiver to the M&O contractor(s), and the M&O contractor(s) may elect to retain title to such inventions subject to retention by the federal government of march-in-rights and a non-exclusive, non-transferrable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the invention throughout the world.
- Proprietary information of all parties will be protected and not released to other parties unless specially authorized.
- Public release of scientific or technical information is based on the DOE policy to routinely make publicly available all unclassified scientific information (including scientific and technical computer software) resulting from the performance of work for other federal agencies unless that agency specifically requests otherwise.
- Regardless of the above statement on agencies restricting release of scientific or technical information, DOE must still provide information subject to the Freedom of Information Act and/or other relevant laws.

8. Summary of Third-Party Use of DOE and DOE M&O Contractor Information

- A Third Party may further release or distribute information specifically supplied to them by ORNL subject to U.S. government classification restrictions and any Non-Disclosure Agreements that have been executed by the parties.
- A Third Party may further release or distribute information specifically obtained from a DOE or a DOE M&O contractor's publicly available information site, such as a publicity announcement or an external DOE World Wide Web site.
- A Third Party may further release or distribute information specifically indicating an

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<sup>6</sup> A private sector company means any one of the following non-public sector entities: University, Commercial For-Profit Companies, Joint Ventures, Limited Partnerships, Non-Profit Organizations, Limited-Liability Corporation, etc.

<sup>7</sup> See DOE Headquarters Memorandum from Mr. Richard Hopf, the Deputy Assistant Secretary for Procurement and Assistance Management, dated July 30, 1997, subject: Work For Others - Teaming With Industry; and DOE Headquarters Memorandum from Mr. Richard Hopf, the Deputy Assistant Secretary for Procurement and Assistance Management, dated October 6, 1997, subject: Clarification of the Department of Energy's Policy on Teaming with Industry Through the Work for Others Program.

existing DOE or DOE M&O contractor relationship, such as a licensing agreement, procurement contract, grant award, or a subcontract arrangement. These announcements are subject to any non-disclosure statements resident in the original contract agreement or financial assistance award.

- DOE does not control a Third Party's use, further distribution, or further usage of DOE or DOE M&O contractor-supplied information (subject to obvious restrictions on classified, export control, IP, or other information covenants agreed to in the original rendering of the information.)

## APPENDIX A:

## REFERENCES

1. DOE Headquarter Office of Science Memorandum August 7, 2006, **Office of Science Policy on the Protection of Personally Identifiable Information.**
2. The National Competitiveness Technology Transfer Act of 1989, Public Law 101-189, Sections 3131, 3132, 3133, and 3159, which prescribes technology transfer as a mission of the DOE and its facilities.
3. Stevenson-Wydler Technology Innovation Act of 1980, Public Law 96-480, as amended, Section 11, which states as public policy that the federal government shall strive to transfer federally owned or originated technology to State and local governments and the private sector.
4. DOE Order 481.1C, 1-24-05, subject: **Work for Others (Non-Department of Energy Funded Work)**
5. DOE Manual 481.1-1A, Chg 1: 9-28-01, **Reimbursable Work for Non-federal Sponsors Process Manual**
6. DOE O 471.3, 04/09/2003, Identifying and Protecting Official Use Only Information
7. DOE Headquarters Brochure, **How Federal Agencies Obtain Technical Resources and Skills from the U.S. Department of Energy.** Published by the U. S. Department of Energy, Assistant Secretary for Human Resources and Administration, January 1996.
8. DOE Headquarters Memorandum from Mr. Richard Hopf, the Deputy Assistant Secretary for Procurement and Assistance Management, dated July 30, 1997, subject: **Work For Others - Teaming With Industry**
9. DOE Headquarters Memorandum from Mr. Richard Hopf, the Deputy Assistant Secretary for Procurement and Assistance Management, dated October 6, 1997, subject: **Clarification of the Department of Energy's Policy on Teaming with Industry Through the Work for Others Program**
10. Export Administration Regulations (EAR) - 15 CFR Parts 730-744.
11. International Traffic in Arms Regulations (ITAR) - 22 CFR Parts 120-130.
12. Nuclear Regulation Commission (NRC) - 10 CFR Part 110.
13. DOE O 522.1, **Pricing of Departmental Materials and Services**, dated 11-03-04, which establishes requirements and assigns responsibilities for setting prices and charges for materials or services sold or provided by DOE, either directly or through site/facility

management contractors, to organizations and persons outside DOE/NNSA.

14. DOE O 241.1A, **Scientific and Technical Information Management**, dated 4-9-01, which establishes requirements and assigns responsibilities to ensure that scientific and technical information emanating from DOE research is appropriately identified, processed, disseminated, and preserved.
15. DOE P 443.1, **Policy on the Protection of Human Subjects**, dated 05-15-00, which defines the DOE policy for the protection of human subjects in research activities.
16. DOE O 443.1 **Protection of Human Subjects**, dated 05-15-00, which establishes the procedures and responsibilities for implementing the policy and requirements set forth in 10 CFR Part 745 and in DOE P 443.1.
17. DOE Acquisition Regulation Section 970.5217-1 **Work For Others Program (Non-DOE Funded Work) (Jan 2005)**.