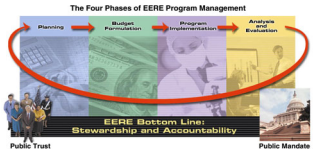
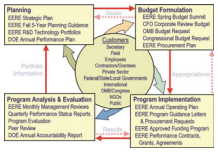
Appendix G-3

Role of the National Laboratories





a. Primary Role of the National Laboratories:

The DOE national laboratories, such as the National Renewable Energy Laboratory (NREL), are Federally Funded Research and Development Centers (FFRDC), which are primarily government-owned, contractor-operated facilities with the typical contractual mechanism being a Management and Operating (M&O) contract. The intended use of the national laboratories is described in two parts of the Federal Acquisition Regulations (FAR): Part 17.6–Management and Operating Contracts and Part 35.017–Federally Funded Research and Development Centers.

The characteristics of DOE national laboratories, as FFRDCs, include:

- They meet long-term research or development need that cannot be met as effectively by existing in-house resources or other contractors.
- They have a special long-term relationship with DOE.
- The accomplishment of their tasks are integral to the mission and operation of DOE.
- They have access, beyond that which is common to the normal contractual relationship, to Government and supplier data, including sensitive and proprietary data, and to employees and (government-owned, contractor-operated) facilities.
- They are required to conduct their business based on their special relationship with DOE, to operate in the public interest with objectivity and independence, to be free of organizational conflicts of interest, and to have full disclosure of their affairs to DOE.

- They have a long-term relationship with DOE in order to provide the continuity that will attract and retain high-quality personnel at the national laboratories. *M&O contracts with a base term of 5 years and a 5 year option are typically used to maintain national laboratory expertise and equipment and facility capabilities, to provide continuity on the national laboratory meeting the needs of DOE, to maintain their objectivity and independence, and to provide a quick response capability.*

The FAR specifically states that it is not the intent of the Government that an FFRDC use its privileged information or access to facilities to compete with the private sector. It further states that a FFRDC often performs work because the private sector is unable or unwilling to use its own facility for the work. FFRDC competition with the private sector is a sensitive issue. It should also be noted that the DOE Financial Assistance Regulations preclude FFRDCs from being recipients of grants and cooperative agreements (10 CFR 600.101 states: "recipient...does not include government-owned, contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally funded research and development centers.").

National Laboratory employees are precluded from:

- *performing inherently Governmental functions.*
- *performing support services.*
- *obtaining support services for a DOE organization through a laboratory subcontract (prohibition extends to all M&O contractors: National Laboratories, Y-12, etc).*

b. DOE and Congressional Sensitivities with the Use of the National Laboratories:

The primary concerns with the use of the national laboratories (based on Departmental Orders, Inspector General (IG) reports, and report language that has accompanied the Energy and Water Development (E&WD) appropriations) center on:

- national laboratory employees, particularly those located in the Washington, D.C. area, augmenting DOE staff by performing inherently governmental functions.

- national laboratory employees, particularly those located in the Washington, D.C. area, performing activities that should be performed by support service contractors (issues of national labs competing with the private sector and higher costs).
- insufficient programmatic and cost-effectiveness justifications of national laboratory employees located in the Washington, D.C. area provided by the sponsoring DOE programs.
- long duration of assignments of national laboratory employees located in the Washington, D.C. area (from the 1997 IG report: "conveys the appearance, if not the reality, that program offices were augmenting Federal staff rather than filling short-term needs for unique experience"; DOE O 350.2 states: "DOE facility contractor employees shall not be assigned to the Washington, D.C., area to... - (4) perform assignments that exceed 12 months in duration unless the individual's continued assignment is critical and represents significant mutual benefit to the program sponsor and the facility.").
- national laboratories providing support services to DOE programs through national laboratory subcontracts (for E&WD funded programs, the sensitivity is the augmentation of appropriations for support services, since there has been Congressional report language that funding for support services is to be only from limited program direction funds and laboratory subcontracts use less limited program funds).
- national laboratories competing with the private sector.

c. Local (Washington DC area) National Laboratory Employees:

DOE O 350.2, "Use of Facility Contractor Employees for Services to DOE in the Washington, D.C., Area contains the following provisions that concern the approved use of national laboratory employees located in the Washington DC area:

- On an annual basis in advance of the next fiscal year (by May 1), this Order requires each Assistant Secretary to submit a "DOE Facility Contractor Employee Staffing

Plan." As part of the EERE plan, each EERE office/ program has to submit by their Objectives and Performance Measures for that fiscal year, the key functions and critical skills required of local national laboratory employees along with the associated number of local national laboratory employees and the estimated costs in program and program direction funds. From these forms, there is a second form that lists the name of each requested national laboratory employee, the lab, their job assignment (which must align with the key functions), their location of work (in the Forrestal or not), the EERE program, the start and end dates of their job assignment, the percent of their time charged against program funds, and their total (direct and indirect) costs per month.

- National laboratory employees are precluded from performing either inherently-Governmental functions or support services.
- A supporting analysis needs to be performed that determines that the most cost-effective method for performing the work is by a local national laboratory employee.
- DOE has a ceiling of local contractor employees located in the Washington, DC area (for fiscal year 2003, the ceiling is 200 employees). The Order defines a facility contractor (local M&O employee) as an employee of a DOE M&O contract, a DOE M&I contract, or a DOE environmental restoration contract. It not only includes employees under these contracts, but also employees of their subcontractors. If these employees are in the Washington, D.C. area for more than 30 contiguous days, they count. The order does not include exclusions for Intergovernmental Personnel Assignments (IPAs), use by other agencies, etc. Trying to circumvent the 30 continuous day requirement through the frequent use of national laboratory employee travel, would not be viewed as good faith (note: the 1999 GAO report performed for House E&WD, "DOE Management, Opportunities for Saving Millions in Contractor Travel Costs").

- EERE uses a disproportionately high number of local national laboratory employees. The only way EERE can increase its ceiling is to request a waiver. The Order states: "Any DOE program office...facing a critical need to exceed its ceiling may request a waiver from the Deputy Secretary, DOE. All waiver requests must be concurred in by the Director, Management, Budget and Evaluation (MB&E) (formerly Management and Administration (MA) before being submitted to the Deputy Secretary, DOE." Since EERE has about 25 percent of the Department's ceiling, it is improbable that the Assistant Secretary would submit a waiver. It is more likely that other parts of the Department would submit waivers with the offset coming out of EERE's disproportionately high ceiling.

- All approved local national laboratory employees must be listed in the Department's database. Use of a local national laboratory employee that is not listed in the Department's database can have substantive consequences. The Order states: "Failure to list such an employee in the database will cause any costs associated with the employee (e.g., salary and benefits) to be deemed as unallowable under the terms and conditions of the contract." and "Payments to a facility contractor employee for any additional tax burden caused by an extended assignment will also be deemed unallowable." If you are using a local M&O contractor who is not currently listed as approved in the DOE database, the Government should not pay for their costs. This poses consequences for both the national laboratory as well as the sponsoring DOE program.

- **The EERE coordinator for the annual submission of use of local national laboratory employees and any changes to the use of national laboratory employees is Dreda Perry (phone:202-586-0561).** EERE must stay within its allotted ceiling of local national laboratory employees. This means if we are requesting approval of another local M&O contractor employee, an existing local M&O contractor employee is no longer allowed to perform work for us. The Order requires the authorization of the Head of Contracting Authority (HCA) or designee for all assignments of facility contractor employees to the Washington, D.C. area. Requirements for

the justification and the approval process are contained in the Order. If approved, this is what happens: "The DOE contracting officer or designee, upon DOE HCA approval of a new assignment of a facility contractor employee to the Washington, D.C. area or upon expiration of an existing assignment, enters the appropriate changes into the MB&E database of facility contractor employees providing services to DOE in the Washington, D.C. area within 30 days of such change becoming effective."

d. References:

- DOE O 350.2, "Use of Facility Contractor Employees for Services to DOE in the Washington, D.C.
- Federal Acquisition Regulations (FAR): Part 17.6–Management and Operating Contracts and Part 35.017–Federally Funded Research and Development Centers.