

from the laboratory's Designated Approving Authority stating that the system(s) are accredited.

#### **2.4 Subcontracting Under NRC/DOE Work Orders**

Subcontracting of work under NRC/DOE work orders is permitted. However, the NRC offices shall ensure that the laboratory avoids "pass-through" actions (projects and individual TOs) in which the subcontractor performs the majority of the effort and the laboratory acts as an overseer and as a mere conduit for subcontract administration and does not contribute significantly to the technical results. A "pass-through" shall be avoided for both projects and individual TOs.

The DOE laboratory shall include résumés and work to be undertaken concerning its proposed subcontractor(s) or consultant(s) in its proposal.

The DOE laboratory shall also include cost details (level of effort, direct labor cost, travel costs, materials, equipment, indirect rates, and other direct costs) for all consultants and subcontractors when subcontract costs are estimated to exceed 25 percent of the project value.

Although the identity of a subcontractor or consultant may not be known at the time of proposal submission, the DOE laboratory shall describe in its proposal, to the greatest extent possible, any technical support effort proposed to be performed by a subcontractor or a consultant.

Determinations as to whether the subcontracting or consulting effort is "major or significant" are based on the labor hours to be subcontracted in relation to the total number of labor hours for a project or an individual TO and/or the impact that the subcontracted portion of work would have on project or individual TO results.

The laboratory shall have technical responsibility for directing the accomplishment of the subcontract effort, and all subcontract deliverables shall be integrated into the laboratory's work product.

If the NRC office requires additional specific subcontractor information or limitations, these requirements shall be stated on the NRC Form 173 ("Standard Order for DOE Work (SOEW)"). DOE will provide any special requirements, such as financial and organizational disclosures for consulting services, to the office.

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- Ensure that delays on projects are minimized. When the laboratory indicates either verbally or by a written notification such as in the MLSR that the project is experiencing a delay, the NRC office shall take prompt action to resolve all issues or, if appropriate, take action to terminate the project if the DOE laboratory has not made necessary efforts to resolve the issue(s) causing the delay.
- Ensure that any required agency action is taken expeditiously so as not to impede the laboratory's progress.
- Determine if the impact of problems and/or any proposed solutions will require the agreement to be modified.
- Document the office project file as to the nature and resolution of issues and problems.

Performing the review described will enable the office to respond to questions posed on NRC Form 552, "MLSR Review (MLSRR)." PMs should respond to each question. Problems encountered with laboratory performance on costs reported and subsequent resolution shall be documented and placed in the file.

#### **7.4 Modifications to Projects**

Modifications range from administrative in nature, such as incremental funding actions, change in key personnel, no cost extension of project, for example, to the more complex technical changes or actions, such as amending the SOW to add additional work and to terminate some or all of the work.

Modifications involving the simpler administrative actions may be accomplished without requesting a proposal since project cost is not affected. NRC Form 173, signed by NRC and DOE, effects the change.

Modifications that affect project costs, on the other hand, require a laboratory proposal. For example, if an additional task is added to the SOW, the laboratory must prepare a proposal for DOE approval. The PM shall evaluate the proposal and negotiate the costs. If only minor differences unrelated to cost were discussed during negotiations, a revised proposal is not required. However, if any issues were discussed and resolved during discussions that affected project costs, the PM shall request a revised proposal from DOE. An NRC Form 173, signed by NRC and DOE, effects the change.

contract should be modified to protect NRC's interests, NRC will advise DOE's patent counsel of NRC's desire to modify DOE's standard policy with respect to permission for a contractor to assert copyright in that code. DOE and NRC will then jointly determine the appropriate provisions for the code. The DOE patent counsel shall provide the laboratory with written notice, with a copy to the cognizant NRC division director or designee, of that joint determination. The laboratory may then proceed to assert copyright.

In no case shall the DOE laboratory take action relating to assertion of copyright until the NRC division director or designee provides written approval to the laboratory's request to assert copyright. Further, DOE shall not permit a contractor to assert copyright of an NRC-funded computer code or computer software without the written approval of the cognizant NRC division director or designee. Where NRC has not granted permission to copyright, NRC recognizes that once a laboratory has delivered to NRC a developed version of a particular code, the laboratory may exercise the existing right that both the laboratory and other parties have to further develop, without NRC funds, software codes that are in the public domain and to copyright the new, non-NRC-funded versions of these codes without NRC approval.

### **11.6 Key Personnel**

The individual(s) identified as key personnel in NRC Form 189, "DOE Laboratory Project and Cost Proposal for NRC Work" (Exhibit 3), is (are) considered essential to the successful performance of the work. The DOE laboratory agrees that these personnel shall not be removed from the project or replaced without complying with the following:

- If one or more of the key personnel, for whatever reason, becomes or is expected to become unavailable for work under this contract for a continuous period exceeding 30 workdays, or is expected to devote substantially less effort to the work than indicated in the proposal or initially anticipated, the DOE laboratory shall immediately notify the NRC office of its intent to make key personnel replacements.
- All requests for approval of substitutions on a project shall be in writing and shall provide detailed explanation of the circumstances necessitating the proposed substitutions. The request shall contain a complete résumé for the proposed substitute and other information requested by the NRC office to approve or disapprove the proposed substitution. The NRC office will evaluate such requests

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and promptly notify the DOE laboratory of its approval or disapproval thereof in writing.

- The project may be terminated if the office determines that—
  - Suitable and timely replacement of key personnel who have been reassigned, terminated, or have otherwise become unavailable for the project is not reasonably forthcoming.
  - The resultant reduction of effort or expertise would be so substantial as to impair the successful completion of the work order.

#### **11.7 Limitation of Funds**

NRC is not obligated to reimburse DOE for costs incurred by its contractors in excess of the total amount obligated by an appropriately executed NRC Form 173. The NRC office will formally notify the appropriate DOE Site Office or the DOE Field Office of any projects that are intended to be phased out or terminated as soon as such intent is known, preferably at least 30 days before the proposed termination date. For work orders with fixed performance periods, the DOE Site Office or the DOE Field Office should assume that the program will terminate on the last day of the period specified in the "Standard Order for DOE Work" unless notified otherwise.

If at any time the laboratory has reason to believe that the costs will exceed the total amount authorized, the laboratory must notify NRC and the DOE Site Office or the DOE Field Office. In the absence of formal NRC instructions to continue or to terminate a work order, the DOE Site Office or the DOE Field Office contract officer or his or her designee will notify NRC by fax or other suitable written means when the accrued costs of any NRC work order approaches 75 percent of the authorized funding level for a project or task order (TO).

The notification should include the estimated date when the accrued costs will equal the authorized funds, and may, if appropriate, recommend or request the NRC action desired. The notification should be sent to the appropriate NRC office with a copy to DOE.

After this notification, the office will evaluate costs incurred against technical progress and, if necessary, will—