

Approved: 1-19-2017

SUBJECT: FOREIGN ENGAGEMENTS WITH DOE NATIONAL LABORATORIES

POLICY

The Department is committed to making DOE National Laboratories available to non-DOE entities, including foreign entities,¹ as long as such work is consistent with or complementary to the missions of DOE and the laboratory to which the work is to be assigned, and does not impede the laboratory's ability to successfully accomplish its DOE missions. For these foreign engagements,² additional review criteria and procedures are needed to ensure that the proposed engagements meet three tests. In particular, the proposed engagements must:

- Align consistently with the strategic interests and foreign policies of the United States;
- Be legally sound and compliant with U.S. laws and regulations,³ and
- Address any counterintelligence considerations.

In addition, review of all such engagements must take into account certain issues, including, as appropriate: access to the laboratory and technology by sensitive countries, potential access to classified information, intellectual property rights, and U.S. competitiveness requirements.

PURPOSE AND SCOPE

This Policy applies to collaborative engagements between DOE laboratories and foreign entities under the following mechanisms:

1. Memoranda of Understanding (MOUs),⁴
2. Strategic Partnership Projects (SPPs),⁵
3. Cooperative Research and Development Agreements (CRADAs),
4. Agreements for Commercializing Technology (ACT), and/or

¹ For purposes of this Policy, "foreign entities" include: (1) any foreign government or foreign government agency or instrumentality thereof; (2) any international organization; (3) any form of business enterprise or legal entity organized, chartered or incorporated under the laws of any country other than the United States or its territories; (4) any form of business enterprise organized or incorporated under the laws of the United States or a State or other jurisdiction within the United States which is owned, controlled or influenced by a foreign government, agency, firm, or corporation; and (5) any person who is not a citizen or national of the United States.

² This policy does not apply to any agreements related to mutual defense.

³ These include the International Traffic in Arms Regulations, the Export Administration Regulations, and the Assistance to Foreign Atomic Energy Activities Regulation (10 CFR Part 810).

⁴ MOU includes Memorandum of Understanding, Statement of Intent, Letter of Intent, Declaration of Principles, or similar document between a DOE laboratory and a foreign partner. MOUs may not be entered into with individuals.

⁵ SPPs were formerly known as Work for Others (WFO) agreements

5. Any other similar legally binding contractual instrument between a DOE laboratory and one or more foreign entities.⁶

This Policy replaces the Secretarial memorandum on foreign engagements, dated November 16, 2014. It outlines the requirements that apply to DOE Headquarters (HQ) review of proposed foreign engagements, and identifies important considerations that must be addressed when working with foreign entities.

DOE HQ REVIEW REQUIREMENTS

The basic requirements for DOE HQ reviews of proposed laboratory engagements with foreign entities are described below. At a minimum, each request for HQ review must be submitted to the general email address labagreements@hq.doe.gov managed by IA-42. DOE HQ review of proposed foreign engagements should be completed in the timeframes identified herein so as not to unnecessarily impede the collaboration between a DOE laboratory and a foreign entity or entities. The DOE review specified in this Policy supplements and does not obviate the need for other approvals and conditions that are required under other applicable laws, regulations, and directives.

MOUs

Prior to negotiation of the proposed laboratory MOU with one or more foreign entities, the draft text of the proposed MOU must undergo review by the Senior Counterintelligence Officer (SCIO) for the laboratory, the laboratory export control office, and DOE Site Office (SO) counsel, followed by HQ review. HQ review of such MOUs requires pre-negotiation review and concurrence from each of the following offices:

1. Cognizant Secretarial Office (CSO),⁷
2. Program Secretarial Office (PSO),⁸
3. Office of International Science & Technology Collaboration (IA-42),⁹
4. Cognizant General Counsel Office (GC),
5. Office of Intelligence and Counterintelligence (IN),
6. Office of Nonproliferation and Arms Control (NA-20), and
7. Office of Classification (AU-60), if involving potential access to or use of classified information.

⁶ Only includes other contractual instruments that require the laboratory to perform work for the foreign entity.

⁷ The CSO has the federal stewardship responsibility for a laboratory and oversees the laboratory.

⁸ The PSO is responsible for the technologies involved in the foreign engagement. For MOUs with NNSA laboratories, if the PSO is not in NNSA their recommendation will be provided to NA-10.1.

⁹ For MOUs with NNSA laboratories, IA-42 will provide their recommendation to NA 10.1.

As part of the package submitted for HQ review, laboratories must indicate in writing how the MOU aligns with each the following principles.

1. In the long-term, there must be a benefit to DOE and/or the U.S. Government from the partnership.
2. The partnership must be consistent with the foreign policy and national security interests and priorities of the U.S. Government.
3. Work under the MOU must comply with all applicable laws, U.S. Government policies and regulations, and DOE procedures.
4. Work under any proposed MOU must be consistent with the long-term goals and objectives of DOE and the relevant DOE programs must be notified.
5. The collaboration should not create a resource burden on a DOE Program Office or DOE Laboratory.
6. The partnership should aim to leverage domestic capabilities to advance U.S. scientific achievement or clean energy technologies and potentially enhance the Department's or laboratory's stature and global leadership.
7. The partnership should aim to advance global efforts in areas related to DOE's missions including, for example, environmental protection and remediation, energy security, development or adoption of clean energy technologies, or nuclear security and nonproliferation.
8. The partnership should aim to provide a benefit to the U.S. economy through lower cost technologies for consumers, export markets for domestic companies, U.S.-based jobs, or similar economic advantages.

In some cases, a foreign entity may require a copy of the agreement in its own language, in addition to English. In such cases, language conformance will be required to ensure the English and foreign language versions agree precisely in meaning. These services must be provided by the Department of State's Office of Language Services, and be coordinated by IA-42, with the costs for such services borne by the cognizant DOE program office or laboratory. No laboratory MOU may be signed in a foreign language until the HQ review has been completed and the State Department's Office of Language Services issues DOE an official comparison memo indicating that the two texts have the same meaning in all substantive respects.

An MOU with a foreign entity must be reviewed by HQ at least every five years to ensure these activities remain consistent with U.S. national security and other policies.

SPPs, CRADAs, ACTs and Other Contractual Instruments

HQ review of proposed laboratory work under a contractual mechanism with one or more foreign entities is initiated by the DOE Site Office (SO) or laboratory, and requires review and concurrence from each of the following offices:

1. Cognizant Secretarial Office (CSO),
2. Program Secretarial Office (PSO),¹⁰
3. Office of International Science & Technology Collaboration (IA-42),¹¹
4. Cognizant General Counsel Office (GC),
5. Office of Intelligence and Counterintelligence (IN), and
6. Office of Nonproliferation and Arms Control (NA-20).

The SO or laboratory provides to the appropriate HQ offices a copy of the abbreviated proposal and any supporting documents, which may include the agreement itself and a full or summary statement of work. Each HQ office performs an independent review for different purposes, for example, for programmatic, technical or legal reasons, and may request additional documentation from the SO or laboratory.

A project with a foreign entity must be reviewed by HQ at least every five years to ensure these activities remain consistent with U.S. national security and other policies.

Review Procedure

All DOE HQ reviews for both MOUs and contractual instruments should be completed within 20 business days following receipt of the request. IA-42 coordinates the HQ review of the laboratories' proposed engagements with foreign entities if requested by the program offices. In all cases, a response will be provided by HQ to the SO or laboratory within the 20 business day timeframe that indicates approval, disapproval, or the need for more time to review the request since some proposals may require additional time to review due to special circumstances. All issues identified by the SO and HQ reviewing offices and communicated to the laboratory must be satisfactorily resolved before negotiation and signature of the proposed MOU or contractual instrument will be authorized.

For MOUs, the laboratory may negotiate and sign the MOU with the foreign entity or entities after all the required reviews are completed and concurrences are received. Any substantive departures from the approved MOU text must be reviewed by SO counsel before the MOU may be signed. Any changes in the identity of the foreign entity or entities must be reviewed by the laboratory's SCIO. A pdf copy of each final, fully executed MOU must be submitted to IA-42 (at labagreements@hq.doe.gov) within 20 days of signature.

¹⁰ For activities at an NNSA laboratory, if the PSO is not in NNSA their recommendation will be provided to NA-10.1

¹¹ For activities at a NNSA laboratory, IA-42 will provide their recommendation to NA 10.1

For contractual instruments, the Contracting Officer (CO) from the SO may approve the project with the foreign entity or entities after all the required reviews are completed and the concurrences are received. Execution of the work proposed under the contractual instrument shall not proceed without the final approval from the CO.

BY ORDER OF THE SECRETARY OF ENERGY:



ELIZABETH SHERWOOD-RANDALL
Deputy Secretary