

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE DEPARTMENT OF ENERGY
OFFICE OF NUCLEAR ENERGY, SCIENCE & TECHNOLOGY
AND
THE DEPARTMENT OF THE ARMY

ARTICLE I - PURPOSE AND AUTHORITY

This Memorandum of Understanding ("MOU") is entered into by and between the U.S. Department of the Army ("DA") and the Department of Energy, Office of Nuclear Energy, Science & Technology (NEST) (the parties') for the purpose of establishing a mutual framework governing the respective responsibilities of the parties for the provision of DA to provide engineering and other technical services. This MOU is entered into pursuant to the Economy in Government Act (31 U.S.C. § 1535).

ARTICLE II- SCOPE

Goods and services which the DA may provide under this MOU include engineering services such as owner representatives on contract management and oversight, cost engineering, value engineering, scheduling, resource loading and projections, independent technical reviews of technical documents, construction management, and such other related goods or services as may be agreed upon in the future.

NEST intends to make use of the Huntington District for the services they require. This does not preclude, however, NEST from dealing directly with any of the Corps' districts, research laboratories, or Centers of Expertise now or in the future.

Nothing in this MOU shall be construed to require the NEST to use the DA or to require the DA to provide any goods or services to the NEST, except as may be set forth in the Interagency Agreements ("IA(s)").

ARTICLE III - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between the DA and the NEST, each party shall appoint a Principal Representative to serve as its central point of contact on matters relating to this MOU. Additional representatives may also be appointed to serve as points of contact on IAs.

ARTICLE IV – INTERAGENCY AGREEMENTS

In response to requests from the NEST for DA assistance under this MOU, the DA and the NEST shall conclude mutually agreed upon written IAs. Those IAs must be on either Engineer Form 4914-R or similar document containing the same information as Department of Defense Form 1144. IAs must include:

- a detailed scope of work statement;
- schedules;
- funding arrangements, including whether payment shall be in advance or by reimbursement;
- the amount of funds required and available to accomplish the scope of work as stated above; and
- the NEST's fund citation and the date upon which the cited funds expire for obligation purposes;
- identification of individual project managers;
- identification of types of contracts to be used (if known);
- types and frequencies of reports;
- identification of which party is to be responsible for government-furnished equipment; contract administration; records maintenance; rights to data, software, and intellectual property; and contract audits;
- procedures for amending or modifying the IA; and
- such other particulars as are necessary to describe clearly the obligations of the parties with respect to the requested goods and services.

Goods or services shall be provided under this MOU only after an appropriate IA has been signed by a representative of each party authorized to execute that IA. Upon signature by each parties' representative, a IA shall constitute a valid Economy in Government Act order. In the case of conflict between this MOU and a IA, this MOU shall control.

ARTICLE V - RESPONSIBILITIES OF THE PARTIES

A. Responsibilities of the Department of the Army

1. The DA shall provide the NEST with goods or services in accordance with the purpose, terms, and conditions of this MOU and with specific requirements set forth in IAs and implementing arrangements.

2. The DA shall identify authorized DA representatives to sign IAs.

3. The DA shall use its best efforts to provide goods or services either by contract or by in-house effort.

4. The DA shall provide detailed periodic progress, financial and other reports to the NEST as agreed to in the IA. Financial reports shall include information on all funds received, obligated, and expended, and on forecast obligations and expenditures.

5. The DA shall inform the NEST of all contracts entered into under each IA.

B. Responsibilities of the Department of Energy, Office of Nuclear Energy, Science & Technology

1. The NEST shall certify, prior to the execution of each IA under this MOU, that the IA complies with the requirements of The Economy Act.

2. The NEST shall pay all costs associated with the DA's access to all work sites and support facilities, and shall perform all coordination with and obtain any permits from state and local agencies, as necessary during the execution of each IA.

3. The NEST shall ensure that only authorized NEST contracting officers sign IAs.

4. The NEST shall develop draft IAs to include scope of work statements.

5. The NEST shall obtain for the DA all necessary real estate interests and access to all work sites and support facilities, and shall perform all coordination with and obtain any permits from state and local agencies, as necessary during the execution of each IA.

ARTICLE VI - FUNDING

The NEST shall pay all costs associated with the DA's provision of goods or services provided in the Interagency Agreements. For IAs for work estimated to cost more than \$250,000 total in contracts and in-house services or \$50,000 in contracts, the DA shall bill the NEST in advance and the NEST shall provide the necessary funds in advance. For IAs for work valued at less than these amounts, the NEST may reimburse the DA for the goods or services. For these lesser requirements, the DA shall bill the NEST monthly for costs incurred, using Standard Form ("SF") 1080, Voucher for Transfers between Appropriations and/or Funds, and the NEST shall reimburse the DA within 30 days of receipt of an SF 1080.

If the DA forecasts its actual costs under a IA to exceed the amount of funds available under that IA, it shall promptly notify the NEST of the amount of additional funds necessary to complete the work under that IA. The NEST shall either provide the additional funds to the DA, require that the scope of work be limited to that which can be paid for by the then-available funds, or direct termination of the work under that IA.

Within 90 days of completing the work under a IA, the DA shall conduct an accounting to determine the actual costs of the work. Within 30 days of completion of this accounting, the DA shall return to the NEST any funds advanced in excess of the actual costs as then known, or the NEST shall provide any additional funds necessary to cover the actual costs as then known. Such an accounting shall in no way limit the NEST's duty in accordance with Article X to pay for any costs, such as contract claims or other liability, which may become known after the final accounting.

ARTICLE VII - APPLICABLE LAWS

This MOU and all documents and actions pursuant to it shall be governed by the applicable statutes, regulations, directives, and procedures of the United States. Unless otherwise

required by law, all contract work undertaken by the DA shall be governed by DA policies and procedures.

ARTICLE VIII - CONTRACT CLAIMS AND DISPUTES

All claims and disputes by contractors arising under or relating to contracts awarded by the DA shall be resolved in accordance with Federal law and the terms of the individual contract. The DA shall have dispute resolution authority for these claims. Any contracting officer's final decision may be appealed by the contractor pursuant to the Contract Disputes Act of 1978 (41 U.S.C. § 601-613). The Armed Services Board of Contract Appeals (ASBCA) is designated as the appropriate board of contract appeals. In lieu of appealing to the ASBCA or its successor, the contractor may bring an action directly to the United States Court of Federal Claims.

The DA shall be responsible for handling all litigation involving disputes and appeals, and for coordinating with the Department of Justice as appropriate. The DA shall notify the NEST of any such litigation and afford the NEST an opportunity to review and comment on the litigation proceedings and any resulting settlement negotiations.

ARTICLE IX - DISPUTE RESOLUTION

The parties agree that, in the event of a dispute between the parties, the NEST and the DA shall use their best efforts to resolve that dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the parties. The parties agree that, in the event such measures fail to resolve the dispute, they shall refer it for resolution to the Office of Management and Budget.

ARTICLE X — RESPONSIBILITY FOR COSTS

If liability of any kind is imposed on the United States relating to the DA's provision of goods or services under this MOU, the DA will accept accountability for its actions, but the NEST shall remain responsible as the program proponent for providing such funds as are necessary to discharge the liability, and all related costs. This obligation extends to all funds legally available to discharge this liability, including other NEST funds that may be made legally available through transfer, reprogramming or other means. Should the NEST have insufficient funds legally available, including other NEST funds that may be made legally available through transfer, reprogramming or other means, they remain responsible for seeking additional funds from Congress for such purpose, although nothing in this MOU shall be construed to imply that Congress will appropriate funds sufficient to meet the liability.

Notwithstanding the above, this MOU does not confer any liability upon the NEST for claims payable by the DA under the Federal Torts Claims Act. Provided further that nothing in this MOU is intended or will be construed to create any rights or remedies for any third party and no third party is intended to be a beneficiary of this MOU.

ARTICLE XI - PUBLIC INFORMATION

Justification and explanation of the NEST's programs before Congress and other agencies, departments, and offices of the Federal Executive Branch shall be the responsibility of the NEST. The DA may provide, upon request, any assistance necessary to support the NEST's justification or explanations of the NEST's programs conducted under this MOU. In general, the NEST is responsible for all public information. The DA may make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and administration process. The NEST or the DA shall make its best efforts to give the other party advance notice before making any public statement regarding work contemplated, undertaken, or completed pursuant to IAs under this MOU.

ARTICLE XII - MISCELLANEOUS

A. Other Relationships or Obligations

This MOU shall not affect any pre-existing or independent relationships or obligations between the NEST and the DA.

B. Survival

The provisions of this MOU which require performance after the expiration or termination of this MOA shall remain in force notwithstanding the expiration or termination of this MOU.

C. Severability

If any provision of this MOU is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.

D. Funding

The MOU is neither a fiscal nor a funds obligation document. Nothing in this MOU authorizes or is intended to obligate the parties to expend, exchange or reimburse funds, services or supplies, or transfer or receive anything of value.

ARTICLE XIII - AMENDMENT, MODIFICATION AND TERMINATION

This MOU may be modified or amended only by written, mutual agreement of the parties. Either party may terminate this MOU by providing written notice to the other party. The termination shall be effective upon the sixtieth calendar day following notice, unless a later date is set forth. In the event of termination, the NEST shall continue to be responsible for all costs incurred by the DA under this MOU and for the costs of closing out or transferring any ongoing contracts.

ARTICLE XIV - EFFECTIVE DATE

This MOU shall become effective when signed by both the NEST and the DA.

Department of Energy
Office of Nuclear Energy, Science
and Technology

U.S. Department of the Army



Dennis M. Miotla
Deputy Director for Nuclear Operations



Edwin A. Theriot
Chief, Interagency and International Services

DATE: March 2006

DATE: 7 March 2006