

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE U.S. ARMY TOXIC AND HAZARDOUS MATERIALS AGENCY
AND
CHICAGO FIELD OFFICE, ARGONNE AREA OFFICE
DOE

9/92

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ARTICLE I. PURPOSE

This Memorandum of Understanding (MOU) is entered into by and between the U.S. Army Toxic and Hazardous Materials Agency (USATHAMA) and the Department of Energy (DOE), Chicago Field Office, Argonne Area Office (DOE-AAO) for the purpose of establishing the respective responsibilities of the parties for delivering technical assistance, contract management, and related services to accomplish specific tasks described in individual work plans (IWPs) to be executed by USATHAMA and DOE-AAO.

ARTICLE II. INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communications between USATHAMA and DOE-AAO, USATHAMA and DOE-AAO have appointed representatives to discuss and consider activities that may be pursued under this MOU. USATHAMA and DOE-AAO representatives are as follows:

For the U.S. Army Toxic and Hazardous Materials Agency:

Commander
U.S. Army Toxic and Hazardous Materials Agency
ATTN: CETHA-OC
Aberdeen Proving Ground, Maryland 21010-5401

For the U.S. Department of Energy, Argonne Area Office:

U.S. Department of Energy
Area Manager
Argonne Area Office
9800 S. Cass Avenue
Argonne, Illinois 60439

USATHAMA and DOE-AAO representatives shall coordinate all requests for assistance under this MOU and shall serve as the points of contact between USATHAMA and DOE-AAO on matters relating to this MOU.

The respective representatives of USATHAMA and DOE-AAO will execute IWPs necessary to accomplish tasks in accordance with the terms of this agreement.

ARTICLE III. PROVISIONS OF ASSISTANCE

Nothing in this MOU is intended to affect other arrangements between the parties. Nothing in this MOU can be or should be construed to require USATHAMA to use the services of DOE-AAO, or to require DOE-AAO to accept assignments from USATHAMA.

USATHAMA shall provide all necessary documentation required by DOE-AAO to make NEPA determinations at DOE sites, and DOE-AAO shall provide all necessary documents required by USATHAMA to satisfy NEPA requirements for work performed at DOD sites. Neither party to this agreement will be required to prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS) on any facility but its own unless otherwise agreed to in an IWP.

A. Responsibilities of DOE-AAO

DOE-AAO shall provide technical assistance related to projects funded by USATHAMA. USATHAMA recognizes that one or more DOE-AAO contractors may perform the work assigned to DOE-AAO under this MOU. DOE contractors shall be responsible for managing the contract(s) under which DOE-AAO authorizes its contractor(s) to perform work under this MOU. Contract management shall include contract administration, quality assurance, change/claim resolution, progress payments processing, contract(s) closeout, and related services.

This work will be performed on best effort basis and neither DOE-AAO, its contractors, nor persons acting on their behalf will be responsible, irrespective of causes, for failure to perform their services or furnish the materials or information hereunder at any particular time or in any specific manner. Furthermore, DOE-AAO hereby specifically disclaims for itself and its contractors any and all warranties, express or implied, including any warranty or merchantability or fitness for any purpose.

B. Responsibilities of USATHAMA

USATHAMA shall have the responsibility for initiating IWPs, developing project concepts, and creating the scope of work statement. If the IWP is accepted by DOE-AAO, USATHAMA will also:

1. Furnish all information necessary to make any justification and approval (J&A) or determination and finding (D&F) required by law or regulation;
2. Provide assistance necessary to comply with any condition or limitation applicable to the funds provided by

USATHAMA, including special terms or other requirements unique to the fund cite;

3. Ensure the requested assistance does not conflict with any other agency's authority or responsibility;

4. Forward annual program projections to DOE-AAO for the following fiscal year (FY) commencing 1 October through 30 September;

5. Review recommendations and determinations made, together with other actions taken by DOE-AAO, which may affect USATHAMA projects; and

6. Confirm that all IWPs conform to the requirements of FAR Subpart 7.3 (Contractor vs. Government Performance).

ARTICLE IV. FUNDING

USATHAMA shall, subject to the availability of funds, fund all costs of assistance for tasks provided under this MOU and the IWPs negotiated under this MOU. USATHAMA shall provide funds in advance of the commencement of the work or the issuance of any obligation of DOE-AAO for any task assigned. USATHAMA shall provide DOE-AAO the full amount of estimated expenses by delivering a DD Form 448, Military Interdepartmental Purchase Request (MIPR), prior to the start of each IWP. If the actual cost to DOE-AAO is forecast to exceed the amount of funds available, DOE-AAO shall promptly notify USATHAMA of the amount of additional funding necessary to pay for the assistance. USATHAMA shall either provide the additional funds to DOE-AAO within fifteen (15) calendar days thereafter, or require the scope of the assistance be limited to that which can be financed by the available funds, or USATHAMA will direct termination of the project. Should USATHAMA not exercise any of the above options, DOE-AAO may immediately terminate the project notwithstanding Article XIX of this MOU.

DOE-AAO will utilize the funds issued by USATHAMA to cover all DOE-AAO expenses, including, but not limited to, salaries, travel, per diem, administrative overhead, and indirect costs pursuant to this MOU and the IWPs negotiated under this MOU, including the allowable costs of its contractors. Established DOE-AAO accounting procedures will be used for recording costs.

Upon furnishing the assistance contemplated by this MOU and the IWPs negotiated under this MOU, DOE-AAO or its contractor shall conduct a final accounting within 120 calendar days of project completion (physical and financial) to determine the actual costs of the assistance provided. DOE-AAO shall return any funds advanced by USATHAMA in excess of the actual costs

within 90 calendar days of the final accounting or Defense Contract Audit Agency (DCAA) audit of any subcontracted work, whichever is later.

ARTICLE V. BILLING

Billing will be performed by DOE-AAO or its contractor and forwarded to the billing address indicated on each IWP. Billing is performed monthly for the costs recorded during the previous month on an SF Form 1080 for reimbursement to DOE-AAO or its contractor appropriation on the basis of actual costs incurred.

ARTICLE VI. ACCEPTANCE OF FUNDS

Funds shall be considered obligated upon DOE-AAO's acceptance of the funds and authorization letter to its contractor to perform the IWP. No project expiration dates will be added to the funding document and all schedules or delivery dates will be expressed in the project task descriptions.

Performance by DOE-AAO or its contractor shall continue until one or more of the following conditions are met:

- A. Completion of the Statement of Work and Task Closeout;
- B. Expenditures/commitments equal the amount authorized for the task;
- C. Task termination by either party to this agreement; or
- D. Arrival of the work completion date as specified in the IWP. Work completion dates will be mutually agreed upon by both parties. (Work completion dates are not to be confused with obligational expiration dates.)

ARTICLE VII. APPLICABLE LAWS AND REGULATIONS

DOE-AAO shall furnish all assistance under this MOU and the IWPs negotiated under this MOU in accordance with applicable laws and regulations. Unless otherwise required by law or set forth in this MOU, all work undertaken by DOE-AAO shall be performed in accordance with DOE-AAO or its contractor's DOE-approved procurement, claims, and reimbursable work policies and procedures.

Nothing in this MOU relieves any applicant, grantee, consultant, contractor, subcontractor, or other party from any obligations imposed upon them by law, regulations, and other applicable requirements.

This agreement is entered into pursuant to the authority of the Economy Act of 1932, as amended (31 U.S.C. 1535), and adheres to Federal Acquisition Regulation (FAR) 6.002 and other applicable Federal laws and regulations. To the best of USATHAMA's knowledge, the work requested will not place the Department of Energy and its contractor in direct competition with the private sector.

ARTICLE VIII. RECORDS AND REPORTS

DOE-AAO shall establish and maintain records and receipts of the expenditure of all funds provided by USATHAMA. Records shall be maintained in sufficient detail to permit identification of the nature of the expenditures made by DOE-AAO and shall be made available for inspection by officials of USATHAMA upon request.

DOE-AAO will provide status reports on projects pursued under this MOU and the IWPs negotiated under this MOU. Upon request, DOE-AAO will also provide reports and/or briefings. These reports will include management information and will monitor scheduled activities. These reports will provide data to support planning and budget decisions.

Upon request copies of documents supporting contract management decisions and activities affecting USATHAMA projects will be turned over to USATHAMA, for maintenance. DOE-AAO will retain all originals in accordance with Federal records management practices.

ARTICLE IX. CONTRACT CLAIMS AND APPEALS

All claims arising under or relating to this MOU or IWPs executed hereunder shall be resolved in accordance with Federal law and the terms of the individual contract. DOE-AAO has dispute resolution authority for these claims, and shall be responsible for litigating all claims or appeals. DOE-AAO shall consult with USATHAMA during settlement negotiations.

DOE-AAO shall notify USATHAMA of claims or appeals and shall submit requests to USATHAMA for funds to cover such claims or appeals. Subject to the availability of funds, USATHAMA shall promptly provide payment of judgments or settlements of claims and appeals and for the administrative costs for defending all such claims and appeals, as well as funds for the administrative costs for processing all claims and appeals.

ARTICLE X. PATENTS

DOE patent and intellectual property policies shall apply to any work performed, and appropriate patent and intellectual property provisions shall be included in any agreements entered

into in order to implement the IWP accepted under this MOU. Rights to inventions made by United States Government employees shall be determined by the employing agency. Rights in inventions and other intellectual property of a DOE prime operating contractor (or its subcontractors) shall be governed by the provisions of the DOE prime operating contract (or subcontract).

To further the mandates of the Technology Transfer Act, the parties agree to the extent consistent with law and with the nature of the work under this MOU to:

- A. Include technology transfer considerations in preliminary planning or work statements;
- B. Identify internal personnel or offices responsible for technology transfer; and
- C. Work cooperatively to enhance technology transfer opportunities that may arise under this MOU.

ARTICLE XI. PROPERTY/EQUIPMENT

If equipment is acquired as part of the project, such equipment will be accounted for and maintained during the term of the project in the same manner as DOE-AAO property. When the project terminates, disposition of the equipment will be as previously agreed to or as instructed by USATHAMA. Such equipment will be delivered to location requested by USATHAMA, transferred to DOE-AAO or declared as excess. Cost of disposition shall be born by USATHAMA.

ARTICLE XII. DISPUTE RESOLUTION

Before any signatory to this MOU may bring suit in any court against a third party concerning an issue relating to this MOU, such signatory must first seek in good faith to resolve the issue through negotiation or other forms of non-binding alternative dispute resolution, mutually acceptable to the parties.

If the parties to this agreement cannot resolve any dispute arising over the terms or conditions of this agreement, including any and all IWP attachments hereto, resolution of all dispute issues will be through use of an arbitrator appointed by the Department of Justice, pursuant to procedures adopted by that arbitrator.

ARTICLE XIII. SECURITY AND CLASSIFICATION

USATHAMA will provide to DOE-AAO existing applicable classification and any new guides/updates as they are developed,

which apply to classified tasks. Security requirements to be followed in performance of the work will be in accordance with applicable Department of Defense and DOE-AAO orders. Before any classified work under this project is initiated, DOE-AAO's and USATHAMA's security representatives will establish appropriate security requirements/procedures.

ARTICLE XIV. PUBLIC INFORMATION

Subject to the Freedom of Information Act, 5 USC 552, decisions on disclosure of information to the public regarding work undertaken pursuant to this MOU shall be made by USATHAMA, following consultation with DOE-AAO. Justification and explanation of USATHAMA programs before Congress and the Executive Branch shall be the responsibility of USATHAMA. DOE-AAO may assist USATHAMA in responding to Congressional inquiries and may support USATHAMA in budget justifications.

No commercial use shall be made of the name of any party or contractor name without the prior written approval of the party.

Prior to issuing public announcements pertaining to services related to this MOU, USATHAMA and DOE-AAO shall coordinate and consult with each other. DOE-AAO may provide, upon request, information to support contacts with Congress and the Executive Branch. DOE-AAO may make public announcements and respond to all inquiries relating to administration matters.

ARTICLE XV. OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, or other elected official shall share in any part of this MOU, or any benefit that may arise therefrom.

ARTICLE XVI. COVENANT AGAINST CONTINGENT FEES

No person or selling agency has been employed or retained to solicit or secure this MOU upon agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees.

ARTICLE XVII. CONFIDENTIALITY

To the extent permitted by the law governing each party, including the Freedom of Information Act, the parties agree not to disclose or disseminate to others exchanged information when requested not to do so by the providing party.

ARTICLE XVIII. ORGANIZATIONAL CONFLICT OF INTEREST

A. USATHAMA recognizes that a contractor may perform the work assigned to DOE-AAO under this MOU. DOE-AAO has approved internal procedures governing access to and flow of information between DOE-AAO contractors and affiliate organizations. DOE-AAO contracts adopt these procedures and apply to all work performed under DOE-AAO contracts. These procedures are subject to DOE-AAO audit at all times. The procedures prohibit the contractor, including any of its officials who may acquire information as a part of their management responsibilities, from further disseminating any third-party proprietary data or Government sensitive data information, as indicated by restrictive markings identifying the data and information so protected, to its affiliated organizations.

B. In view of the above, USATHAMA hereby agrees that affiliates of the contractor shall not be restrained or restricted from competing for any related follow-on contracts or subcontracts which may relate to work under this MOU other than as limited by law.

ARTICLE XIX. ENVIRONMENTAL AND SAFETY RESPONSIBILITY

Both parties agree that while DOE and its contractors and subcontractors will be expected to adhere to the requirements of applicable environmental or safety laws and regulations, none of the activities under this agreement create an obligation by DOE or its contractors and subcontractors for remedial action or payments therefor or any other continuing responsibility under any such law or regulation.

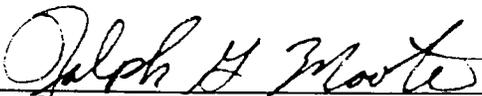
ARTICLE XIX. EFFECTIVE DATE AMENDMENT AND TERMINATION

This MOU is effective upon the date of the last signature by the parties and shall remain effective for a five year period from the effective date unless terminated in accordance with the terms set forth herein. This MOU may be modified by mutual consent of both parties.

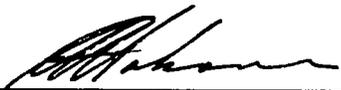
Either DOE-AAO or USATHAMA may terminate this MOU by providing 120 calendar days written notice. In the event of termination, DOE-AAO or USATHAMA shall consult with each other concerning all claims for termination costs; however, USATHAMA shall continue to be responsible for all costs incurred by the DOE including the allowable costs of its contractors under this MOU, or under the IWPs and for the costs of closing out or transferring any ongoing obligations.

Upon request by either party, but at least annually, both parties shall review this MOU, to assure that it continues to reflect the appropriate understandings and procedures to provide for current needs and capabilities.

ACCEPTANCE for the U.S. Army Toxic and Hazardous Materials Agency:

By:  Date: 9/8/92
Ralph G. Wooten
Colonel, U.S. Army
Commanding
U.S. Army Toxic and Hazardous Materials Agency

ACCEPTANCE for the U.S. Department of Energy, Chicago Field Office, Argonne Area Office:

By:  Date: 9-8-92
A.L. Taboas
Area Manager
Argonne Area Office
U.S. Department of Energy

TERMS AND CONDITIONS

DE-AI79-89BP02108

Purpose: This Interagency Agreement initiates work on the Pacific Northwest Hydropower Data Base and Analysis System.

Representatives and Responsibilities:

Administrative Responsibilities: The parties listed below shall provide the overall management and direction under which the Corps and BPA will cooperatively develop and maintain the Pacific Northwest Hydropower Data Base and Analysis System. They will take measures to provide the necessary skills and expertise to carry out the tasks described under their respective agency responsibilities.

Norman E. Fuller, Chief Generation Analysis and Technical Support Section, Generation Programs Branch, Division of Resource Management, Office of Energy Resources, Bonneville Power Administration, U.S. Department of Energy.

Kenneth C. Boire, Chief Economics Branch, Planning Division, North Pacific Division, U.S. Army Corps of Engineers.

Technical Responsibilities: The parties listed below shall provide the working level point of contact and leadership to permit the cooperative development and maintenance of the Pacific Northwest Hydropower Data Base and Analysis System by the Corps and BPA.

Ronald H. Holeman, General Engineer, Generation Analysis and Technical Support Section, Generation Programs Branch

Thomas L. White, Economist, Economics Branch, Planning Division, North Pacific Division, U.S. Army Corps of Engineers.

Procedure for Changes to Agreements

It is anticipated that the period of performance of this agreement may be extended for up to four (4) twelve month periods by mutual agreement. The annual cost and required level of NWHS support may be renegotiated on an annual basis should the agreement be extended.

Reporting Requirements:

At the conclusion of each NWHS maintenance processing, the Corps shall submit the following materials to BPA:

- o Maintenance and Edit processing Job Control Language (JCL).
- o Computer output listings from the Edit and Maintenance process.
- o Computer output Form 1 for updated projects.
- o Computer output listings, as appropriate, from any associated
Hydropower Analysis Model (HAM) runs.
- o BPA provided data input diskettes used for the data base maintenance processing.

The Corps is expected to process NWHS data base edit and maintenance runs within two days of receipt of the diskette from BPA to minimize backup.

As a minimum, on a monthly basis, the Corps shall provide BPA and the Council with one copy each of the updated tape of the NWHS data base, including all data changes sent to the Corps. The BPA tape copy should contain projects within the four state area (Montana, Idaho, Oregon and Washington). The Council tape copy shall contain all the projects on the NWHS. Updated tapes may be provided more frequently based on the volume/importance of project updates.

Maintain a listing of NWHS users, including the user contact name, mailing address, and telephone number. Provide a copy of this list to BPA and the Council quarterly or upon request by the COTR. Provide copies of user information requests and the Corps response to the user, to BPA as they are received and processed.

Payment: U.S. Army Corps of Engineers will submit monthly invoices for reimbursement for work performed, referencing the Interagency Agreement number to:

Bonneville Power Administration
Office of Energy Resources
ATTN: Ron Holeman - RMGB
P.O. Box 3621
Portland, Oregon 97208

U.S. Army Corps of Engineers will supply an itemized listing of expenditures for each budgetary line item set forth in the approved budget, showing as a minimum:

1. Salaries (including personnel and benefits)
2. Nonexpendable equipment and material (greater than \$1000 per item)
3. Expendable equipment and material (sensitive in nature)
4. Operations and maintenance (including computer services and publications)
5. Overhead
6. The currently approved budget
7. Current budget period
8. Cumulative expenditures to date

Costs under this cost reimbursement agreement will be accumulated and charged to BPA in accordance with the accounting principles and system approved for the agency by the General Accounting Office. (BAG 17-505-70).

Non-itemized and/or incomplete billings will be detained for payment processing until correct information has been supplied by the U.S. Army Corps of Engineers. Allowable costs shall be determined in accordance with the cost principles as implemented by the Bonneville Acquisition Guide.

Equipment:

It is not anticipated that the U.S. Army Corps of Engineers will acquire any property chargeable to BPA under this agreement.

Limitation of Cost:

1. The parties estimate that performance of this agreement will not cost Bonneville more than the estimated cost specified in the budget. U.S. Army Corps of Engineers agrees to use its best efforts to perform the work specified in the Statement of Work and all obligations under this agreement within the estimated cost.
2. U.S. Army Corps of Engineers shall notify the Contracting Officer in writing whenever it has reason to believe that:
 - a. The costs the servicing agency expects to incur under this agreement in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in the agreement; or
 - b. The total cost for the performance of this agreement will be either greater or substantially less than had been previously estimated.
3. As part of the notification, U.S. Army Corps of Engineers shall provide the Contracting Officer a revised estimate of the total cost of performing this agreement.
4. Except as required by other provisions of this agreement specifically citing and stated to be an exception to this clause:
 - a. Bonneville Power Administration is not obligated to reimburse U.S. Army Corps of Engineers for costs incurred in excess of the estimated cost specified in the agreement.
 - b. U.S. Army Corps of Engineers is not obligated to continue performance under this agreement or otherwise incur costs in excess of the estimated cost specified in the budget, until the Contracting Officer (1) notifies U.S. Army Corps of Engineers in writing that the estimated cost has been increased; and (2) provides a revised estimated total cost of performing this agreement.
5. No notice, communication, or representation in any form other than that specified in subparagraph (4)(b) above, or from any person other than the Contracting Officer, shall affect this agreement's estimated cost to Bonneville Power Administration. In the absence of the specified notice, Bonneville Power Administration is not obligated to reimburse U.S. Army Corps of Engineers for any costs in excess of the estimated cost.

6. If the estimated cost specified in the budget is increased, any costs U.S. Army Corps of Engineers incurs before the increase that are in excess of the previously estimated cost shall be allowable to the same extent as if incurred afterward, unless the Contracting Officer issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.
7. Modifications shall not be considered an authorization to exceed the estimated cost to Bonneville Power Administration, unless they contain a statement increasing the estimated cost.
8. If this agreement is terminated or the estimated cost is not increased, Bonneville Power Administration and U.S. Army Corps of Engineers shall negotiate an equitable distribution of all property produced or purchased under the agreement, based upon the share of costs incurred by each.

Changes: Any changes in the project objectives, scope, or key personnel, including any proposed transfer of expenditures between approved budget line items must be approved by the Contracting Officer. All such changes must be submitted in writing through the Contracting Officer's Technical Representative, prior to initiating the change.

Publication: Bonneville strongly endorses the publication of project results in scientific journals to facilitate public access and to preserve project data. When appropriate, Project Managers shall prepare manuscripts for submission to journal editors, giving due credit for Bonneville's financial support. Bonneville reserves the right to publish all or part of the reports submitted pursuant to the terms of this Interagency Agreement.

Public Presentations: All news releases, presentations, or publications shall acknowledge Bonneville support for project activities. Copies of news articles shall be forwarded to the Bonneville Contracting Officer's Technical Representative (COTR).

Termination: This Interagency Agreement may be terminated by either party upon 30-days' written notice. In the event of a termination, Bonneville shall reimburse the servicing agency for costs actually incurred to the effective date of the termination, and for any commitments extending beyond the termination date, but not exceeding the expiration date of the Interagency Agreement, that the servicing agency is unable to cancel.

Contracting Officer's Technical Representative (COTR)

1. The Contracting Officer's Technical Representative (COTR) is the authorized representative of the Contracting Officer for technical actions

performed in relation to the agreement. This includes the functions of: (1) inspection and review of work performed; (2) inspection and witness of tests, presentations, or other activities; (3) interpretation of technical specifications; (4) approval of Contractor's reports, other materials and invoices; and (5) rejection of nonconforming services, material, or equipment.

2. The COTR is not authorized to act for the Contracting Officer in the following matters pertaining to the agreement: (1) agreement modifications that change the agreement cost, technical specifications, or time for performance; and (2) suspension or termination.

Contracting Officer's Representative (COR)

The Contracting Officer's Representative (COR) shall have all the rights, powers, and privileges of the Contracting Officer necessary to the administration of the agreement: provided, however, that the COR is not empowered to execute agreement modifications, or to suspend or terminate the agreement.

(VS2-6690m)