

NLDC Prioritization of Burdensome Policies and Practices

May 31, 2011

The following eighteen policies/practices were rated as the most burdensome by forty-two senior managers representing every Lab across the complex. These items focus on areas where DOE has the ability to internally fix the identified problems without legislative action or coordination with other agencies.

1: Unneeded Approvals

Problem: Business processes which require DOE approval of M&O activities should be reserved for extremely high value, high risk transactions. A proliferation of approvals have arisen, often in response to minor and isolated problems, at the site office, service center, program, or headquarters support level, approvals inappropriately distribute risk-acceptance responsibilities and lead to costly delays and risk-aversion. DOE must clearly state when site offices, or service centers should be involved in serious, high-risk, high-dollar approvals and excluded from routine approvals. Pursue the following actionable items to reduce unneeded approvals:

- 1A. DOE approval is required for all CRADA and Work for Others agreements, leading to costs and delays. Delegate all but very high value or unique approvals to the M&O and hold them accountable for maintaining appropriate portfolios. Delegate authority for foreign WFOs and, if needed, provide an entities list with which the M&O should not contract. [Owner:Work for Others (MA,GC)]
- 1B. Some DOE review and approvals related to salary actions are outdated and limit contractors' flexibility to address salary needs as they arise. Allow labs to move funds between salary adjustment categories (except for variable pay) during the fiscal year and delete requirement for DOE approval for Key Personnel salaries. Some field offices require that they approve the salaries of the M&O contractor's top three executives. This is not justified since salaries over the allowed amount are covered with unallowable, i.e. contractor funds. Eliminate reporting of Salaries above particular thresholds. [Owner:HR (MA)]
- 1C. DOE approval for higher value subcontracts and procurements results in long delays and risk aversion. Substantially raise the thresholds for review for all M&Os and limit DOE review to either the solicitation or award if changes are minimal. Give contractors the authority to make Davis-Bacon construction determinations. Delegate authority to the contractor to make all Buy American Non-availability determinations. Raise the Major Items of Equipment (MIE) Threshold from \$2 million to \$10 million. Permit M&Os to accept vendor terms and conditions on procurements up to 100k at Laboratory discretion. Allow Contracting officers to describe classes of procurements and projects that must meet certain requirements (such as labor standards), rather than individually reviewing them. [Owner:Procurement (MA)]
- 1D. International collaboration and conference attendance is a necessary part of all areas of scientific research. Approval for foreign travel is extremely time consuming and substantially increases the costs to DOE by delaying travel purchases. Re-evaluate the DOE O 551.1C Official Foreign Travel for possible elimination or revision. Identify the basic requirements and make the contractor accountable for meeting these and clearly define those that do not require DOE approvals. [Owner:Travel (MA)]

2: Excessive Oversight

Problem: DOE's structure encourages a "piling on" of audits and assessments without clear risk-prioritization, coordination, or value. Audit findings must always follow audits, and these take on the force of policy, resulting in variable, audit-driven policy responses and ever higher costs. The Laboratories must staff up to deal with these audits and assessments, moving more and more dollars away from science. Recommend reducing the scope of

audit activities and limit them to real "for cause" actions. Rely on independent audit functions at the Laboratories. Substantially improve management of "corrective action" responses.

- 2A. The Office of the Inspector General has migrated from looking at serious areas of risks to poking at a never-ending stream of seemingly random "efficiency opportunities" which despite being un-validated and often rejected by management and subject matter experts throughout the complex, are listed as findings which require actions. A cycle of policy by audit follows as HQ Departments attempt to be responsive to the OIG. Break this cycle. Engage in serious conversation with the IG about their priorities and radically reduce the focus on efficiency opportunities within the Laboratories (just as IG's in other agencies don't audit their contractors to find "efficiencies." [Owner:Audits (S2,OIG)])

3: Unnecessary Reporting

Problem: The Laboratories are required to submit a variety of reports to DOE. Many of these reports are duplicative or provide information that does not contribute to better management or oversight of the M&O. On the contrary, much of this reporting is time consuming and ultimately is not used in any meaningful way towards the missions of the Labs. Below are specific reporting requirements that do not add value in managing the Laboratories.

- 3A. It is anticipated that criteria proposed in the RevCom draft DOE O 232.1 would, at minimum, triple the number of reportable occurrences at many labs with little promotion of organizational learning and possible negative impacts on open reporting cultures. Given the type of events required to be reported, based in the new draft order, it appears this may be an attempt to use the ORPS process to collect metric-type data on issues that are not necessarily event driven. This, however, comes at increased indirect costs to manage ORPS processes, by organizational occurrence owners, and the increased support for event critiques/causal analyses. Revise O232.1 based on this input. [Owner: EHS (HSS)]

4: Striving Towards Best Practices

Problem: In many areas of DOE, best practices or even conventional operating practices used in industry and academia are not followed. While best practices may not be suitable for some unique processes within DOE, many of the practices in place do not deliver more effectively with fewer problems and unforeseen complications. Below are specific instances where DOE can strive toward better practices.

- 4A. Consistent with the DOE Office of Finance and Accounting recommendation, increasing the dollar threshold for the capitalization of assets from \$50k to \$500k would significantly reduce the cost and effort currently required to cap items at the lower threshold. Beyond this threshold though, distinguishing between operating and capital funds is in and of itself a useless exercise. This distinction can easily be made for items treated as projects under DOE Order 413.3-1b, so it is for the items that do not fall under the order (< \$5M) where it could make a difference. National laboratories are not corporations that own assets the assets belong to the government, so there is no value in distinguishing between capital and operating funds. Depreciation and other tax consequences have no relevance to our situation. If one looks over the entire DOE complex including laboratories, field offices, and headquarters, there are 100's of accountants and supporting staff whose job is to deal with "correctly" accounting for these items. Therefore, significant savings would result from elimination of the "color of money" complication. The argument here is stronger than a "no added value" one; besides paying people to track something that has no relevance, managers waste time worrying about these arbitrary categorizations of money. [Owner:Finance (CFO)]
- 4B. Extrapolation incentivizes contractors to have excessive controls to minimize impact to unallowable cost. A contractor who maintains a system with a reasonable error rate, consistent with commercial practices, may be required to write off costs from private funds because a more expensive zero error system was not maintained. This creates a situation where cost to achieve perfection is allowable, while a more

moderate and balanced cost of operation focused on efficiency frequently results in an unallowable cost penalty to the contractor. Therefore, we suggest the Department develop policy guidance for Contracting Officers (COs) and Contractor Internal Audit (IA) organizations that recognizes when it may be in the best interest of the government to forego questioning minor errors and the extrapolation of questioned costs that is when the contractor is operating financial systems within reasonable error rates. [Owner:Finance (CFO)]

- 4C. DOE's property management requirements are extremely expensive to implement and are not cost-benefit positive for the agency. DOE should revisit entirely the concept of treating all M&O property as Government property in the same way the agency does and should instead look towards alternate models that permit Laboratories to operate property management systems that are in line with peer private institutions and Universities. In particular, DOE should delegate risk-based judgments about what items should be tracked to M&Os, report lost and missing items at fair market or depreciated value, and allow Laboratories to stop inventorying items after they reach zero value. Use information security and cyber security requirements to manage these risks instead of trying to mitigate them with property requirements. Numerous Federal approvals at several levels are required for disposal of property. Delegate property disposal approval to the M&O for all but very high value approvals. [Owner:Property (MA)]
- 4D. The funds and budgeting process does not lead to effective program execution. The process by which funding decision are made at HQ and then executed to the field is lengthy and outdated. The FFRDCs regularly are given the verbal charge to perform work by a DOE Office but the actual Financial Plan update does not occur for 4-8 weeks. There is an expectation that work is actually being initiated, but, the FFRDCs are forbidden from commencing work without having funding in the Financial Plan. The Financial Plan updates should be made at the time that work is authorized. Budget process - accessibility of funds. It takes up to eight weeks for the research staff to have access funding once HQ program managers input into the financial plan. If ARRA funds can be turned around much faster, program funds should be able to as well. In addition, recent changes to the STRIPES system that have slowed down the ability to put funding on laboratory contracts and which require an early cutoff date (likely end of June/beginning of July) will hamper DOE's ability to execute on FOAs in the same year they are issued and it will reduce the laboratories' ability to bring leverage to the DOE resources through partnership with other organizations such as the DoD. Funding decisions need to move more quickly. [Owner:Finance (CFO)]
- 4E. The STARS accounting system requires that contractor and DOE books balance precisely (to the penny) by award by fund type. Rounding issues are inherent in all systems. Implementing the necessary adjustments to align with the STARS accounting system is costly in terms of time and resources. It costs more to adjust immaterial variances than the actual amount of the variance. It is suggested that the STARS requirement for individual WFO awards be modified to allow for immaterial variances. [Owner:Finance (CFO)]

5: Over-Regulation

Problem: DOE has developed regulations in the form of Orders, guidance, or memos, that are duplicative of and often go beyond existing national standards. These regulations are often requirements that are imposed with little flexibility and may contradict existing national standards. Below are specific items that highlight this problem.

- 5A. The DOE Worker Safety and Health Program establishes the worker safety and health requirements for DOE contractors. The rule, 10 C.F.R. Â§ 851, adopted OSHA standards, ASME standards, ANSI standards, NFPA Codes and NEC. The rule goes significantly beyond the OSHA standards and incorporates standards that were not designed to be regulatory in nature. It has not been demonstrated that the rule has improved worker safety at DOE facilities since its adoption; however, the cost to implement and maintain the requirements that go beyond the OSHA standards have significantly increased costs to DOE contractors and subcontractors. Therefore, it is recommended that the rule be revised to implement only OSHA standards. This action would align DOE facilities with U.S. industry, academia, and other federal facilities such as NIST. Use of guidelines as standards such as those provided by NIH should also be eliminated. [Owner:EHS (HSS)]

- 5B. DOE Orders 430.1B and 413.3B impose multilayered rules and regulations. DOE officials interpret and impose these orders inconsistently, which leads to confusion of requirements, program delays, and increased costs, all of which impede mission delivery. One Lab estimates that DOE Order 413.3B increases schedule requirements by a minimum of 1/3 and costs by at least 15%. Additive time for completing capital projects contributes to aging infrastructure, which increases maintenance and energy costs, impedes mission work, and negatively affects the morale of facility occupants. Recommend reviewing and revising both orders to reduce costs of implementation and complexity. [Owner:Facility Management (MA)]

6: Improving Policy Making

Problem: DOE's policy making process appears to lead to amplification of requirements without reference to the unique structure of M&Os. Specifically, substantive policy continues to be created in numerous places beside the Directives system, including acquisition letters, DEAR, FAR, and through the inclusion of numerous external "standards" which may have originally been intended as guidance. There should be clear governance processes to include stakeholder input early in policy development for all areas of policy, as well as clear channels to eliminate bad requirements injected through the acquisition side.

- 6A. Policies of all kinds fail to distinguish between M&Os and other types of contractors or Federal employees. This is especially in true in acquisition regulations, where the flowdown to a "contractor" has been taken as the requirement to flowdown to all M&Os. [Owner:Procurement (MA)]
- 6B. DOE has multiple "catch all" Directives that add no value and have become audit-bait for overseers throughout the Department. In particular, the Quality Assurance Order should be eliminated. The Quality Assurance Order is unnecessary, overly broad, and invites inefficient modes of oversight and management. As DOE seeks to reinvigorate the M&O model, it is critical to remove requirements which are simply good management practices and instead focus on the overall performance of the Contractor and its skill in choosing among good management practices to produce great research and production results. Turning good management practices like QA into requirements invites well intentioned but ultimately negative oversight models, leading to a focus on compliance instead of strategic investment,. For the small number of areas where detailed QA requirements are necessary (i.e. high risk nuclear facilities), the requirements should be delivered via a contract clause closely tailored to exact scope of work that presents the hazards. These requirements should, on face, be parallel with those that would be delivered to any r&d contractor or grantee conducting similar work. Overall, DOE must limit the high-level strategic models it imposes on the M&Os to the most critical ones - performance based contracting, and contractor assurance systems. [Owner:General (S2,HSS)]
- 6C. Acquisition Letters - Acquisition letters have been promulgated without the normal review and due consideration of rule making. Essentially, Acquisition letters bypass input from both the programs and the contractors Acquisition Letters that impact the contractors need to go through the formal process for rule making with adequate time for input from stakeholders and appropriate governance. Letters we consider unnecessary and that should be revoked are AL 2005-12 on Meal Costs and AL 2005-11 on Home Office Expenses, since both subjects are well addressed by FAR/CAS, AL 2010-06, which amplifies and misrepresents OMB requirements on IPv6 and applies them inappropriately to M&Os, and AL 2005-10 which misrepresents DOE's implementation of HSPD-12. [Owner:Procurement (MA)]

7: General Issues and Quick Fixes

Problem: A number of general issues were submitted that don't fall into the previous categories, but instead point to very specific problems with somewhat easy fixes. These are listed below.

- 7A. Allow National Laboratories to participate on a nonexclusive basis, with teams responding to RFP's. Currently the FFRDC restrictions have been interpreted by DOE to prevent it. Furthermore, interpretation of what constitutes competing with private industry has been inconsistent across the DOE complex. In some cases as long as the Federal Agency states in the solicitation that National Laboratories may respond,

that is sufficient notice to all bidders that the National Laboratories are available to be part of a proposal team. Some local DOE offices, however, require more specific language in the solicitation before they will approve participation by a National Laboratory. [Owner:Procurement (MA)]

- 7B. Quarterly apportionments impacts the lab in several ways: a) Procurement delays and increased carryover: many projects have subcontracts in which full funding levels are needed, e.g. purchasing equipment. This results in delaying the execution of sub-contracts until later in the year resulting in higher uncostered levels. b) Work stoppages due to inadequate funding levels and c) Missed research milestones [Owner:Finance (CFO)]

Information on Data Collection

At the direction of the NLDC, data for this list was collected by Rosio Alvarez (LBL) and Adam Stone (LBL). Over 120 burdensome policies/practices were identified by senior management across all Labs between March 2011 and May 2011. After elimination of duplicates and overlaps, eighty unique items were categorized and presented in survey form for Senior Management at each of the Labs to prioritize as High (5pts), Medium (3pts) and Low (1pt). The list above was derived by selecting items whose average was ≥ 3.5 . Eighteen Labs participated in the survey with N=42 responses.