Department of Energy
Washington, DC 20585

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MEMORANDUM FOR DISTRIBUTION

FROM: TOM PARK
DIRECTOR, OFFICE OF FINANCE AND ACCOUNTING
OFFICE OF THE CHIEF FINANCIAL OFFICER

Subject: **Financial Implementation Guidance for the Revised Departmental Order 413.2C, *Laboratory Directed Research and Development***

The revised DOE Order 413.2C, *Laboratory Directed Research and Development*, implements the legal requirements in The Consolidated and Further Continuing Appropriations Act, 2015, P.L. 113-235. This memorandum provides financial guidance to assist in the implementation of the revised order, and was coordinated with the Office of Primary Interest for DOE Order 413.2C (the Office of Science).

In accordance with the order, effective October 1, 2015, and in future years unless changed by Congress, (1) the Laboratory Directed Research and Development (LDRD) rate shall not exceed 6 percent and (2) labs shall apply a uniform rate to each fully-burdened final cost objective's total cost (excluding activities funded by construction line-items and the LDRD program itself). The order supersedes all prior guidance on LDRD cost accounting practices.

Changes to cost accounting practices at DOE laboratories required to implement the revised order should be disclosed in each contractor's Cost Accounting Standards (CAS) disclosure statement and approved by the Contracting Officer in accordance with normal procedures.

Transition Period

In recognition that changes to LDRD calculations were not anticipated when developing the budgets for current reimbursable work projects and FY 2016 DOE-funded activities, there is a one-year transition period in FY 2016 during which the contracting officer may approve exemptions from the LDRD charge for (1) procurements and subcontracts associated with specific projects (2) specific major items of equipment (MIEs) or (3) specific minor construction projects, including general plant projects (GPPs), accelerator improvement projects (AIPs), and institutional general plant projects (IGPPs).

Exceptions may only be granted (1) when needed to prevent unfunded cost increases to existing projects and (2) if the resulting LDRD rate remains at or below 6 percent and the same rate is consistently charged when applied. Exceptions shall be noted in the Cost Accounting Standards disclosure statement and approved by the contracting officer. Any operating, capital equipment, MIE, or minor construction costs excluded from the LDRD allocation base for the FY

2016 transition year must also be excluded from the base used to establish the LDRD budget per the legally-mandated limit of 6 percent. Please note that the FY 2016 transition year allows time for project sponsors and DOE programs to include future cost increases in their FY 2017 and subsequent budgets. Therefore, the exception for MIEs, minor construction projects, and procurements and subcontracts will not be extended beyond September 30, 2016, except in the cases described below.

Certain MIE and minor construction project exceptions may extend beyond the FY 2016 transition year. Contracting officers may approve exceptions to the LDRD base for the application of LDRD to MIE projects that achieve CD-2 before or during FY 2016, and minor construction projects reported in the FY 2016 or prior budget requests for which the total cost would exceed $10M if LDRD were applied. These exceptions apply until these specific MIE and minor construction projects are complete. The MIE or minor construction project costs that are excluded from the LDRD allocation base under this scenario must also be excluded from the base used to establish the LDRD budget. All other MIEs and minor construction projects will be required to charge LDRD after the one-year transition period as described above.

Specific Cost Accounting and Financial Implementation Questions
Implementing the order requirements raises specific cost accounting and implementation questions that are addressed below.

- ***Allocation of LDRD Costs to Minor Construction projects.*** Under the provisions of the order, direct-funded minor construction projects—including GPP and AIP projects—must be charged the same uniform rate as other laboratory final cost objectives. The only exclusions permitted by the order are line-item construction activities and LDRD. Additionally, specific minor construction projects may be allowed a transition period as described above. Indirect-funded minor construction—IGPP—shall be included in the LDRD allocation base but shall not be double-charged. Since IGPP cost is distributed through a General and Administrative (G&A) or other indirect cost allocation, IGPP activities will bear the full allocation of LDRD costs when the LDRD charge is applied to the fully-burdened final cost objective. A separate LDRD charge should not be applied to individual IGPP projects.

- ***Treatment of Inter-entity work.*** The order does not affect current cost allocation practices for inter-entity work sponsored by one contractor but performed by another contractor. Current practice is for such work to bear appropriate indirect cost allocations—including LDRD charges—at the laboratory performing the work. The sponsoring laboratory would not allocate LDRD charges to this work.

- ***R&D Subcontracts.*** There is no exemption or special provision for Research and Development subcontracts to non-DOE entities. Subcontracts and procurements associated with specific projects may be exempted in FY 2016 when approved by the contracting officer.

- ***Cost Allocations for LDRD Program Staff.*** Individual contractors' methodologies for allocating the cost of LDRD program staff shall be consistent with Cost Accounting Standards (CAS) and each contractor's approved cost accounting practices, as described in the CAS Disclosure Statement.

  There is no requirement for a uniform cost accounting methodology for LDRD program staff across the various DOE and NNSA laboratories. Administrative expenses for LDRD, or any other program/project, may be appropriately charged as direct or indirect (including G&A), based on the application of the disclosed cost allocation practices. For example, a lab with staff supporting the LDRD program as only a part of its duties may appropriately include those support costs in G&A while a lab with staff assigned primarily to LDRD work may allocate those support costs to the LDRD program.

- ***Applicability of the Revised LDRD Order to NNSA Plants and Sites.*** Neither the revised order nor the legal provision that it implements (the Consolidated and Further Continuing Appropriations Act, 2015, P.L. 113-235) applies to Site-Directed Research and Development (SDRD) and Plant-Directed Research and Development (PDRD). Separate legal thresholds apply to these programs as detailed in the Energy and Water Development Appropriations Act, 2006, P.L. 109-103. NNSA may choose to apply relevant provisions of the LDRD order to these programs at its discretion.

- ***Mid-year Adjustments to the LDRD Rate.*** The allocation rate for LDRD may be adjusted as necessary to minimize end-of-year variances between the actual LDRD program costs and funds collected for the LDRD program. Per normal practice for indirect cost rates, such adjustments will be applied retroactively, resulting in a uniform rate. In no case, however, may the allocation rate exceed the legally-mandated maximum of 6 percent. Material end-of-year variances shall be addressed as would material variances for other indirect costs.

- ***Composition of the Laboratory Total Operating and Capital Budget.*** As used in the context of Order 413.2(c), the laboratory total operating and capital equipment budget consists of the laboratory's anticipated expenditures for the year (excluding line-item construction activities and LDRD), regardless of the funding source or appropriation year.

Addition Implementation Questions

For additional questions on the financial implementation of the revised order please contact Thomas Griffin, Division Director for Financial Policy, at 202-586-1585.