THE CHALLENGES OF COLLABORATING WITH DEPARTMENT OF ENERGY NATIONAL LABORATORIES (AFFILIATES AND NON-AFFILIATES)

PRESENTERS:
JOANNE ALTIERI, UNIVERSITY OF KANSAS
LAURA LINDLEY, UNIVERSITY OF CHICAGO
BECKY MUSSELMAN, IOWA STATE UNIVERSITY
TODAY’S AGENDA

• Relationships between universities and DOE affiliated labs
  – ISU and Ames Lab
  – UChicago and Argonne National Lab/Fermi
  – ISU and Pacific Northwest National Lab – Joint Appointments
• Visiting Faculty (A couple of case studies)
• Other types of contractual relationships/common obstacles
  – Start with the right contract
  – Why is each lab slightly different?
WHAT’S NOT ON TODAY’S AGENDA

• Specifics about all 18 DOE FFRDCs
• Anything at all about non-DOE FFRDCs
• How to work with your General Counsel if they’re negotiating with DOE to manage your university’s affiliated DOE lab
IOWA STATE UNIVERSITY/AMES LAB - RELATIONSHIP

• Ames Laboratory
  – Government-owned, contractor-operated (GOCO) DOE lab
  – Operated by ISU for over 65 years
  – Located on ISU’s campus
  – $50 million annual budget
  – 450 employees
IOWA STATE UNIVERSITY/AMES LAB - RELATIONSHIP

• Personnel appointments
  – Ames Lab employees are ISU employees – use ISU’s payroll system
  – Ames Lab Director reports to ISU Senior Vice President and Provost
  – Faculty working for ISU and Ames Lab
    • Split funding during academic year
    • Summer months
  – ISU and Ames Lab both have effort reporting systems
IOWA STATE UNIVERSITY/AMES LAB - RELATIONSHIP

• Funding
  – DOE M&O contract funding for Ames Lab recorded by ISU
  – Other Ames Lab external funding not recorded by ISU
  – Many PIs receive funding as an ISU PI and as an Ames Lab PI
  – Two administrative offices
    • ISU Office of Sponsored Programs Administration
    • Ames Lab Sponsored Research Administration
  • In general, project agreements are not used between ISU and Ames Lab
IOWA STATE UNIVERSITY/AMES LAB - RELATIONSHIP

• Other
  – Research may be performed in Ames Lab space or ISU space
  – Ames Lab intellectual property assigned to Iowa State University
  – Ames Lab Overhead Rates – not a single rate; several overhead pools
  – PI concern – no ISU credit for Ames Lab projects
  – PI concern – no PI incentive (15% of F&A charged) for Ames Lab projects
UCHICAGO/ARGONNE - RELATIONSHIP

• UChicago Argonne, LLC
  – Operator of Argonne National Laboratory (ANL)
  – Joint appointments at UChicago and ANL
  – Memorandum of Agreement regarding research to be performed under Grants from the National Institutes of Health (NIH)

• MOU between the DOE and the NIH to define the working relationship between the agencies for the conduct of NIH grant supported research projects at the laboratories in the biological and medical sciences.
UCHICAGO/ARGONNE – WHO, WHAT, WHERE...

Who?
- Is the Sponsor?
- Will be the Prime Recipient?

What?
- Type of work will be performed?
- Type of appointments do the investigators have?

Where?
- Will the work be done?
UCHICAGO/ARGONNE – WHO?

– National Institutes of Health
  • UChicago can be the lead
  • ANL can be the lead
  • UChicago is always the Prime Recipient

– National Science Foundation*
  • UChicago **MUST** be the lead
  • ANL can be a Collaborator
  • UChicago is always the Prime Recipient

* Really all non-NIH, non-DOE federal sponsors
UCHICAGO/ARGONNE – WHO?

• Department of Energy

  – UChicago can be a Prime Recipient
    • ANL will **NOT** be a Collaborator on a UChicago project funded by the DOE

  – ANL is funded by a DOE contract and submits to individual FOAs
    • UChicago can perform work on projects funded by the DOE to ANL through a Basic Ordering Agreement and individual Work Orders
UCHICAGO/ARGONNE – WHO?

• Department of Energy
  – Basic Ordering Agreement (BOA):
    • Contains the terms and conditions for all work performed by UChicago on projects in which ANL is the Prime Recipient
    • Reporting requirements; costs and payments; invoicing; property; performance of work; publications; applicable FAR clauses; etc.
  • Work Orders:
    – UChicago and ANL researchers discuss funding a UChicago project
    – A Price Proposal is submitted to ANL
    – A Work Order is issued to UChicago, referencing the BOA
    – Very similar to the standard federal subcontract process
UCHICAGO/ARGONNE – WHAT?

• Collaborative Research
  – ANL is listed “like” a subrecipient on the proposal
  – All standard subrecipient documentation is required at proposal stage
  – UChicago cannot include ANL costs in its IDC base because of our relationship
  – If the project is funded, a “Work for Others” (WFO) is entered into with ANL
    – WFOs have special terms that are acceptable for DOE laboratories
Do the PI and other investigators have joint appointments?

- Joint appointments, along with where the work will be performed, determine the administrative structure of a project
- ANL fringe benefit rates are used when an investigator's primary appointment is with ANL

Service Provision

- ANL costs are listed as a contractor/vendor
- If the project is funded, costs are paid as simple procurement
UCHICAGO/ARGONNE – WHERE?

• Where will the work be done for each investigator?
  – Closely related to joint appointments
  – Which “hat” is the investigator wearing – UChicago or ANL?
  – Whose resources will be used – UChicago or ANL’s?
  – Will determine whether or not ANL is included as a collaborative organization
  – Remarkably, it’s not always as clear cut as we’d like it to be!
UCHICAGO/ARGONNE – CASE STUDY

• The PI has a joint appointment and her work will be done at UChicago with university resources

• A co-investigator has a joint appointment and will be performing work at ANL

• Another co-investigator has a joint appointment and will be performing work at UChicago

• Another co-investigator has a joint appointment and will be performing work at the Center for Advanced Radiation
ISU/PACIFIC NORTHWEST NATIONAL LAB – A SPECIAL RELATIONSHIP

• Joint Appointment Program
  – Enhance the ability of ISU and PNNL to achieve their respective research missions
  – Joint appointees may be PNNL employees or ISU employees

• ISU/Battelle-PNNL Joint Appointment Agreements
  – Memorandum of Understanding (MOU) concerning joint appointees
  – Inter-Institutional Agreement (IIA) for intellectual property
ISU/PACIFIC NORTHWEST NATIONAL LAB – A SPECIAL RELATIONSHIP

- ISU/Battelle Agreements for Specific Joint Appointee
  - Joint Appointment Letter
  - Agreement for establishing scope, terms and payment obligations

- ISU Agreements with Joint Appointee (employed by PNNL)
  - Memorandum of Agreement (MOA) for an External Scholarly Affiliation
  - Faculty Letter of Intent for Affiliate Associate Professor appointment
ISU/PACIFIC NORTHWEST NATIONAL LAB – A SPECIAL RELATIONSHIP

• ISU Challenges and Issues Addressed
  – Joint appointee remained as ISU PI on several federal sponsored projects
  – ISU payment process to reimburse PNNL for joint appointee’s work on ISU projects
  – PNNL documentation of ISU project effort
  – Approval from federal agencies for proposed reimbursement arrangement for PI’s salary and fringe benefits
  – Approval from some federal agencies to submit proposals as ISU PI
  – Estimation of funds available on ISU projects for joint appointee effort at PNNL hourly rate
ISU/PACIFIC NORTHWEST NATIONAL LAB – A SPECIAL RELATIONSHIP

• ISU Challenges and Issues Addressed
  – Approval from federal agencies for changes in ISU PI’s level of effort
  – Request for approval to rebudget funds for subcontract to PNNL
  – New award received by ISU after joint appointee became PNNL employee
  – ISU equipment transferred to PNNL for use by joint appointee
  – Joint appointee does not serve as sole major professor of graduate students
  – Joint appointee does not have direct spending authority
VISITING FACULTY

WHEN YOU’RE NOT JOINED AT THE HIP
A COUPLE OF CASE STUDIES

• When our faculty spend time in an FFRDC
  – Ownership of IP…can your institution allow the PI to give it to the lab (if required)?
  – Can you agree to possible confidentiality provisions that may affect publication rights?
  – What do you need to know…that you don’t know?
CASE STUDIES

• #1 – In prehistoric times, between KU and Los Alamos
• #2 – In more recent history with Los Alamos
OTHER EXAMPLES OF VISITING FACULTY

• Ames Lab – “Visiting Scientists”
  – Salaried and non-salaried associate appointments
    • Required for individuals visiting Ames Lab for more than 10 days
  – Visiting faculty may be given joint appointments with an ISU department
  – Intellectual property that arises during the course of utilization of any Ames Lab facility is assigned to ISU

• International visiting scientists
  – Form 473 Foreign Visits and Assignments Request must be approved by DOE-Chicago
  – Form 473 must be approved before J-1 visa is requested or offer is made
  – Some visitors come in with own funding and are unpaid
    – Ames Lab may supplement with salary to meet minimum funding requirements
TYPES OF RELATIONSHIPS AND COMMON OBSTACLES

(WHEN THE LAB IS NOT AFFILIATED WITH YOUR UNIVERSITY)
TYPES OF CONTRACTUAL RELATIONSHIPS

• When receiving funding from a National Lab
• When giving funding to a National Lab
• Why are they all different?
WHEN RECEIVING FUNDS: MAKE SURE YOU START WITH THE RIGHT CONTRACT!

- Lawrence Berkeley National Laboratory (example)
  - General Provisions for:
    - Standard Research Subcontracts*
    - Commercial Subcontract
    - Construction
    - Fixed Price Non-Commercial Supplies and Services
    - Architect & Engineer
    - Cost Reimbursable Subcontracts (No Fee) (w/educational institutions and nonprofits)
    - Consultants and Personal Services
    - CRADAs
    - Work for Others (aka Strategic Partnership Projects)*
WHAT’S THE DIFFERENCE?

• Ex: C-R with Educational Institutions
  – Indemnification
  – Disputes
  – Publication restrictions that require prior written approval

• Standard Research Subcontracts
  – No indemnification
  – More flexible disputes clauses
  – 45 day review period for publications

• But both have 52.227-14 with Alternate V (non-negotiable)
WHAT MAY BE NEGOTIABLE

- Patent ownership for non-commercial use; patent indemnity
- Insurance
- Indemnification
- Governing law
- Publication
WHEN ISSUING FUNDING TO AN FFRDC

• Can’t use your university subcontract templates
• Will need to use the specific form allowed by the FFRDC (almost always a Work for Others agreement but they are not all the same)
• Minimal negotiation of terms and little wordsmithing allowed
• Generally require advance payment funding (full or partial) upfront, even for cost-reimbursable contracts
WHY ARE THEY ALL DIFFERENT?

• #1 – Each operating facility negotiates independently with DOE for their university
  – At University of Chicago and at Iowa State, these negotiations take place between DOE and the respective General Counsel’s office (not through the sponsored projects offices) for Ames Lab, Argonne, and Fermi
  – Los Alamos – no longer U of Calif (6/1/06), but LANS LLC (UC, Bechtel, Babcock & Wilcox, and URS so no UC policies now)
  – Univ of Calif still manages Lawrence Berkeley and Lawrence Livermore
  – Oak Ridge – UT-Battelle LLC (Univ of Tenn and Battelle Memorial Inst)
  – Brookhaven – Research Fdn of SUNY on behalf of Stony Brook and Battelle
  – 10 other labs (18 DOE labs total)
WHY ARE THE LABS ALL DIFFERENT?

• #2 – Each has to abide by its prime DOE contract terms
• #3 – Each DOE FFRDC has the authority to develop their own set of subcontracts and subcontract language
• #4 – Each FFRDC has a different focus, so Los Alamos will never be as “open” as some of the other facilities by nature of their work
WHAT EXPERIENCES HAVE YOU HAD?