

DOE/NNSA
Where We've Been
and
Where We're Going
Or
Droppings from a Very Old Bird

Atomic Energy Commission/Energy
Research and Development
Administration/DOE

Then	Now
<ul style="list-style-type: none">• Defense Programs• Science• Naval Petroleum Reserve and Strategic Petroleum Reserve (SPR)	<ul style="list-style-type: none">• National Nuclear Security Administration• Environmental Management• Science• Fossil (SPR)

Leadership

- At last we have a confirmed General Counsel
- And an Under Secretary for Nuclear Security (Administrator of NNSA)
- Still no confirmed Under Secretary of Science or Management and Performance Improvement
- Still no Director of the Office of Science
- No Assistant Secretary of Environmental Management, or
- Principal Deputy Administrator of NNSA

The Field

Then

- Operations Offices
 - Savannah River
 - Oak Ridge
 - Chicago
 - Idaho
 - Albuquerque
 - Nevada
 - Richland
 - San Francisco/Oakland

Now

- Site offices
- Integrated Support Offices
 - Chicago
 - Oak Ridge
- Consolidated Business Center
- Albuquerque Complex

Management Orientation

Then

- Operations Offices: locus of integration
 - Program Execution
 - Safety
 - Security
 - Business operations
 - Cross cutting Technical Support
 - Community

Now

- In general, more centrally focused management
- NNSA: very centrally managed from HQS
- Science: program management, very centralized; the rest through site offices that report directly
- Acquisition & Project management

Goodbye!

- Rocky Flats Plant
- Mound Facility
- Pinellas Plant
- Oakland Operations to Livermore Site
- Inhalation Toxicology Research Institute
- Bartlesville Office

Still Here!

- The degree of influence and control exercised by “staff offices” in DOE HQS
- The management and operating contract remains the principal vehicle by which DOE offices obtain necessary services
- It still defines the special relationship for for mission success.

Management and Operating Contract

Then

- The deal: best efforts to accomplish the work DOE assigns, with the funding provided, on the schedule DOE establishes.
- The laboratory/contractor recovered the cost of the work except for cost incurred due to the willful misconduct or bad faith of contractor managerial personnel.

Now

- Not so sure.....
- Past experiments with cost allowability (accountability rule).
- Tecom and its progeny
- DOE using the prudent business judgment rule to judge senior managers' behavior with cost consequences.

Pantex/Y-12 Contract

- Traditionally, M&O contracts were agreements to spend money
- M&O contracts are quintessentially budget based vehicles
- PTX/Y-12 combines the traditional approach with a share in savings feature within a contract to consolidate the operation of two traditional plants.
- Challenges

The Future of the M&O Contract

- “Public Interest” Federally Funded Research and Development Center (FFRDC)
- Discussion of Contract Type: cooperative agreement in lieu of contract
- From “best efforts” to
- Current reprieve from subcontracting issues
- “Chunking” of projects

David v. Goliath

- New Mexico has recognized an implied contract claim to review source selection decisions of private businesses
- The NM Court of Appeals decision says that waivers/disclaimers are not dispositive of whether an implied contract exists
- Unlike federal bid protests, lost profits and even punitive damages may be recoverable, and a jury reviews
- Review requirements make M&O source decisions particularly vulnerable
- This may be a peculiarity of NM State Law and its liberality in recognizing implied contracts, but.....
- Verdict: for Plaintiff to the tune of \$3.64M, all lost profits

NNSA: Current Issue

- NNSA Laboratories: *exorbitant fees have eroded the public interest nature of the laboratories*
 - Sandia National Laboratories extension: move from substantial at risk fees to fixed fee with small at risk component
 - Los Alamos and Lawrence Livermore National Laboratories: original contracts stipulated fee for 7 years – new structure under discussion

Science Laboratories

- Fees generally considered reasonable: about 1% of spend
- Award fee: evaluations standard across the laboratories based on eight evaluated areas: “report cards” published
- Earned fees in the 91-94% of available
- Most contracts contain an award term feature
- Consensus is that this works very well – don’t fix it until you break it!

Common Laboratory Issue

- **Erosion of the “special relationship” between M&Os/Labs and DOE.**
- **DOE seems more interested in arm’s length rather than “special relationship” interactions.**
- **For example, 10 CFR Part 719: inconsistent with management/contractor assurance at a time when the large class actions are essentially done (i.e. closing the barn door shut after all the cows have left).**
- **Full benefits of the M&O concept being missed**
- **Fewer and fewer people who understand the concept may lead to the abandonment of it**

Other Common Issues

- Consensus among laboratories that site offices are numerically too large
- And that site office personnel still do not utilize fully the management/contractor assurance tool
- And that site office personnel fail in providing timely government furnished services to laboratories

What Is in the Crystal Ball(?)

- There will be one proposal submitted for Brookhaven National Laboratory
- Kansas City Plant contract runs its term on September 30, 2015
- Nevada National Security Site one year later
- Sandia National Laboratories competition delayed for two years

What Will Be in the News

- The Congressional Advisory Panel (Augustine/Mies):
 - Realign NNSA back into DOE (failed experiment)
 - Apply the Kansas City Model across the national security enterprise, excepting nuclear safety and security.
 - Sensible requirements based on statute, regulation, national and industry standards not DOE Orders
 - Management assurance systems

News (cont.)

- Augustine/Mies (cont.)
 - Strengthen the technical proficiency of the federal workforce
 - Utilize 300 excepted service positions provided by the NNSA Act
 - Some version of the “public interest” model for FFRDC’s
- National Academy of Science Panel: considering governance approach by which DOE, DOD, DHS and intelligence community can access laboratories and invest in infrastructure

News (cont.)

- National Academy Panel (cont.):
 - Likely outcome: strengthen the operation of the MOU among DOE, DOD, DHS and the IC.
 - Encourage more strategic thinking and encourage investment
 - Consider broadening the MOU framework to include Oak Ridge National Laboratory and Pacific Northwest National Laboratory
 - Still a work in progress

News with No Clue

- Panel on the effectiveness of the national laboratories
 - Leadership is superb: J. Cohon is extraordinary
 - The Usual Suspects
 - Prelude to a BRAC for laboratories?