

**Memorandum of Agreement
Between**

**UT-BATTELLE, LLC
And
UNIVERSITY OF CALIFORNIA**

**Regarding
LANL SPALLATION NEUTRON SOURCE PROJECT
SUBCONTRACTS**

The parties to this Memorandum of Agreement (MOA) are the Regents of University of California (UC) operating the Los Alamos National Laboratory (LANL) pursuant to its contract # W-7405-ENG-36 with the National Nuclear Security Administration (NNSA), of the US Department of Energy (DOE) and UT-Battelle, LLC (UT-Battelle) the management and operating contractor of the Oak Ridge National Laboratory pursuant to its contract No. DE-AC05-00OR22725 with DOE, which also includes managing and operating the Spallation Neutron Source (SNS) project. UT-Battelle is a limited liability company, organized and existing under the laws of the State of Tennessee.

Background

Both parties are management and operating (M&O) contractors with the DOE and are designated as two of the Partner Laboratories in the SNS Project Execution Plan approved by DOE. The DOE site offices for both M&O contractors have executed an MOA committing to expeditiously support the SNS Project Execution Plan. As part of that plan each Partner Laboratory is responsible for supplying the SNS Project with instruments and components that are to be installed at the SNS Project Site in Oak Ridge, Tennessee. Each Partner Laboratory is to use its own DOE approved procurement system, under the overall management of the SNS Procurement Director, to issue subcontracts to procure these instruments and components. The SNS Project Execution Plan, however, contemplates that as the technical work at the individual partner laboratories migrates to Oak Ridge, the supporting business activities of the respective laboratories will be phased out as well. These activities include Financial Management, Property Management, Quality Assurance, Records Management, Project Controls, and Procurement.

As the technical work winds down at LANL, UC and UT-Battelle have recognized that it is now time to to transfer (*i.e.*, assign or novate) certain LANL subcontracts to UT-Battelle that involve instruments and components that are to be delivered to the SNS Project Site. Transfer of these subcontracts reflects the overall strategy to migrate the technical work and supporting business activities at the various partner laboratories to Oak Ridge. When these subcontracts are individually identified, UC will transfer the responsibility for such subcontracts to UT-Battelle. UC will remain responsible for any cost resulting from a claim or action arising from any UC activity or omission that occurred prior to the transfer to the extent such cost is deemed unallowable by the cognizant DOE Contracting Officer in accordance with UT-Battelle's prime contract. UT-Battelle will assume responsibility for any activity or omission occurring prior to the transfer to the extent such cost is deemed allowable by DOE, and for all activities or omissions occurring subsequent to the transfer. The transfer of a subcontract will be deemed to have taken place the date the letter notifying the subcontractor of the transfer is sent. The assignment or novation will occur after the subcontracts to be transferred are identified and a transfer schedule is developed.

1. Therefore, UT-Battelle and UC agree to work together to achieve the following goals:

- a. Orderly transfer to UT-Battelle of LANL subcontracts designated by the SNS Procurement Director with input from LANL procurement and SNS project management.
- b. Obtain needed subcontract information for effective contract administration and document retention.
- c. Ensure full explanation and notification is provided to affected subcontractors regarding subcontract transfer.
- d. Identify any outstanding issues prior to transfer of the subcontracts.

2. UT-Battelle responsibilities:

- a. Designate, with the input of LANL and SNS Project Management, the specific LANL subcontracts that require transfer.
- b. Expeditiously review LANL subcontract and related documentation in advance of transfer so that transfer of contract administration activities can begin expeditiously.
- c. As between the parties, accept responsibility and liability for loss, claim, damage or cost arising before or after transfer of the subcontracts to UT-Battelle including defense cost and disposition cost, except to the extent such loss, claim, damage or cost arises from or is caused by UC activities or omissions that occurred prior to the transfer of the subcontracts to UT-Battelle and are deemed unallowable by the cognizant DOE Contracting Officer in accord with UT-Battelle's prime contract.
- d. Accept all contract administration responsibilities after transfer, including subcontract closeout, record retention, and receiving notification of subcontractor disputes under the Disputes Clause. UT-Battelle shall have the authority to resolve any claim or action arising out of the transferred subcontract regardless of when the claim arose. However to the extent any cost resulting from a claim, loss, or damage arises from or is caused by UC activities or omissions that occurred prior to transfer of a subcontract to UT-Battelle and is specifically deemed unallowable by the cognizant DOE Contracting Officer in accordance with UT-Battelle's prime contract, UC shall be responsible for payment of such unallowable cost either as reimbursement to UT-Battelle or directly to the claimant. Payment of such cost shall not constitute agreement or an admission by UC that such cost is unallowable. UC's responsibility for payment of unallowable cost shall not be diminished in any way by the novation of any transferred subcontract to UT-Battelle. UT-Battelle shall provide notice to UC of any claims or actions, which allegedly arise from or are caused by UC activities or omissions that occurred prior to transfer of a subcontract to UT-Battelle and, UC may, at its option, participate in the resolution of the claim or actions. UT-Battelle will provide UC with a copy of any determination of unallowability that would obligate UC to make a payment under this MOA, within ten days of UT-Battelle's receipt of such determination. If the DOE Contracting Officer determines a cost to be unallowable for which UC is responsible under this MOA and UT-Battelle has the right to appeal that determination, upon receipt of UC's timely request UT-Battelle shall file an appeal under the Disputes clause of its prime contract. UT-Battelle and UC shall cooperate in good faith with each other in connection with the appeal. Nothing in this MOA shall be construed to prohibit or place restrictions on UC rights to contest any determination of unallowable cost with the cognizant NNSA Contracting Officer in accordance with UC's prime contract.

3. UC responsibilities:

- a. Cooperate in the designation of LANL subcontracts that require transfer.
- b. Copy and mail or electronically supply to SNS Procurement all subcontract and related documentation necessary to begin contract administration, including accounts and funding information.
- c. Timely transmit a notification letter, whose contents have been agreed to by UC and UT-Battelle, to affected UC subcontractors informing them that a subcontract has been transferred to UT-Battelle.
- d. Assist UT-Battelle and the LANL subcontractors in identifying any outstanding contract issues that exist prior to transfer of the subcontract.
- e. As between the parties, accept responsibility and liability for payment of a loss, claim, damage or cost whenever it may arise, including defense cost and disposition cost, to the extent such loss, claim, damage, or cost arises from or is caused by UC activities or omissions that occurred prior to the transfer of the subcontract to UT-Battelle, but only to the extent that such cost is specifically deemed unallowable by the cognizant DOE Contracting Officer in accordance with UT-Battelle 's prime contract. Any UC payment under this MOA shall not constitute agreement or an admission by UC that such cost is unallowable under its prime contract, and UC retains the right to assert the allowability of such payment under its prime contract with the cognizant NNSA Contracting Officer as provided in its prime contract.
- f. Cooperate fully with UT-Battelle to supply information reasonably needed for any litigation that might arise out of, or relates to, any of the transferred subcontracts, including documentary evidence or making personnel available for consultation or sworn testimony. Any cost to UC arising from such activity shall be charged to SNS programmatic funds.

Other Terms of the Agreement

This MOU addresses only the parties' agreement regarding transfer of certain LANL subcontracts to UT-Battelle. Agreements regarding other business activities to be transferred to UT-Battelle, including Financial Management, Property Management, Quality Assurance, Records Management, and Project Controls will be handled under separate arrangements.

Any funds held by UC for the administration or payment of the transferred subcontracts shall be transferred to the SNS Project Office. Each subcontract funding will be identified by the appropriate accounting code as requested by the SNS Project Office.

Each Party shall designate a contact person to whom correspondence and other communications relating to this MOA will be addressed. This person will act as the coordinator of communication between the parties and all other matters related to implementation of this MOA.

It is understood and agreed that this MOA may be transferred from UC or UT-Battelle to a successor prime contractor.

This MOA may be amended by written agreement signed by both Parties.

This agreement shall become effective upon signature by both PARTIES and shall continue in effect until the conclusion of all contract administration activities for all subcontracts transferred pursuant to its terms.

UT-BATTELLE, LLC

By: Thomas Mason

Name: Thomas E. Mason
Title: Associate Laboratory Director
Spallation Neutron Source

Date: 10/27/03

UNIVERSITY OF CALIFORNIA

By: F. A. Pace, Jr.

Name: F. A. Pace, Jr.
Title: Procurement Lead, Team 6

Date: 10/30/03