Cooperative Research & Development Agreements (CRADAs)

Brief

| Title: Cooperative Research & Development Agreements (CRADAs) |
|------------------|------------------|
| Publication date: 11/20/2012 |
| Effective date: 10/23/2009 |

**BRIEF**

**Policy Summary**

This policy sets forth the requirements for Berkeley Lab Cooperative Research and Development Agreements (CRADAs). Specifically, the policy covers:

- Submitting, reviewing, and approving CRADA proposals by Berkeley Lab researchers
- Accepting, performing, and administering CRADA awards from non-Department of Energy (DOE) sponsors

**Who Should Read This Policy**

Any Berkeley Lab employee involved with submitting, reviewing, or approving CRADA proposals and accepting, performing, or administering CRADA awards from non-DOE sponsors

**Contact Information**

Office of Sponsored Projects and Industry Partnerships (OSPIP) Manager

**Policy**

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D.2 JWS/CRADA Proposals
D.3 CRADA Analysis
D.4 Joint Work Statement
D.5 Other Important Considerations
D.6 Proposal and Negotiation Process

**POLICY**

A. **Purpose**

This policy provides the process and requirements for Lawrence Berkeley National Laboratory (Berkeley Lab) Cooperative Research and Development Agreements (CRADAs) and covers:

- Submitting, reviewing, and approving CRADA proposals by Berkeley Lab researchers
- Accepting, performing, and administering CRADA awards from non-Department of Energy (DOE) sponsors

B. **Persons Affected**

Any Berkeley Lab employee involved with submitting, reviewing, or approving CRADA proposals and accepting, performing, or administering CRADA awards from non-DOE sponsors

C. **Exceptions**
D. Policy Statement

D.1 General

1. CRADAs are developed with a non-federal partner in specified research or development efforts that are consistent with the missions of the facility. The non-federal party contribution must be more than financial and/or equipment or the development of a statement of work. The University of California (UC) and DOE contract establish the rules under which UC will operate and manage Berkeley Lab. Contract Clauses I.91 - DEAR 970.5227-2 (Rights in Data --- Technology Transfer) and I.92 - 970.5227-3 (Technology Transfer Mission) are two of the primary clauses related to CRADAs.

2. The President of the University of California has delegated to the Berkeley Lab Director the authority for Laboratory contract and grant authority to solicit and accept or execute certain extramural grants and contracts that include CRADAs.

3. The Office of Sponsored Projects & Industry Partnerships (OSPIP) is the institutional organization responsible for submitting proposals and accepting awards from non-DOE sponsors. All proposals and awards for sponsored research must be processed through OSPIP. OSPIP's contract officers (COs) have been delegated authority from the Laboratory Director to submit proposals and negotiate awards in accordance with UC policy. The OSPIP Manager retains the authority to sign CRADAs.

D.2 JWS/CRADA Proposals

OSPIP COs have the institutional review responsibility for submitting all CRADA proposals to the Laboratory's CRADA partners, and the Joint Work Statement (JWS) and CRADA to DOE for review and approval, which are necessary to the CRADA proposal review and submittal process.

D.3 CRADA Analysis

1. The CO should review the JWS and the Statement of Work to ensure that the project involves a real work effort on the part of the partner.

2. The CRADA is to be used only if there is a true collaboration on behalf of the partner and Berkeley Lab.

3. If there is no DOE funding involved, consideration should be given to conducting the research as a Work for Others (WFO) contract rather than a CRADA.

4. The partner must be informed of the availability of the class waiver WFO in accordance with Contract 31, Clause I.92 n(4)(i).

5. There must be in-kind contributions to document the partner's collaborative activities to demonstrate that the partner is providing more than money (see Valuation of In-Kind Contribution form).

D.4 Joint Work Statement

1. The CRADA process begins with the Joint Work Statement. Special attention should be given to the following:
   a. Fairness of Opportunity. It is important that fairness of opportunity is followed and documented. The file must describe how Berkeley Lab and the partner joined efforts for the proposed CRADA, including how the partner became aware of Berkeley Lab’s capability and willingness to participate.
   b. U.S. Competitiveness. The JWS should indicate whether the partner will agree to the standard DOE clause on U.S. competitiveness. If not, a description of the alternative benefits to which the partner is willing to contractually agree must be described using the U.S. Competitiveness Worksheet.

2. See the U.S. Competitiveness Worksheet, February 26, 1993, distributed via DOE Memorandum Restatement of Departmental Technology Transfer Policy on U.S. Competitiveness.

D.5 Other Important Considerations

1. Use of Students. See the OSPIP Policy Manual on the Use of Students in CRADAs. The use of students is allowed, as long as there is no protected generated information (standard Berkeley Lab language).

2. Advance Invoice. If the CRADA partner is providing funds, an advance must be obtained prior to starting the CRADA (see OSPIP Process/RAPID Manual for the process to obtain an advance invoice).

3. EH&S Human and Animal Use Approvals. A new CRADA requires approval by the Environment, Health & Safety (EH&S) Division via e-mail (see Human and Animal Subjects Process).

4. Conflict of (COI) Review. Compliance with COI policies must be ensured (see Conflict of Interest in Research — CRADAs). No award can be initiated unless approved by the Berkeley Lab COI Coordinator, and then DOE. If a positive COI exists, the OSPIP CO sends a CRADA Positive Financial Interest Disclosure letter to DOE/Berkeley Site Office (BSO) requesting its review and approval of a positive financial disclosure prior to the start of the research. This is accomplished after the Berkeley Lab COI Coordinator has approved the affected employees' participation in the CRADA.
5. **U.S. Trade Representative (USTR) (for Foreign CRADA Partners).** DOE Order 483.1-1, **DOE Cooperative Research and Development Agreements Manual**, Appendix B, page 67, requires consultation with either the USTR directly or by accessing information on the USTR Web site to satisfy the requirements that the foreign country has favorable reciprocal partnership policies. Document this in the JWS and create a memo (see **CRADA memo sample**) to retain as documentation.

6. **Option to Exclusive License.** The Morella Bill requires that a CRADA partner have the opportunity to receive an option to an exclusive license for a prenegotiated field of use license to Berkeley Lab's subject inventions. Contact **Technology Transfer and Intellectual Property Management (TTIPM)** and provide the Licensing Manager with the JWS and contact information. Request that TTIPM contact the CRADA partner to offer the partner the option agreement.

### D.6 Proposal and Negotiation Process

1. **CRADA Proposal Package to Partner.** The OSPIP CO prepares the CRADA partner proposal transmittal letter, attaches the following, and sends the complete package to the proposed CRADA partner contact:
   a. CRADA
   b. Scope of Work
   c. Budget

2. **CRADA Proposal Approval – OSPIP Manager.** The OSPIP CO prepares a DOE/BSO CRADA transmittal letter and attaches the following for review and approval by the OSPIP Manager:
   a. Joint Work Statement
   b. Proposed CRADA
   c. Exception to Full Cost Recovery form, if applicable

3. **CRADA Proposal Approval – DOE/BSO.** Upon approval, the CO submits the package to DOE/BSO for review and approval. Approximately 10 days after submitting the proposal to DOE/BSO, the OSPIP CO follows up with DOE/BSO on approval status of the JWS and the CRADA, responding to any DOE/BSO questions on the approval package.

4. **Partner Negotiations / DOE Approval to Changes in Terms and Conditions.** The OSPIP CO contacts the partner's contracts office to determine whether the partner has questions or issues on the proposed CRADA. If the proposed CRADA terms are acceptable, the OSPIP CO requests that the partner sign both copies of the CRADA and return them to the OSPIP CO for signature.

5. **Changes in Terms and Conditions.** If negotiations on the CRADA terms are necessary, the OSPIP CO should not agree to changes to terms and conditions that DOE would be unlikely to approve. The OSPIP CO should only agree to changes that have a reasonable chance of obtaining DOE approval.

6. **DOE/BSO Approval of Changes to Terms and Conditions.** Once contract negotiations are complete, the OSPIP CO should prepare a DOE/BSO CRADA transmittal letter explaining the basis for each change. The letter and negotiated CRADA are then submitted to the DOE/BSO Contracting Officer for approval.

7. **Renegotiations.** The OSPIP CO should follow up with the DOE/BSO CO to determine if the negotiated contract terms are acceptable. If not, the DOE changes to the negotiated CRADA are renegotiated with the partner until partner, DOE, and Berkeley Lab agree on the negotiated contract terms. Signatures are then obtained from the partner and the OSPIP Manager on the negotiated CRADA, and partner advance payment is obtained, if required.

### E. Roles and Responsibilities

None

### F. Definitions/Acronyms

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<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tr>
<td>Cooperative Research and Development Agreement (CRADA)</td>
<td>An agreement between the University of California and one or more non-Federal participants under which the government (through Berkeley Lab) provides personnel services, facilities, equipment, intellectual property, or other resources (with or without reimbursement) and the non-Federal parties provide funds, personnel, services, facilities, equipment, intellectual property, or other resources (with or without reimbursement) towards the conduct of specified research or development efforts that are consistent with the mission of the Laboratory</td>
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<td>JWS</td>
<td>Joint Work Statement</td>
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### G. Recordkeeping Requirements

None

### H. Implementing Documents

Lawrence Berkeley National Laboratory. The official or current version is located in the online LBNL Requirements and Policies Manual. Printed or exported versions are not official. Users are responsible for working with the latest approved revision.
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<td>U.S. Competitiveness Worksheet</td>
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<td>Restatement of Departmental Technology Transfer Policy on U.S. Competitiveness</td>
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I. Contact Information

Office of Sponsored Projects and Industry Partnerships (OSPIP) Manager

J. Revision History

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<th>By whom</th>
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<td>1.1</td>
<td>R. Inada</td>
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<td>L. Nowell</td>
<td>New link for the U.S. Competitiveness Worksheet</td>
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Document Information

**DOCUMENT INFORMATION**

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Source Requirements Documents

- **DOE Order 483.1 - CRADAs. Establishes DOE policy, requirements, and responsibilities for the oversight, management, and administration of CRADA activities at DOE facilities.**
- **National Competitiveness Technology Transfer Act of 1989. The law that created the CRADA mechanism for use by government-owned contractor-operated (GOCO) laboratories such as Berkeley Lab. It is part of DOE Order 483.1.**
- **Class Waiver – Patent Rights, DOE 2/25/91 letter. A class waiver of the government's U.S. and foreign patent rights for inventions made in the performance of CRADAs entered into by The Regents of the University of California under Contract 31 between the DOE and UC (W[C]-91-001; SAN 587). This provides the waiver of the government's rights in participant CRADA inventions.**
- **Cost Sharing of CRADAs, DOE 3/14/94 memorandum. Reiterates DOE policy that prior work cannot be counted as in-kind CRADA contributions.**
Other Driving Requirements

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Other References

- **DOE Order 483.1-1 CRADA Manual** This manual supplements DOE Order 483.1 and provides detailed requirements to supplement DOE O 483.1, DOE Cooperative Research and Development Agreements, dated 1-12-01, which establishes requirements for the performance of technology transfer through the use of CRADAs.