

OPERATING AGREEMENT

between

NATIONAL ASSOCIATION OF STATE ENERGY OFFICIALS

and the

**ASSOCIATION OF STATE ENERGY RESEARCH AND
TECHNOLOGY TRANSFER INSTITUTIONS**

for the

STATE TECHNOLOGIES ADVANCEMENT COLLABORATIVE

Background

The State Technologies Advancement Collaborative (STAC) has been designated as the implementing mechanism for the Intergovernmental Agreement (IA) among the U.S. Department of Energy (DOE), National Association of State Energy Officials (NASEO), and the Association of State Energy Research and Technology Transfer Institutions (ASERTTI) that established a "Collaborative RDD&D Pilot Program". NASEO and ASERTTI are the Parties to this Operating Agreement and may be referred to individually as a Party. The purpose of the IA commits the Parties "to establish a five year collaborative pilot program to jointly support the research, development, demonstration, and deployment (RDD&D) of technologies where common Federal and State energy efficiency and renewable energy and fossil energy activities exist and crosscut DOE's Office of Energy Efficiency and Renewable (EERE) and Office of Fossil Energy (FE) programs. The IA further states "for purposes of this Agreement, and in the operation of the Pilot Program, NASEO and ASERTTI will jointly represent the interests of the States and will work collaboratively with one voice in working with the Department in the conduct of the Pilot Program". The purposes of this NASEO and ASERTTI Operating Agreement are to: (1) provide guidance on what is expected to constitute "working collaboratively with one voice"; and (2) describe in more detail than is provided in the IA the contracting, decision-making, program oversight, and program and project management operational characteristics of STAC.

NASEO and ASERTTI have different missions and, therefore, somewhat different, but similar and/or overlapping goals and objectives. NASEO's full voting members include all the "state energy offices" throughout the United States, as well as the US territories and D.C. (excluding Virginia), whose energy RDD&D activities focus primarily on demonstration and deployment, but also encompass research and development. The interests and programs of ASERTTI's members, which include both state and regional organizations as "delegate members" and other public and private organizations as "associate members", cover the full range of RDD&D (i.e., applied research, technology development, demonstration and deployment).

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Together, NASEO represents all the States and ASERTTI represents the vast majority of state-level public interest energy R&D activities. Both organizations and their members have a history of working with the DOE.

A. Required Commitment

For STAC to be fully successful, NASEO and ASERTTI must develop and maintain a productive collaborative relationship. Collegiality, consultation and open discussion should be the hallmarks of the relationship between the leadership and representatives of both organizations. As Parties to this Operating Agreement, the Boards and Officers of both organizations agree and instruct their representatives to: (1) make decisions within the framework and processes established by the STAC Executive Committee (ExCom); and (2) first reach agreement between the two organizations directly relating to key STAC decisions avoiding any attempt to preempt each other by lobbying DOE, administration officials, members of Congress and Congressional staff.

The STAC leadership designated by the two organizations shall meet on a regular basis either face-to-face or via conference call to facilitate the development of the "one voice" called for by the IA.

In accordance with the IA, both organizations also agree to commit resources to provide support to the Pilot Program and the STAC Executive Committee.

B. Key Program Components

Four key program components must be developed for STAC's effective and efficient implementation:

- Contracting between the DOE and NASEO.
- Decision-making and program oversight.
- Contracting between NASEO (acting on behalf of the STAC ExCom) and RDD&D performers.
- Program and project management.

1. Contracting Structure Between DOE and STAC

In December 2001, the Parties engaged in initial discussions about contracting alternatives for DOE funds to be made available to STAC. The Parties agreed that the ideal organizational structure would be to establish a new entity that has a state government mandate for administration of STAC. However, during these discussions DOE expressed a preference for an IA as the contracting mechanism for establishing the Collaborative RDD&D Pilot Program. To be a party to an IA the DOE representatives participating in the discussion stated that the organization had to have either governmental or quasi-governmental status. Given the time required for a new entity to attain this status, representatives of all three Parties decided to have DOE contract with NASEO, which has as full voting members only states, territories and the District of

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Columbia, and, in the view of DOE lawyers, is eligible to sign an IA. As discussions continued on STAC with the DOE General Counsel, it was agreed that all three parties (DOE, NASEO, ASERTTI) would sign the IA, but the preferred option for the pilot program is to have NASEO and DOE execute a Cooperative Agreement (CA) to implement the IA. The Parties agree to keep open the alternative of establishing a new entity at some later date. The specifics of the CA are to be developed jointly by DOE and NASEO. However, all of the parties are to: (1) be kept fully informed; and (2) have an opportunity to comment on the draft CA as it is being developed prior to being put into effect.

2. Proposed STAC Decision-Making/Oversight Structure

The types of decisions to conduct the STAC program include program policy and planning, oversight of program administration, project funding decisions, oversight of project management, and evaluation of program performance/results. Program policy and planning will be undertaken to adopt program goals and develop program processes to determine mutual areas of RDD&D interests between states and the DOE. STAC program administration includes the methods for solicitation of RDD&D projects that meet both the overall program goals and overlapping federal/state joint areas of interest. Funding decisions will provide a fair selection of the best available RDD&D projects. The oversight of project management will provide assurances to program sponsors that the supported RDD&D is effectively and efficiently using funding resources to meet project goals.

In order to meet STAC program goals as established by the IA, key criteria for success in a decision-making structure include clarity and speed of decisions, low program overhead costs, ability of the three major organizations (i.e., DOE, ASERTTI, NASEO) to veto a proposed action, and fair representation of large and small states through both ASERTTI and NASEO. Consistent with these criteria, a clear but simple decision-making structure is proposed for the five-year pilot program. A high priority STAC start-up activity will be for NASEO to contract for the services of a highly qualified RDD&D Program Director as described in Section 4 below, and as approved by the STAC Executive Committee. Consistent with the overall guidance provided by the STAC ExCom, the Program Director will lead the development and implementation of processes for overseeing program administration as outlined above.

- **STAC Executive Committee (ExCom):** The IA provides for a seven-member ExCom that will administer STAC, consistent with NASEO's responsibilities pursuant to the CA. The STAC ExCom has full decision-making authority for the STAC program. The NASEO and ASERTTI Boards and DOE Assistant Secretaries have delegated authority to the STAC ExCom for the types of decisions described earlier. At the end of each year of program implementation, a brief report shall be completed providing a program status update and documentation of the decisions made by the STAC ExCom. Both NASEO and ASERTTI Boards/Executive Committees and DOE/Assistant Secretaries may provide policy and advisory input to the STAC ExCom. Figure One shows the

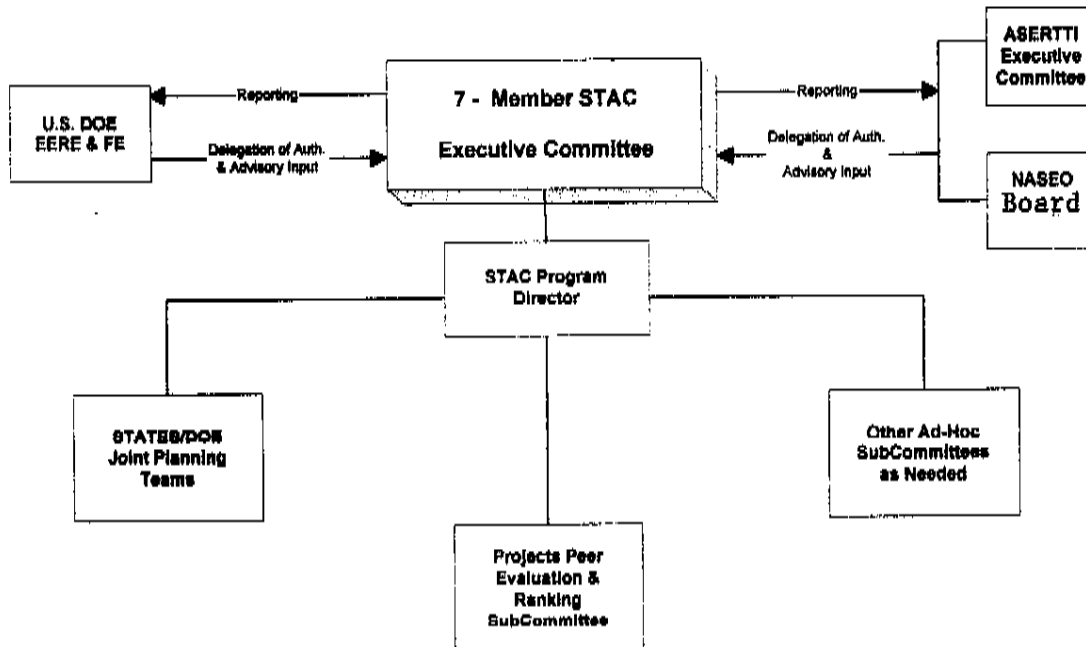
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proposed administration and decision-making structure for STAC and its relationship to the program sponsors.

Members of the seven-member ExCom will include two ASERTTI representatives, two NASEO representatives, two US DOE representatives, and one independent member. By having a seven member ExCom, STAC decision-making will occur even if more than one member needs to recuse themselves from a decision because of potential conflicts in interest. At least one member of the STAC Executive Committee from ASERTTI and one member from NASEO shall be from medium or small states (in terms of population).

- **STAC Decision-Making:** The STAC ExCom shall make all decisions in an environment open to DOE, and all ASERTTI and NASEO members. A quorum for decision making for the STAC ExCom shall require at least a majority of the

Figure One: Proposed STAC Pilot Program Decision Making Structure (Draft)



STAC ExCom members. In addition, at least one representative from each organization must be present for a vote. Notice of meetings shall be provided to allow sufficient time in advance for interested persons to attend. Members would be allowed to participate via conference telephone, or any other means by which all participants can hear all other participants, and be considered as present for a vote. Members would not be allowed to send an alternate representative for voting purposes, except due to recusal because of conflicts of interest during approval of awards for projects. While unanimity is the goal of decision-making, if there is opposition by any member to any proposed decision of the ExCom, the ExCom is obligated to listen to the reasons for opposition and to consider options to address the issues. After consideration of the dissenting opinion, the ExCom can move

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forward in an affirmative decision with a simple majority of votes. However, each organization (DOE, ASERTTI, and NASEO) shall have the authority to veto the award of any project(s) that are not consistent with its goals and objectives. Organization veto authority means the unanimous opposition by the organization's two representatives (i.e., both members) to a proposed project award, or in the event of non-attendance by one of the members, the decision by the other organizational representative. The independent member of the ExCom does not have veto authority.

- Members of the STAC ExCom shall disqualify themselves on any decision where a conflict of interest or an incompatible activity may exist. For example, if a specific state organization will benefit financially from a proposed project, the representative from that state organization on the STAC ExCom shall withdraw from the decision-making process. For the US DOE representatives it is expected that, the Assistant Secretaries for EERE and FE shall establish a policy under which their representatives are to withdraw from decision-making and shall communicate this determination to the other Parties.
- In order to evaluate whether there is a fair distribution of projects in the STAC program, there will be an assessment of the types of projects funded and the award recipients as part of the annual report for STAC to DOE, ASERTTI, and NASEO. A target of 50% of funds allocated to demonstration and deployment and 50% to research and development will be evaluated as part of this report.
- The STAC ExCom shall be allowed to form subcommittees or utilize other means to help in the conduct of the ExCom's duties. A peer review process shall be conducted through subcommittee(s) for the fair evaluation and ranking of proposed projects for the STAC program. To the maximum extent possible, reviewers will be drawn from DOE and the states. NASEO, with direction from the STAC ExCom, also shall be allowed to contract for services to help in managing and administering the program, provided that administrative costs remain a small portion of overall program costs.

3. STAC Contracting to RDD&D Performers

- It will be important to maintain flexibility in contracting options in the STAC program because of the variety of funding sources and the inherent difficulty of standardizing terms and conditions, such as indemnification and intellectual property rights from the various funding organizations. There are three sources of funds that will be contractually obligated for RDD&D projects in the STAC program: federal, state, and other public and private funds.
- It is anticipated that 'other public and private funds' will be leveraged in proposals submitted for funding to the STAC program. As directed by the STAC ExCom, and consistent with NASEO's responsibilities under the CA, a contract will be prepared, negotiated and executed between the STAC program and the

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RDD&D performers for each project in order to provide funding in return for the proposed RDD&D work. For those states that decide to provide funds directly to STAC, both federal and state funds could be included in a specific STAC contract to the RDD&D performer(s). For those states that decide to provide funds directly to the RDD&D performer(s) in separate state contract(s), the STAC contract for the same project may include only the federal funds. NASEO and the STAC ExCom will work to establish flexible contracting vehicles.

- It is not anticipated that a new entity will be formally created during the five-year pilot period of this program, although both the IA and CA provide sufficient flexibility to make a change if the Parties should decide to do so. Absent a change, NASEO receives the DOE's STAC funding on behalf of the STAC ExCom and commits those funds as directed by the STAC ExCom, including funding for the services of a STAC Program Director and projects the STAC ExCom decides to support, consistent with NASEO's fiduciary responsibilities under the CA. In order to achieve the streamlining purposes of the STAC program, a new and simple model contract with standardized terms and conditions will need to be developed for STAC and may be required in all proposals in response to STAC solicitations. As indicated in Section 4 below, consistent with guidance from the STAC ExCom, with the assistance of both DOE and the States and consistent with NASEO's requirements under the CA, the STAC Program Director will be responsible for leading the development of this model contract.

4. STAC Program and Projects Management

- While major decisions for STAC will be made by the STAC ExCom, there will be many other day-to-day activities that will need to be completed to conduct a high quality, major RDD&D program. These activities include program planning to develop an agreed upon STAC RDD&D agenda, development of program policies, development and release of RDD&D solicitations, conduct of peer review of proposals, preparation for STAC ExCom meetings, negotiation of contracts, approval of invoices from STAC projects, program reporting to NASEO, DOE and the STAC ExCom, etc. In order to professionally complete these activities to conduct the STAC program, the STAC ExCom will need to contract for the services of a highly qualified, RDD&D Program Director. The STAC Program Director also will need to be supported with administrative and legal help available from NASEO, NASEO and ASERTTI members, or DOE.
- Similar to the STAC program, each STAC-funded RDD&D project will include many activities that will need to be performed and the contract will include specific requirements for a Project Manager that is to be included in all proposals. This Project Manager should be experienced and capable, and be employed by the RDD&D performers or one of the states conducting the specific project. RDD&D performers for STAC must have a good track record of effective and efficient project management. Project reporting requirements and deliverables to STAC and DOE should be enforced by the STAC Program Director based on a program

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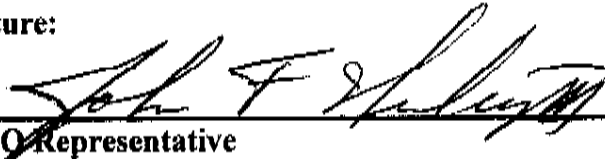
approval process (e.g., cost reimbursement) of invoices for the project. As with the other operating requirements identified above, developing detailed procedures designed to ensure effective and efficient operations will be the responsibility of the STAC Program Director consistent with guidance provided by the STAC ExCom, and consistent with NASEO responsibilities under the CA.

C. Implementation Requirements

As an interested Party, DOE may review this Operating Agreement if it so chooses.

This Operating Agreement is being executed by an authorized representative of the Parties, with an effective date of January 21, 2003. This Operating Agreement may be amended by written agreement of the Parties.

Signature:



1-17-03

NASEO Representative

Date

John Nunley, III Chairman, NASEO

Print (Name and Title)

Signature:



1/21/03

ASERTTI Representative

Date

William M. Flynn
Chairman

Print (Name and Title)