



March 4th, 2025

U.S. Department of Energy – Office of Acquisition Management
1000 Independence Avenue SW
Washington, DC 20585

Subject: Public Comment on DOE’s Interim Final Rule Regarding Other Transaction Agreements (RIN 1991-AC19—2024 Other Transaction Agreements)

Dear Office of Acquisition Management Staff,

The Nuclear Innovation Alliance (NIA) is an independent, non-profit, non-partisan “think-and-do” tank whose mission is to help create the conditions for success for advanced nuclear energy so it can play a major role as an energy security and climate solution. Through policy analysis, research, outreach, and education, NIA is catalyzing the next era of nuclear energy. We focus on regulatory modernization, federal and state policy, and enabling private investment to support advanced reactor commercialization while meeting national environmental and energy security goals.

NIA supports the steps the Department of Energy (DOE) is taking in this interim final rule (IFR) to update, streamline, and relocate the policies, procedures, and provisions that are applicable to the award and administration of their other transaction agreements (OTAs). These steps will help DOE to effectively and efficiently exercise their authority to utilize a performance milestone-based approach (i.e., “payments based on payable milestones” or “payment-for-milestones approach”) when providing funds to government contract awardees. This approach, which is enabled through DOE’s OTA, can be a highly effective alternative to conventional cost reimbursement models (i.e., expenditure-based funding), and can enhance the impact of government spending while minimizing financial risk to taxpayers. This was made evident by NASA’s use of performance milestone-based funding for their Commercial Orbital Transportation Services (COTS) program, which ultimately helped bring SpaceX to commercial success.

Through the use of performance milestone-based funding, DOE can facilitate more effective public-private partnerships to deploy and commercialize advanced nuclear energy technologies. This IFR, by streamlining DOE’s procedures for awarding and administering OTAs (including performance milestone-based funding) improves DOE’s ability and capacity to support nuclear energy innovation. By clarifying and streamlining OTA procedures, this rule can help ensure that performance milestone-based funding is utilized more effectively for the commercialization of advanced nuclear energy technologies.

Benefits of Performance Milestone-based Funding

Performance milestone-based funding can increase the cost-effectiveness and likelihood of success for technology demonstration projects by requiring companies to orient business activities around commercialization outcomes, not contract processes. By awarding funding to a company when they achieve specific commercial milestones, this approach incentivizes more rapid innovation and can provide offramps for unsuccessful projects. As a result, funding using a milestones-based approach reduces taxpayer risk, increases the likelihood of project success, and can accelerate commercialization.

Specific benefits of this approach include:

- **Incentivizing rapid innovation:** The energy security and climate objectives of the United States create an urgent need to develop advanced nuclear energy technologies as rapidly as possible. By tying funding to the achievement of performance milestones, this approach incentivizes companies to deliver their project as fast as possible, accelerating innovation.
- **Reducing resources for compliance:** Cost reimbursement models can require significant government and private sector overhead for contract compliance. Performance milestone-based funding can save dollars for taxpayers and the private sector by simplifying this process.
- **Letting the industry lead in innovation:** By allowing industry to define its metrics of success with DOE, industry has a major role in establishing what success is for their business and technology development pathways and can focus on getting innovations to market as fast as possible.
- **Increasing transparency of objectives:** Defining specific project milestones that signal progress can enable the Department of Energy and the public to judge how well a project is delivering on its promises.
- **Discontinuing funding for underperformance:** Taxpayer dollars are a precious resource and significant delays in projects and cost overruns could threaten overall progress towards national objectives. Ending unsuccessful projects can free up funding for new efforts, enabling a more nimble and adaptive approach to technology commercialization.

The fundamental goal of a milestone-based funding approach for demonstration projects is complementing and accelerating a company's commercial plan to develop a technology of importance to the national interest.

In Support of this IFR

Despite DOE's determination that this rulemaking is merely a procedural rule, the importance of updating and streamlining these procedures to enable DOE's OTA, including the use of performance milestone-based funding, should not be understated. DOE has only exercised the

authority to utilize a milestone-based funding approach in a small number of awards, including DOE's milestone-based fusion program, DOE's Risk-Reduction award to Kairos Power, and DOE's Hydrogen Program^{1,23} Therefore, DOE has limited experience implementing a milestone-based funding approach, which can lead to difficulties and inefficiencies, or a reluctance to use this approach instead of conventional cost reimbursement funding mechanisms.

It is crucial that DOE clarify and improve its OTA procedures, as is proposed in this IFR, to overcome these barriers and further the use of performance milestone-based funding for future public-private partnerships. Therefore, NIA supports the actions being taken in this IFR.

Recommendations

While DOE is not currently seeking substantive comments on improving the effectiveness of milestone-based funding, this IFR presents an opportunity for DOE to consider future steps to enhance its implementation after this rule is finalized. Therefore, we offer the following recommendations to help DOE proactively identify actions that can further strengthen the use of performance milestone-based funding for advanced nuclear energy.

Recommendation 1: Establish Clear and Well-Defined Milestones. To ensure the successful implementation of a performance milestone-based approach to funding public-private partnerships, DOE should establish clear and well-defined milestones that leave no ambiguity about when they are met. Unclear milestones can create unnecessary delays, confusion, and disputes over funding disbursement, which could negatively impact project timelines and company operations. Defining milestones with precision will provide certainty for both DOE and award recipients, reducing administrative friction and ensuring timely funding allocation.

Recommendation 2: Strengthen Coordination Across DOE Offices. DOE should improve coordination between offices that have experience implementing performance milestone-based funding. The Office of Acquisition Management should actively engage with offices such as the Office of Nuclear Energy (NE) and the Office of Fusion Energy Sciences (FES), both of which have utilized performance milestone-based funding, to assess lessons learned and establish best practices. These insights should then be shared across DOE to improve each office's efforts to utilize and implement performance milestone-based funding. For example, this knowledge transfer is critical for the Office of Clean Energy Demonstrations (OCED) because it will utilize a performance-milestone based approach for the Generation III+ Small Modular Reactor Program. Given that OCED has not used a performance milestone-based approach before and will be implementing such an approach for the first time once awardees are selected, OCED can benefit greatly from lessons learned by FES and NE, provided those lessons are shared.

¹ [U.S. Department of Energy | U.S. Department of Energy Announces Selectees for \\$107 Million Fusion Innovation Research Engine Collaboratives, and Progress in Milestone Program Inspired by NASA](#)

² [Kairos Power | U.S. Department of Energy and Kairos Power Execute Novel Performance-Based, Fixed-Price Milestone Contract to Enable Investment in Advanced Reactor Demonstration Project](#)

³ [U.S. Department of Energy | Department of Energy Hydrogen Program Plan](#)

Therefore, DOE should ensure that best practices for milestone-based funding are not siloed within specific offices but are instead leveraged across all relevant programs by enabling strong interoffice coordination.

Recommendation 3: Ensure Equal Consideration for Milestone- and

Reimbursement-Based Funding. Currently, DOE contracting officers appear to be required to opt in to allow performance milestone-based funding for a given opportunity, which may limit its broader adoption. Instead, all internal DOE funding opportunities should automatically accept applications regardless of whether they propose performance milestone-based or cost reimbursement-based funding, ensuring a more flexible and innovation friendly approach. This approach would prevent DOE from screening out cost-effective proposals that utilize a performance milestone-based approach, allowing all projects to be evaluated on their merit rather than their funding structure. Additionally, this approach would not diminish federal oversight of issuing awards using performance milestone-based funding because, as specified in section 42 U.S.C. 7256, senior procurement executives at DOE still need Presidential appointment Senate confirmed (PASC) approval and Senior Procurement Executive (SPE) sign off to make such awards.

Recommendation 4: Develop Guidance for Applicants. To improve industry awareness and engagement with OTA contracting opportunities, and specifically performance milestone-based funding opportunities, DOE should develop publicly available guidance outlining key aspects of performance milestone-based funding. This resource would help potential applicants understand: (1) what milestone-based funding entails and how it differs from traditional cost-reimbursement models; (2) the benefits of OTA and milestone-based contracts, including increased flexibility, reduced administrative burden, and better project outcomes; (3) how to engage with DOE and structure proposals to align with milestone-based funding requirements; and (4) best practices for defining milestones to ensure project success and secure funding in a timely manner. By providing clear guidance, DOE can ensure that companies, especially new entrants, can effectively leverage performance milestones in new federal funding opportunities, thereby enhancing the success and efficiency of public-private partnerships.

NIA would like to thank DOE for the opportunity to comment on this IFR. If you have any questions, please contact us at ecothron@nuclearinnovationalliance.org.

Sincerely,

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