

BOARD OF REGENTS BRIEFING PAPER

Agenda Item Title: Formation of a DRI Nonprofit Affiliate, DRI-Tennessee

Meeting Date: October 23, 2015

2. BACKGROUND & POLICY CONTEXT OF ISSUE:

In a competitive bid process, DRI has submitted a detailed three volume proposal to the Department of Energy Office of Science (DOE SC) for the opportunity to lead and manage its premier Oak Ridge Institute for Science and Education (ORISE), located in Oak Ridge, Tennessee, through an affiliated nonprofit, DRI-Tennessee. The contract offered by DOE SC intends to support key scientific initiatives that will develop the next generation of science, technology, engineering, and mathematics (STEM) professionals; promote quality DOE funded research through peer-review; operate the Radiation Emergency Assistance Center/Training Site (REAC/TS); provide information on the long-term health outcomes of current and former workers; and provide capabilities to independently assess environmental cleanup. Given DRI's 1959 Legislative mandate: "To contribute more effectively to the security of the nation and to promote the general welfare of the State of Nevada and its citizens through the development of educational and scientific research, the Board of Regents may establish... the Desert Research Institute." (1959 NRS 396.795, 396.7951), and considerable due diligence, DRI submitted a comprehensive proposal to assume the management of ORISE through an affiliated nonprofit, DRI-Tennessee. The proposed DRI-Tennessee will consist of (a) governing board of directors from Nevada and ultimately Tennessee; and (b) a leadership team assembled from DRI, leading corporations, and Woman-owned small businesses that have decades of experience providing quality service and products to DOE. The strategic vision for ORISE that has been offered by DRI through the proposed DRI-Tennessee is to serve as the nexus of research and education for DOE, other federal agencies and the nation.

3. SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

Stephen G. Wells, DRI President, is requesting Board approval to form an affiliated nonprofit 501c(3), DRI-Tennessee, according to Title 4, Chapter 10, Section 10 of the Board of Regents Handbook. DRI-Tennessee will be incorporated in the state of Tennessee for the purpose of effectively and efficiently executing the contract as well as leading and managing the DOE Office of Science's Oak Ridge Institute for Science and Education (ORISE) located in Oak Ridge, Tennessee.

4. IMPETUS (WHY NOW?):

Board approval is required at this time to allow the proper filing of the 501c(3) affiliated nonprofit, DRI-Tennessee, prior to the projected award date (estimated October 31, 2015) by DOE's Office of Science to award the contract to one of two bidders, the incumbent Oak Ridge Affiliated Universities and DRI. DRI-Tennessee must be in place by the award date in order to (a) initiate the transition/negotiation processes over the 45 days following the award date and (b) to effectively and efficiently assume the management on day one of the transition.

5. BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:

- The opportunity to lead and manage ORISE will provide unprecedented national visibility to DRI, NSHE and Nevada;
- The Work for Others (WFO) programs at ORISE offers opportunities for DRI, as well as for UNR, UNLV & another 115 affiliated universities across the nation, to provide research and service to DOE, other federal agencies and the nation;

- Opportunities for DRI to collaborate with partnered firms to enhance future proposal development opportunities as well as opportunities for enhanced public-private partnerships;
- Opportunity for faculty engagement through specific task orders or full time; and
- Financially advantageous for DRI through DRI-Tennessee contract.

6. POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:

- Board action to approve the affiliated nonprofit, DRI-Tennessee is required in advance of the decision date set by DOE however, there is no guarantee that DRI will be awarded the contract, and if the contract is not awarded and thus the need for DRI-Tennessee to manage ORISE will not be required.

7. ALTERNATIVE(S) TO WHAT IS BEING REQUESTED/RECOMMENDED:

None. If the affiliated nonprofit, DRI-Tennessee is not created in advance of the DOE decision date, DOE will not have the confidence in DRI's ability to meet the goals and processes provided in DRI's proposal and DRI will not be able to accept the contract, initiate the transition and manage the operations of ORISE on day one of the award.

8. COMPLIANCE WITH BOARD POLICY:

- ☒ Consistent With Current Board Policy: Title # 4 Chapter #10 Sections #10 (Procedures Manual)
- ☐ Amends Current Board Policy: Title # _____ Chapter # _____ Section # _____
- ☐ Amends Current Procedures & Guidelines Manual: Chapter # _____ Section # _____
- ☐ Other: _____
- ☐ Fiscal Impact: Yes _____ No ☒ Explain: _____

Report to the Nevada System of Higher Education Board of Regents

Request to Form Affiliated Nonprofit (501c3) DRI-Tennessee To Lead and Manage the Oak Ridge Institute for Science and Education (ORISE)

What is the Opportunity & Request?

In a competitive bid process, DRI has submitted a detailed three volume proposal to the Department of Energy Office of Science (DOE SC) for the opportunity to lead and manage its premier Oak Ridge Institute for Science and Education (ORISE), located in Oak Ridge, Tennessee, through an affiliated nonprofit, DRI-Tennessee. The contract offered by DOE SC intends to support key scientific initiatives that will develop the next generation of science, technology, engineering, and mathematics (STEM) professionals; promote quality DOE funded research through peer-review; operate the Radiation Emergency Assistance Center/Training Site (REAC/TS); provide information on the long-term health outcomes of current and former workers; and provide capabilities to independently assess environmental cleanup. Given DRI's 1959 Legislative mandate: *"To contribute more effectively to the security of the nation and to promote the general welfare of the State of Nevada and its citizens through the development of educational and scientific research, the Board of Regents may establish... the Desert Research Institute."* (1959 NRS 396.795, 396.7951), and considerable due diligence, DRI submitted a comprehensive proposal to assume the management of ORISE through an affiliated nonprofit, DRI-Tennessee. The proposed DRI-Tennessee will consist of a governing board of directors from Nevada and ultimately Tennessee and an executive director from DRI as well as a vast majority of employees from ORISE that will be under the organization structure of DRI-Tennessee. DRI has assembled an outstanding management team from DRI, leading corporations, and woman owned businesses that have decades of experience providing quality service and products to DOE. The strategic vision for ORISE that has been offered by DRI through the proposed DRI-Tennessee is to serve as the nexus of research and education for DOE, other federal agencies and the nation. The reason the opportunity exists is that contract options cited serious deficiencies with the incumbent performer over two five-year contract periods (2004 to present) and the lack of resolution over performance deficiencies during the latest 5-year contract by the incumbent management, Oak Ridge Associated Universities (ORAU). DOE Office of Science has made it clear that the bid process to potentially replace ORAU is serious and valid. DRI is confident that the team assembled to lead and manage ORISE not only addresses these key deficiencies but as mentioned above provides a clear and bold vision for ORISE.

What is ORISE?

ORISE is a U.S. Department of Energy Office of Science institute headquartered in Oak Ridge, Tennessee focusing on scientific initiatives to research health risks from

occupational hazards, assess environmental cleanup, respond to and advise on medical aspects of radiation emergencies, support national security and emergency preparedness, and educate the next generation of scientists. The five technical programs that operate at ORISE are:

- STEM Workforce Development,
- Scientific and Technical Resource Integration,
- Radiation Emergency Assistance Center/Training Site (REAC/TS)
- Human Subject Health and Protection Surveillance, and
- Independent Environmental Assessment and Verification.

ORISE maintains a campus near the Oak Ridge National Lab and has approximately 500-600 employees, as well as a half dozen unique laboratories and training centers in support of DOE.

Why Did DRI Compete for the Opportunity to Lead & Manage ORISE?

There are several key reasons that DRI has proposed to assume the leadership and management of ORISE:

1. The opportunity to lead and manage ORISE will provide unprecedented national visibility to DRI, NSHE and Nevada;
2. The Work for Others (WFO) programs at ORISE offers opportunities for DRI, as well as for UNR, UNLV & another 115 affiliated universities across the nation, to provide research and service to DOE, other federal agencies and the nation;
3. Given the effort to assemble a team both from DRI and from leading industries which have worked for DOE, there will be opportunities for DRI to collaborate with partnered firms to enhance future proposal development opportunities as well as opportunities for enhanced public-private partnerships beyond the ORISE opportunity;
4. There will be opportunities for faculty engagement through specific task orders or full time positions; and
5. The opportunity is financially advantageous for DRI through DRI-Tennessee.

DRI's proposed contract scope includes: a maximum 10 year (one 5-year and 5 one-year) contract period, cost plus award fee, and initial award of ~\$150 million per year based upon recent history with the potential to grow up to \$250 million per year under a total proposed contract value of approximately \$3.2 billion.

The potential impacts to DRI if the contract is awarded includes the following:

- Direct DRI increased research support of \$1-3 million per year;
- 100% of the general and administrative expenses (in lieu of ICR) will be used to support the operations of ORISE in Tennessee;
- Annual award fees are expected to be performance based and negotiated during the contracting process; and

- An impact to DRI's state funding formula of ~\$7.5 million per year based upon 5% of ~\$150 million initial award amount.

What is the Proposed Affiliated Nonprofit, DRI-Tennessee?

DRI submitted a comprehensive proposal to assume the management of ORISE through an affiliated nonprofit, DRI-Tennessee. The proposed DRI-Tennessee will consist of (a) governing board of directors from Nevada and ultimately Tennessee; (b) an executive director from DRI, Dr. Kimothy Smith; (c) and a vast majority of employees from ORISE that will be under the organization structure of DRI-Tennessee. **(See attachment A).** DRI has assembled an outstanding management team from DRI, leading corporations, and woman owned businesses that have decades of experience providing quality service and products to DOE. **(See attachments A and B).**

A Tennessee based 501c(3) DRI affiliate is the most competitively advantageous mechanism to accept the award and serves as the most effective and efficient structure to lead and manage ORISE because:

- it is a competitively advantageous structure required to contend against the incumbent nonprofit ORAU;
- it provides an umbrella under which contractually key personnel and partnering private business can operate harmoniously;
- it offers a local base in Oak Ridge, Tennessee that will allow for the most rapid transition for assuming the contract;
- it provides a segregation of responsibilities between DRI and DRI-Tennessee; and;
- it creates an appropriate interface with NSHE and DRI, consistent with the NSHE Handbook Title 4, Chapter 10, Section 10.

The President of the Board of Directors of DRI-Tennessee reports to the President of DRI. The Executive Director of DRI-Tennessee/ORISE Director is required to report both to the DOE Office of Science and the President of DRI through the governing board of DRI-Tennessee. The President of DRI is responsible for the activities of DRI-Tennessee. Title 4, Chapter 10, Section 10 of the NSHE Handbook generally governs financial accounting, including financial reports to the Board of Regents. The DRI President, DRI-Tennessee Board President, and the DRI-Tennessee Executive Director/ORISE Director will present annual reports on the operations of DRI-Tennessee to the Board of Regents. A senior administrator with financial expertise must attend all Board and Executive Committee meetings of the affiliated nonprofit.

The affiliated nonprofit must prepare an annual financial statement that is compliant with all state and federal laws as well as with the Board of Regents policy, including an unqualified opinion by an independent certified public accountant. This financial report will be provided to NSHE within 3.5 months of the end of the

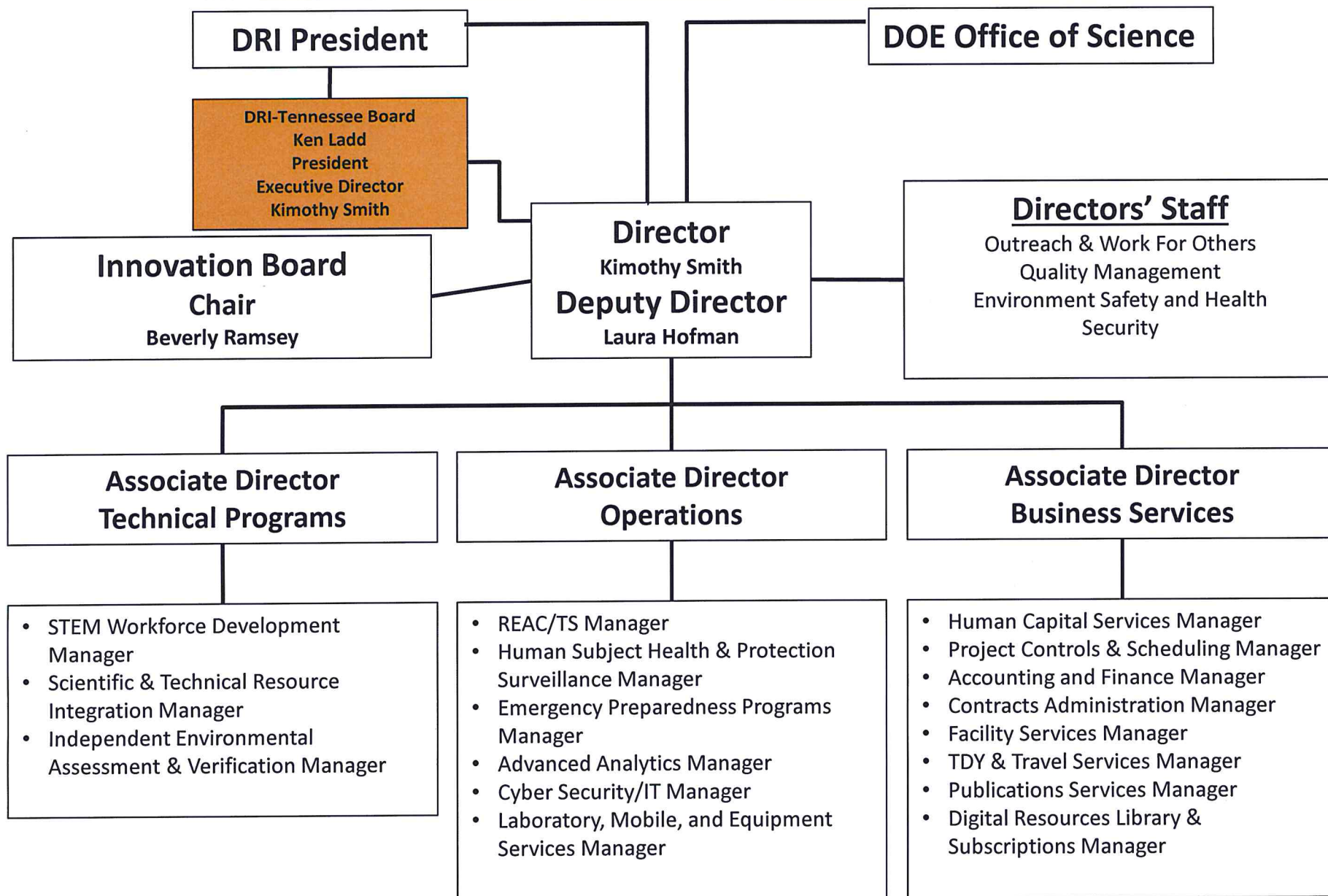
affiliated nonprofits financial year. Both NSHE and DRI rules would only be applicable to DRI-Tennessee to the extent contained in Section governing affiliated nonprofits **(see attachment C)**.

The proposed initial Board of Directors for DRI-Tennessee includes Mr. Kenneth Ladd (President), Mr. Bruce James (Secretary/Treasurer), and Dr. Robert Gagosian. All three bring significant leadership skills in leading and managing nonprofits and business operations. The proposed executive director of DRI-Tennessee will be Dr. Kimothy Smith who does not serve on the Board **(see attachment D)**.

What is the time frame for the ORISE contract?

The proposed decision date for the contract award is estimated to be October 31, 2015. If DRI is successful in receiving the award, DRI will need to have the affiliated nonprofit (DRI-Tennessee) established prior to this date. In addition, there is a 45 day contract negotiation and transition period from the award decision date, requiring DRI-Tennessee to be in place and ready to operate on day 1. The anticipated contract start date is January 1, 2016.

Attachment A: Organizational Chart for ORISE and DRI-Tennessee



Attachment B: Proposed Leadership Team

- Dr. Kimothy Smith (Research faculty, DRI) – Director
- Dr. Laura Hofman (President, Pearl Grace Group, Inc.) – Deputy Director
- Dr. Tom Baer (PhD, Nuclear Engineering, retired Captain USNR) – Associate Director Technical Programs
- Dr. Wayne Andrews (Nuclear Engineering & Radiation Effects, President, Risk Management Associates, LLC) – STEM Workforce Development Manager
- Dr. James Metcalf (Research faculty, DRI) Associate Director of Operations;
- Mr. Bruce Bowland (Gate 6 Solutions, Inc.) – Associate Director for Business Services
- Ms. Lydia Birk (Project Manager at SUMMIT Technical Resources, Inc.) – Outreach and Work for Others Manager
- Dr. Beverly Ramsey (Executive Director, DRI's Division of Earth & Ecosystems Sciences) is the proposed chair of the Innovation (advisory) board to DRI-Tennessee

October 7, 2015

Dr. Stephen Wells, President
Desert Research Institute
2215 Raggio Parkway
Reno, NV 89512

Dear President Wells:

You are reviewing the feasibility of creating a non-profit corporation which would provide management and operations services to Oakridge Institute for Science and Education (ORISE). Legal advice has been requested based upon the following information that you have provided to us. As this non-profit would operate primarily in Tennessee it should be incorporated under the laws of the State of Tennessee. It would be incorporated under the name, DRI-Tennessee. DRI-Tennessee would be affiliated with the Desert Research Institute (DRI) and responsible for a significant fraction of the on-site effort for the management and operations of ORISE. The opportunity offered by DoE contracting the management of ORISE and DRI's ability to secure that contract management would provide: (1) national visibility, (2) work for other agencies, departments as well as opportunities for affiliated universities (including UNR and UNLV), (3) opportunities to collaborate with partnered firms to enhance future proposal development opportunities, (4) opportunity for faculty engagement task for task or full-time, and (5) would be financially advantageous for DRI.

DRI-Tennessee would be a non-profit affiliated with NSHE and DRI upon meeting the criteria of NSHE Handbook, Title 4, Chapter 10, Section 10. A non-profit affiliated to an NSHE institution is required to follow NSHE Handbook, Title 4, Chapter 10, Section 10 ("Section 10"). Under that section, the DRI President is responsible for the activities of DRI-Tennessee. Section 10 generally governs financial accounting, including financial reports to the Board of Regents. A senior administrator with financial expertise must attend all board and executive board meetings of the affiliate.

Specifically, Section 10.B.1 requires that the affiliated non-profit prepare an annual financial statement. That statement must reflect compliance with all applicable state and federal laws and Board of Regents' policy and include an unqualified opinion by an independent certified public accountant. The statement must follow a common format established by the NSHE Chancellor's office. Section 10.B.5. The financial statement must be forwarded to the NSHE Chancellor's office within 3 and 1/2 months of the end of the non-profit's financial year end. Section 10.B.1.

Section 10 does not govern many issues. As a result, DRI-Tennessee would not be required to follow NSHE requirements not included in Section 10. For example, DRI-Tennessee

would not need to comply with the personnel rules governing DRI faculty and technologists contained in the NSHE Handbook, NSHE Procedures and Guidelines Manual, DRI Bylaws, Administrative Manual, and Technologists Manual. Stated another way, the DRI rules regarding termination of employment, bridge funding requirements, sabbaticals, and shared governance would not apply to the relationship between DRI-Tennessee and DRI-Tennessee employees. Rather, DRI-Tennessee would establish its own personnel rules applicable to the DRI-Tennessee employees. Similarly, Section 10 does not establish rules governing the purchase and sale of real property or purchasing except to the extent that these transactions need to be reported as discussed above.

Legal counsel recommends that upon approval by the Board of Regents of the non-profit affiliate, a contract between the Board of Regents of the Nevada System of Higher Education on behalf of the Desert Research Institute and DRI-Tennessee be prepared. This contract would describe the duties and responsibilities of the two entities, including clarifying the issues described in this letter.

Please let us know if you have any other questions.

Sincerely,



John Albrecht
General Counsel
Desert Research Institute

Brooke A. Nielsen



Vice-Chancellor for Legal Affairs
Nevada System of Higher Education

cc: Chair Rick Trachok
Chancellor Daniel J. Klaich

Attachment D

DRI-Tennessee Proposed Board of Directors Members

Kenneth Ladd, President and Director

Retired Executive Vice President and head of commercial banking for U.S. Bank

More than 35 years of banking experience

An active participant in the Las Vegas community. He holds Directors positions with agencies such as United Way Services, Inc., Sunrise Children's Foundation and Nevada Development Authority. He is past Chairman of the DRI Foundation, the Nevada Development Authority and the United Way

He has an MBA from the University of Utah

Bruce James, Secretary/Treasurer and Director

President and Chief Executive Officer for Nevada New-Tech, Inc.

An experienced business and government leader who founded and operated more than a dozen printing and publishing companies

Former US Government Printer. Former Chairman of the Nevada SAGE Commission. President of the Board of Trustees, Rochester Institute of Technology. Former DRI Foundation Trustee. Trustee for Sierra Nevada College

Dr. Robert Gagosian, Director

Former President and CEO of the Consortium for Ocean Leadership, President Emeritus

Served as President and Director of the Woods Hole Oceanographic Institution for over a decade

As a research scientist Gagosian studied organic substances produced by marine organisms and their transport and transformation as they disperse through the water column to the seafloor.

His research led to the importance of the atmosphere as a transport mechanism for land-derived organic material to the open ocean

He is the author and co-author of some 85 scientific papers and several technical reports

Ph.D from Columbia University in organic chemistry