

# ISTC/STCU JOINT PROJECTS PROCEDURES



## JOINT ISTC-STCU PROJECTS

The ISTC and STCU have developed a concept paper for approval by both Centers' Governing Boards, which established the arrangements by which the two Centers will implement "joint ISTC/STCU projects". These are projects involving participation scientists and institutes that are located in the territories of one or more Parties in both Centers. The concept paper is attached to this report and is submitted for approval by the STCU Governing Board.

The concept paper was approved with amendments by the ISTC Governing Board during their 35<sup>th</sup> Governing Board Meeting held on 27 October 2004 in Moscow, Russian Federation. The following excerpt is from the ISTC Governing Board documents summarizing the outcome of the ISTC Coordinating Committee (CC) discussions and Governing Board decision:

### 3 Dual Membership / Relationship with STCU (GB-35-105)

The CC discussed the Secretariat proposal to establish a flexible mechanism to allow for joint projects between institutes from the two Science Centers: ISTC and the Science and Technology Center in Ukraine (STCU). This proposal contains several principles that would allow for improved coordination between the two Centers, eliminating both the need for new dual membership in the ISTC and STCU as well as the current practice of separate and unlinked formal decision processes by the Governing Boards of both Centers.

The US proposed that the Governing Board confirm in writing that joint projects approved by the STCU Governing Board be considered ISTC projects to ensure tax-exemption and other legal benefits of the ISTC. The Russian Federation stressed the need for Host Government Concurrence before formal registration of joint projects, and requested that it be made clear that the respective Centers should effectively handle any problem arising during the course of such projects in its area of responsibility, such as customs clearance, etc. EU and Canada requested that the Administrative Agreement be submitted to the Board for approval.

The CC noted the main principles that were discussed in detail at the CEC meeting in Moscow, based on a paper presented by the Secretariat. This paper will be added (unchanged) to the GB documents as GB-35-105. Further, the Secretariat will follow the CC request that any Administrative Agreement between ISTC and STCU explicitly state that ISTC and STCU agree to register joint proposals including participation of Russian scientists only following receipt of Host Government Concurrence from the Russian Federation. The CC can make a recommendation to the Board when these issues are resolved in writing.

**The CC recommends the Governing Board approve the principles outlined in the ISTC – STCU paper on joint proposals, noting:**

- **Any joint ISTC – STCU proposal approved by the STCU Governing Board shall be considered an ISTC project in that any Party that provides Host Government Concurrence for the project is obligated to provide tax exemption and all rights and privileges afforded to project activity under the ISTC Agreement and Statute.**
- **The Administrative Agreement concluded between ISTC and STCU shall explicitly provide for registration of joint proposals including Russian scientists only following receipt of Host Government Concurrence from the Russian Federation.**
- **The Secretariat will forward the Administrative Agreement to the Governing Parties for its approval, possibly through written procedure.**

In addition, two meetings have been held between ISTC and STCU executive staff to coordinate the steps and possible modifications necessary to each Center's proposal processing procedures. The approach being taken at this time is that one Center will take the lead responsibility for handling joint project proposals, notifying the other Center as to the progress of the proposal and next steps if the proposal is approved. To accommodate the ISTC Governing Board decision, steps will be taken to ensure that all necessary Host Governmental Concurrences are received before the joint project proposal is given to the Secretariats for dissemination to the Funding Parties. Other procedural steps, including any necessary modifications to the Model Project Agreements, will be discussed and coordinated between the two Centers in working staff meetings to be held in the near future. All of these procedural issues will be codified in an Administrative Agreement between the ISTC and STCU, the text of which will be presented to the ISTC and STCU Governing Boards for approval.

For this meeting, the STCU Secretariat recommends to its Parties that the STCU Governing Board approve the ISTC-STCU concept paper with the same amendments as approved by the ISTC Governing Board. Namely, that the STCU Governing Board approves the principles outlined in the ISTC-STCU paper on joint proposals provided that:

- (1) Any joint ISTC-STCU proposal approved by the ISTC Governing Board shall be considered an STCU project in that any Party that provides Host Government Concurrence for the project is obligated to provide tax exemption and all rights and privileges afforded to a project activity under the STCU Agreement and Statute
- (2) The Administrative Agreement concluded between ISTC and STCU shall explicitly provide for registration of joint proposals including Russian scientists only following receipt of Host Government Concurrence from the Russian Federation.
- (3) The STCU Secretariat, upon approval by its Governing Board, will alert the ISTC of this approval and will forward the Administrative Agreement for approval to those STCU Governing Parties that are not ISTC Governing Parties, while recommending to the common STCU-ISTC Governing Parties that they provide their approval simultaneously to both Centers.

**ISTC/STCU JOINT PROJECTS :  
ACCOMPLISHING GREATER FLEXIBILITY & OPPORTUNITIES  
FOR CIS RECIPIENT INSTITUTES**

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**Background**

The Parties and the Secretariats of the two Science Centers ISTC and STCU have been made aware of difficulties in implementing so-called “joint projects”, i.e. projects involving the participation of recipient institutes located in countries that are not members of the same Science Centers.

One Center cannot manage a joint project alone, as the legal framework of both Establishing Agreements do not allow for access and monitoring rights to one Center within the territories of a countries that are party only to the other Center.

There are actually two possibilities for conducting projects that cross ISTC and STCU membership. If the participating institutes were in countries that were members of both Centers (i.e. “dual membership”) then the participating institutes could design a single project implemented through one or the other Center. Up until now, only the Republic of Georgia has dual Center membership. At various times, other countries -- Moldova, Tajikistan, and Azerbaijan -- have applied or shown interest in being dual members as well. But currently there is no consensus within either the ISTC or STCU Governing Boards to approve any more dual memberships.

The other possibility is for the participating institutes to design two separate projects, with two full-fledged approval procedures (one ISTC, one STCU), joined by a common research work plan, but with participating scientists/institutes in ISTC member states listed on the ISTC project budget, and similarly for the participants in the STCU member states.

There have been, to date, only a few joint projects between the two Science Centers, primarily projects involving Russian and Ukrainian scientists.

In the course of doing so, the major identified shortcomings have been

1. the non-identical composition of funding Parties,
2. the timing of the Centers’ Board approvals, and
3. a divided project management, both on the part of the Centers and of the recipient institutes.

The perceived lesser drawbacks relate to the:

1. duplication of efforts in proposal review and decision when identical proposals are submitted to both Centers;
2. confusion for applicants with non-identical project proposals and processing procedures;
3. dissatisfaction by CIS national Parties.

Against this background, the ISTC Governing Board instructed its Executive Director to evaluate ways to better cooperate with the STCU on joint projects. Pursuant to the instruction of ISTC’s 33<sup>rd</sup> Governing Board (ISTC document GB-33-201, Pt. 6), the present document analyses the modalities of cooperation between the ISTC and STCU with a view to overcoming perceived difficulties.

**Proposals for improved ISTC/STCU cooperation on joint projects**

Recently, consultations between the executive directors and financial and contract/procurement offices of both Centers (including Information Technology personnel) concluded that greater flexibility for projects involving all possible combinations of location of recipients can be created through the clarification of a few basic issues that presently limit the implementation of joint projects, while retaining most of the Centers’ existing working schemes. The two Secretariats take the view that such a clarification, together with a more effective

cooperative approach toward joint projects, can help to obviate both the necessity of applying for dual Center membership as well as for the Centers' Governing Boards having to review duplicative project proposals.

An assumption made during these discussions is that Japan (a party to the ISTC but not to the STCU) would not be interested in committing funds to any joint ISTC-STCU projects. <sup>(1)</sup>

Another assumption made in this paper is that the Republic of Georgia (a Party to both the ISTC and STCU) will choose one Center to work through on joint projects involving Georgian institutes.

The ISTC and STCU Secretariats propose the following principles for joint projects:

- A. Any project proposal may include the participation of any recipient institute from the Parties of either of the two Science Centers. Such project proposals will be designated by both Centers as "joint project proposals".
- B. Both Centers shall agree that one Recipient Institute and one Center shall be designated as lead Institute responsible as lead Center for the purposes of clarifying the primary elements responsible for the management of each joint project. Both Centers shall agree upon the guidelines to be used in designating the lead Institute and lead Center.
- C. Each joint project proposal shall obtain the concurrence of all participating host governments before either Center submits it to their respective funding Parties. To the extent possible, both Secretariats shall keep each other informed as to the status of a joint project proposal's host government concurrence.
- D. Should the lead Science Center's Governing Board approve a project proposal involving the support of recipient institutes located in member countries of the other Center, that one Governing Board decision will constitute *de facto* and *de jure* approval by both Centers and their Governing Boards. It is recommended that a 30-day "grace period" be foreseen for "negative concurrence" by the Parties of the Governing Board of the supporting Center.
- E. As a rule, no project expense will require the transfer of project funds between the two Centers. Each Center will take responsibility for those project fund disbursements and project-related procurements (following the work plan of the signed joint project agreement) that involve those recipient scientists and institutes located with their respective Party membership and those Parties committing funds to a joint project will sub-divide that commitment between the two Centers according to each Center's portion of the approved joint project work plan and budget.
- F. The two Science Centers will collaboratively develop detailed modalities in an "Administrative Agreement" that is further explained below and that will likewise be submitted to the Governing Parties for their information.

### **The elements for an "Administrative Agreement"**

This "administrative agreement" will commit the two Centers to the following cooperative elements, which will allow joint ISTC-STCU projects to be implemented in a legal, efficient and transparent manner:

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<sup>1</sup> Should the need arise, the Government of Japan and the other ISTC/STCU Parties should address the issue of Japan's participation in future joint ISTC-STCU projects, as a consensus agreement on Japan's involvement in joint projects would require a modification to the procedures outlined in this paper. Japan has a special status within the STCU, and has financed some STCU projects drawing on a one-time transfer of its funds to the STCU (based on specific approval from the STCU Governing Board). But Japan agreed to limit its participation and rights within the STCU in an official statement to the STCU Governing Board (November 1998). In particular, Japan committed to forgo any rights to in foreground intellectual property created in a Japanese-funded STCU project. In any case, to date the level of Japanese-financed activity in the STCU has been very low.

- A. The two Centers will review their respective project proposal forms, with a view toward agreeing upon a common project proposal form that would be completed by the leading recipient institute and that would elaborate the respective work plans and budgets for each participating recipient institutes under their respective Center.
- B. The Centers will develop an additional article for use in project agreements for these joint projects.
- C. If the Board of either Center approves a project, and any Funding Party authorizes the commitment of funds to it, then the Secretariat of the leading Center will take responsibility for the project and will be a signatory of the project agreement.
- D. Based on the allocation of responsibilities laid-out in the joint project proposal, the leading Center will entrust the supporting Center with authority concerning subordinate recipient institute(s) in the territories of the supporting Center (e.g. in the conduct of project monitoring, the performance of project auditing, the process for procurement of project equipment and supplies, the payment of grants, et cetera).
- E. Each Center will be responsible for disbursing the share of the joint project funds to the recipients at the participating institutes located within that Centers' Party membership, following the funding commitments of the Financing Parties, the terms of the signed joint project agreement, and consistent with the financial regulations and systems of the respective Center from which said funds will be disbursed.
- F. Both Centers will agree to:
  1. affirm that they will act with fairness toward one another as well as in good faith in the conduct of these "joint" projects including, but not limited to
    - a. their respective financial, administrative, procurement, and auditing and monitoring practices and
    - b. their non-identical project forms plus project guidance materials.
  2. recognize the valuable contribution of the Japanese Party to the STCU and the 3 November 1998 policy statement of the Japanese Ambassador to Ukraine that Japan will not seek an interest in the foreground intellectual property created in SCTU projects; notwithstanding, they promise to exercise every possible courtesy to afford Japan, on a practical level, parity in information sharing and monitoring as regards these joint projects.
  3. support affording to one another full transparency in the financial auditing of these joint projects.
  4. accept an allocation of IPR created in the course of the performance of these joint projects consistent with their respective Statutes including, but not limited to, their respective provisions for the allocation non-exclusive license rights for the non-commercial uses of joint project IPR.
  5. treat as strictly confidential all communications, intellectual property information, and documents exchanged or generated in the course of these joint projects, whereby the disclosure of joint project information will only be made after the receipt of prior written approval from the other Center.
  6. agree to cooperate closely to resolve any questions or disputes in the execution of the project. Should the Centers not be able to resolve a project-related dispute, such disputes will be submitted to a special committee comprised of five randomly-chosen members of their Governing Boards (i.e. two chosen from each and the chair of one of the Governing Boards being selected by lot) any disagreements including, for example, those arising out of the obligation to "respect" the laws of the nations within which joint projects are conducted and accept those decisions as being final as well as legally binding.

### **Legal Considerations**

Once the Science Centers Governing Boards agree to the initiation of the creation of a mechanism for joint ISTC/STCU projects, then the ISTC/STCU's Executive Director and their Secretariats will be empowered to prepare and implement the Administrative Agreement.

The authority for entering into such agreements comes from Article III (iii) of the *Agreement Establishing an International Science and Technology Center* and Article III (iv) of the *Agreement to Establish a Science and Technology Center in Ukraine*. Both of these articles empower the ISTC and STCU to "establish appropriate forms of cooperation with government, intergovernmental organizations, non-governmental organizations (which shall include...the private sector), and programs...".

### **Next steps to the realization of these joint project concepts**

- A. Discussion and approval of the above approach by the two Centers' Governing Boards.
- B. Preparation by the ISTC and STCU secretariats of an "Administrative Agreement" and its submission to both Governing Boards, for information.
- C. Dissemination of explanatory information to recipient institutes about these new modalities and the opportunities that they represent.
- D. Regular reporting to the Governing Boards and other Parties on the implementation of joint project activities.

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Moscow, Kiev, 15 September 2004