



POLICY FLASH
2006-17

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DATE: February 24, 2006
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, ME-61
Office of Procurement and Assistance Management
SUBJECT: **How EPACT 2005 Affects the Eligibility Requirements
In 10 CFR 600, Subpart F**

SUMMARY: This Policy Flash provides additional guidance relating to eligibility determinations required by Section 2306 of the Energy Policy Act (EPACT) of 1992, as implemented in 10 CFR 600, Subpart F, and supplemented by the guidance in Financial Assistance Letter (FAL) 2005-03.

BACKGROUND

Section 2306 of EPACT 1992 establishes eligibility requirements for companies that receive financial assistance under titles XX through XXIII of that Act. The terms of Section 2306 are limited to those activities specifically authorized under titles XX through XXIII. These titles cover a myriad of programs undertaken by DOE in the various energy-related activities of EE, FE, NE, SC, EM and RW.

In August 2005, Congress passed the Energy Policy Act (EPACT) of 2005, which established a new set of priorities for DOE to undertake. In establishing these new priorities, EPACT 2005 did not include a specific sunset provision for EPACT 1992, nor did it include a similar eligibility requirement except for certain specific programs (e.g., Ultra Deepwater Petroleum Reserves program). In fact, Section 1005 of EPACT 2005 requires the Secretary to carry our research,

development, demonstration, and commercial application projects authorized by the Act in accordance with the provisions of a number of Acts that were identified in the section. Energy Policy Act of 1992 was included in the list of Acts identified.

However, EPACT 2005 does not directly correspond to EPACT 1992. EPACT 2005 contains only 18 titles and has no titles XX through XXXIII.

GUIDANCE

If a specific activity is authorized under EPACT 2005, the eligibility requirements in 10 CFR 600, Subpart F, do not apply. However, if previous years funds are used for an activity covered under titles XX through XXIII of EPACT 1992, the eligibility requirements in 10 CFR 600, Subpart F, as supplemented by FAL 2005-03, apply. Although unlikely, if a current DOE program is not authorized under the 2005 EPACT legislation and relies solely on the 1992 legislation for authorization, the eligibility requirements in 10 CFR 600, Subpart F, apply.

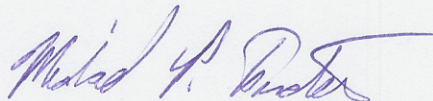
If a contracting officer does not know if a program has been authorized under EPACT 2005, he/she should check with the program official and counsel. If the activities are included in both Acts, the contracting officer may conclude that the activity is now being undertaken under the new EPACT 2005 authority and not under the old titles.

10 CFR 600, Subpart F, and FAL 2005-03 have not been canceled, but will rarely apply to financial assistance undertaken after August 2005. The Office of Procurement and Assistance Policy plans to delete the EPACT eligibility requirements contained in the current DOE announcement template in the near future, since they would apply rarely to new programs and may be inserted inadvertently if they remain in the template. Nevertheless, if the contracting officer determines that the Section 2306 eligibility requirements apply to a specific program, he/she must include the requirement in the program announcement and make the a determination of eligibility prior to making an award.

The guidance in this Policy Flash will be incorporated into the next revision of the Financial Assistance Guide.

Questions

Questions concerning this guidance should be directed to Ms. Trudy Wood at (202) 287-1336 or to trudy.wood@hq.doe.gov.



Michael P. Fischetti, Acting Director
Office of Procurement and
Assistance Policy