



**Department of Energy
Acquisition Regulation and Financial Assistance Regulation**

**No. AL-2006-03
FAL-2006-02
Date 12/02/05**

ACQUISITION LETTER/ FINANCIAL ASSISTANCE LETTER

This joint Acquisition Letter/Financial Assistance Letter is issued under the authority of the DOE and NNSA Procurement Executives.

Subject: Competition and Merit Review Requirements of Section 989 of the Energy Policy Act of 2005 (EPAct 05)

References: Pub. L. 109-58 Energy Policy Act of 2005
FAR Part 6 Competition Requirements
FAR 35.017 Federally Funded Research and Development Centers (FFRDC)
DEAR 970.3501-1 Sponsoring Agreements
DEAR 970.5235-1 FFRDC Sponsoring Agreements
10 CFR 600.6 Eligibility
10 CFR 600.13 Merit Review
DOE O 412.1 Work Authorization System
Circular A-110 Uniform Administrative Requirements for Grants and Agreements
With Institutions of Higher Education, Hospitals, and Other Non-Profit
Organizations

When is this Acquisition Letter (AL)/Financial Assistance Letter (FAL) Effective?

This joint AL/FAL is effective immediately.

When does this AL/FAL Expire?

This AL/FAL remains in effect until superceded or cancelled. This AL/FAL cancels FAL 97-05.

Who is the Point of Contact?

Contact Jacqueline Kniskern of the Office of Procurement and Assistance Policy by telephone at 202-287-1342 or by email at Jacqueline.kniskern@hq.doe.gov.

Visit the website at <http://professionals.pr.doe.gov> for information on Acquisition Letters, Financial Assistance Letters, and other policy issues.

AL 2006-03 /FAL 2006-02 (12/02/05)

What is the Purpose of this AL/FAL?

The purpose of this AL/FAL is to provide implementing guidance on the competition and merit review requirements of Section 989 of EAct 05.

What is the Background?

Section 989, Merit Review of Proposals, provides general provisions covering the award of funds for programs authorized by EAct 05. Awards of funds for programs authorized under EAct, including research, development, demonstration and commercial applications, shall be accomplished competitively to the maximum extent practicable. The regulations (Federal Acquisition Regulations (FAR), Department of Energy Acquisition Regulations (DEAR), and Financial Assistance Rules), DOE Directives (DOE O 412.1A) and other DOE guidance (ALs, FALs, guides, etc) provide for the types of competitive processes applicable to procurement and financial assistance competitions, as well as guidance for those circumstances in which the use of competitive processes are deemed inappropriate.

What Guidance is Provided in this AL/FAL?

Competitive awards under EAct 05 shall involve competitions open to all qualified entities within one or more of the following categories of organizations:

- (1) Institutions of higher education.
- (2) National Laboratories.
- (3) Nonprofit and for-profit private entities.
- (4) State and local governments.
- (5) Consortia of entities described in paragraphs (1) through (4).

Any award of funds for programs authorized under EAct 05 or an amendment made by this Act, whether competitive or non-competitive, shall be made only after an impartial review of the scientific and technical merits of the proposal(s)/applications(s).

a) For procurements conducted under FAR, such review shall be accomplished by complying with the applicable FAR regulation, including Parts 8, 12, and 15.

b) For financial assistance and technology investment agreements, such review should be accomplished by complying with the DOE Merit Review Guide for Financial Assistance and Unsolicited Proposals and the applicable regulations on financial assistance and other transactions authority, including 10 CFR Part 600.

For purposes of this AL/FAL, National Laboratories are those defined by Section 2 of EAct 05 as any of the following laboratories:

- (A) Ames Laboratory.
- (B) Argonne National Laboratory.
- (C) Brookhaven National Laboratory.

- (D) Fermi National Accelerator Laboratory.
- (E) Idaho National Laboratory.
- (F) Lawrence Berkeley National Laboratory.
- (G) Lawrence Livermore National Laboratory.
- (H) Los Alamos National Laboratory.
- (I) National Energy Technology Laboratory.
- (J) National Renewable Energy Laboratory.
- (K) Oak Ridge National Laboratory.
- (L) Pacific Northwest National Laboratory.
- (M) Princeton Plasma Physics Laboratory.
- (N) Sandia National Laboratories.
- (O) Savannah River National Laboratory.
- (P) Stanford Linear Accelerator Center.
- (Q) Thomas Jefferson National Accelerator Facility.

Section 989 provides authority for DOE Contracting Officers to permit the National Laboratories, which are otherwise precluded from responding to a Federal Request for Proposal (RFP) (FAR 37.017-1) to submit a proposal in response to an RFP. Section 989 also provides authority for DOE to include the National Laboratories as eligible recipients under Financial Assistance Funding Opportunity Announcements (FOA). As such, Program Officials need to decide whether a particular opportunity authorized under EPOA is appropriate for participation by the National Laboratories and discuss the issue with the cognizant Contracting Officer. The RFP and the FOA must indicate whether or not National Laboratories are eligible to compete.

Nothing herein obviates the requirement for a contractor operating a national laboratory to obtain DOE approval prior to responding to an RFP/FOA which would require the use of DOE facilities in performance of the statement of work. All RFPs/FOAs that allow the National Laboratories to compete shall be submitted to the Office of Contract Management (MA-62) for DOE, or the Office of Acquisition and Supply Management (NA-63) for NNSA, for review, unless such review is waived by the cognizant office.