

DEPARTMENT OF ENERGY

# GUIDE TO FINANCIAL ASSISTANCE

*A GUIDE TO THE AWARD AND ADMINISTRATION  
OF FINANCIAL ASSISTANCE*



OFFICE OF PROCUREMENT AND ASSISTANCE POLICY  
OFFICE OF PROCUREMENT AND ASSISTANCE MANAGEMENT

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# THE DOE GUIDE TO FINANCIAL ASSISTANCE

## INTRODUCTION

The Guide to Financial Assistance is a reference document that provides a compilation of non-regulatory information and guidance related to the implementation of existing statutory and regulatory requirements. Regulatory requirements are contained in the DOE Financial Assistance Rules, [10 CFR Part 600](#) and applicable program rules. Each year DOE obligates nearly \$2 billion on financial assistance actions in the form of grants and cooperative agreements to states, local and tribal governments, universities, non-profit organizations, for-profit organizations, and individuals.

This guidance is intended to help DOE staff carry out its financial assistance activities. Information contained herein is intended to be consistent with the regulatory guidance provided in the DOE Financial Assistance Rules. In the event of inconsistencies between the information provided in this Guide and provisions of the DOE Financial Assistance Rules, the rule controls. Any apparent inconsistencies between this guide and the DOE Financial Assistance Rules should be reported to the Office of Procurement and Assistance Policy.

The DOE Guide to Financial Assistance will be issued and maintained by the Office of Procurement and Assistance Policy, in coordination with the Office of Acquisition and Supply Management, National Nuclear Security Administration (NNSA), and will be amended to add material or to revise existing material as necessary. Questions regarding specific topics in the Guide and suggested topics may be submitted to the Office of Procurement and Assistance Policy.

## CHAPTER 1 – BASIC INFORMATION

### 1.1 DOE as a Financial Assistance Issuing Organization

#### 1.1.1 Legislative Authority

The Federal Grant and Cooperative Agreement Act (FGCA) of 1977 (31 U.S.C. 6301-08) establishes criteria for determining whether a transaction is financial assistance. A financial assistance instrument is used when the principal purpose of the transaction is the transfer of money or property to accomplish a public purpose of support or stimulation as authorized by Federal statute. The Act also establishes the basis for determining whether to use a grant or a cooperative agreement.

Other statutes, such as the Energy Policy Acts of 1992 and 2005 (EPAct), also provide authority for DOE to enter into financial assistance agreements. Generally, these statutes will identify the purpose of the program, the type of financial assistance to be provided, eligible activities to be funded, eligible recipients, how funds will be distributed, and any special administrative requirements pertinent to the program such as cost sharing.

#### 1.1.2 Program Rules

Statutes governing a number of DOE programs stipulate that the Secretary is authorized or required to issue regulations to carry out the purposes of the statutes and to provide for their orderly administration. These regulations are usually developed by the organization responsible for the implementation and administration of the program statute, with the assistance of the Office of General Counsel and the review and comment of appropriate DOE offices. Programmatic regulations provide more detailed guidance about how a particular program operates. Examples of program rules within DOE are the State Energy Conservation Program at [10 CFR Part 420](#), the Weatherization Program at [10 CFR Part 440](#), and the Office of Science Financial Assistance Program at [10 CFR Part 605](#).

Not all program offices issue program rules, i.e., regulations. For example, Fossil Energy in operating the Clean Coal Program issued internal guidance, only since the authorizing statute did not require implementing regulations and provided sufficient detail regarding program requirements.

#### 1.1.3 Financial Assistance Rules

DOE has regulations which provide the administrative requirements and operational rules for carrying out financial assistance award and administration. The DOE Financial Assistance Rules, [10 CFR Part 600](#), implement the FGCA and establish uniform policies and procedures for the award and administration of DOE financial assistance. Incorporated into the regulations are the Government-wide administrative requirements that apply to financial assistance agreements. These requirements stem from certain Office of Management and Budget (OMB) Circulars. To the extent the coverage of these OMB Circulars applies to

recipients, they have been incorporated into the DOE Financial Assistance Rules either in full text or by reference. The OMB Circulars incorporated into the regulations are:

[OMB Circular A-110](#), Uniform Administrative Requirements for Grants and Cooperative Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations,

[OMB Circular A-102](#), Grants and Cooperative Agreements with State and Local Governments,

[OMB Circular A-133](#), Audits of States, Local Governments and Non-Profit Organizations (the Single Audit Act), and the circulars for cost principles,

[OMB Circular A-21](#), Cost Principles for Educational Institutions,

[OMB Circular A-87](#), Cost Principles for State, Local and Indian Tribal Governments, and

[OMB Circular A-122](#), Cost Principles for Non-Profits.

#### 1.1.4. Internal Guidance

In addition to the above statutes and regulations, DOE periodically issues guidance to Contracting Officers by way of Financial Assistance Letters, policy flashes and this guide.

## **1.2 Functions and Responsibilities of Federal Staff**

### 1.2.1 Senior Procurement Executive

DOE has designated two Senior Procurement Executives; one for non-NNSA activities and one for NNSA activities at the Department. The Senior Procurement Executive is responsible for the overall quality and effectiveness of the financial assistance function within DOE. These functions include:

- Publishing regulations and procedural guidance;
- Assuring an efficient and effective financial assistance process;
- Developing financial assistance training;
- Providing advice and guidance regarding financial assistance policies and procedures;
- Approving or denying requests for class deviations; and
- Authorizing assistance actions that exceed the delegated authority of heads of contracting activities.

### 1.2.2 Head of Contracting Activity

The head of the contracting activity is responsible for:

- overseeing the financial assistance function within that activity and ensuring that agency policies and procedures are implemented;
- establishing review and approval levels for financial assistance actions;
- reviewing requests for deviation; and
- appointing Contracting Officers.

### 1.2.3 Contracting Officer

The following activities are the responsibility of the Contracting Officer or a designated representative. Contracting Officers should consult and coordinate with appropriate officials such as program staff, legal counsel, servicing finance officers and the Inspector General, in carrying out these activities. Within the limits of delegated authority, a duly appointed Contracting Officer may:

- Execute, administer and amend financial assistance instruments;
- Determine the appropriate type of financial assistance instrument;
- Develop and post funding opportunity announcements;
- Receive and review recipients' requests to either incur costs or undertake activities which require DOE prior approval, consulting with program staff as necessary;
- Administer financial assistance award instruments in such a way as to safeguard the funds and the interests of the Federal Government, ensure that all significant actions are fully documented, and assist program organizations in ensuring the most effective use of program funds for financially assisted activities;
- Serve as focal point for dissemination and interpretation of financial assistance policies and procedures;
- Perform budget review and cost analysis (if needed), and related reviews, such as adequacy of an applicant's accounting system, prior to award of financial assistance instruments;
- Negotiate, as necessary, the financial and business arrangements of financial assistance instruments, including cost share and program income;
- Ensure that recipients comply with all terms and conditions of the award;
- Review and approve or disapprove requests for payment, if cost reimbursable;
- Review financial reports



- Maintain the official financial assistance files and ensure that they contain all pertinent materials, records, and documentation;
- Arrange for pre-award and post-award audits, as appropriate; review annual audits (e.g. A-133 audits; and resolve audit findings on DOE awards; and
- Take actions required to close out financial assistance instruments.

#### 1.2.4 Program Manager

The program manager is an official of a program office who has been delegated responsibility for implementation and administration of a specific program which may include one or more projects. This may include oversight of the development of program regulations and/or program announcements, supervision of the evaluation of applications/plans, and development of recommendations for ranking and selection. The program manager may also delegate some or all of his or her responsibility for overseeing or approving specific award and administration issues within a program to a technical project officer either within Headquarters or a field activity.

#### 1.2.5 Project Officer

The project officer is an individual designated by the program manager and whose assigned responsibilities include developing the programmatic aspects of a proposed announcement, participating in the technical review and evaluation of applications, participating in the development of recommendations for selection, and monitoring the programmatic aspects of project performance.

### **1.3 Catalog of Federal Domestic Assistance (CFDA) (4/08)**

The [CFDA](#) is a Government-wide compendium of Federal programs, projects, services, and activities that provide assistance or benefits to a variety of recipients. The CFDA summarizes financial and nonfinancial assistance programs administered by departments and agencies of the Federal Government. The primary purposes of the catalog are to help users identify programs which meet specific objectives of the potential applicant, to provide general information on Federal assistance programs, and to improve coordination and communication between Federal, State and local governments.

The CFDA provides the user with access to programs administered by Federal departments and agencies in a single publication. Program information is cross referenced by functional classification (Functional Index), subject (Subject Index), applicant (Applicant Index), deadline(s) for program application submission (Deadlines Index), and authorizing legislation (Authorization Index). These are valuable resource tools that, if used carefully, can make it easier to identify specific areas of program interest more efficiently.

Other sections provide users with information on programs added and deleted since the last revision, a crosswalk of program numbers and title changes, regional and local offices, intergovernmental review requirements, definitions of the types of assistance under which programs are administered, proposal writing, grant application procedures, and additional sources of information on Federal programs and services.

Programs selected for inclusion in the Federal assistance data base are defined as any function of a Federal agency that provides assistance or benefits for a State or States, territorial possession, county, city, other political subdivision, grouping, or instrumentality thereof; any domestic profit or nonprofit corporation, institution, or individual, other than an agency of the Federal government.

A "Federal domestic assistance program" may in practice be called a program, an activity, a service, a project, a process, or some other name, regardless of whether it is identified as a separate program by statute or regulation. It will be identified in terms of its legal authority, administering office, funding, purpose, benefits, and beneficiaries.

"Assistance" or "benefits" refers to the transfer of money, property, services, or anything of value, the principal purpose of which is to accomplish a public purpose of support or stimulation authorized by Federal statute. Assistance includes, but is not limited to grants, loans, loan guarantees, scholarships, mortgage loans, insurance, and other types of financial assistance, including cooperative agreements; property, technical assistance, counseling, statistical, and other expert information; and service activities of regulatory agencies. It does not include the provision of conventional public information services.

Each entry in the CFDA contains the following list of information:

- (1) Authorization
- (2) Objectives
- (3) Types Of Assistance
- (4) Uses And Use Restrictions
- (5) Eligibility Requirements
- (6) Application And Award Process
- (7) Assistance Considerations
- (8) Post Assistance Requirements
- (9) Financial Information
- (10) Program Accomplishments
- (11) Regulations, Guidelines, And Literature
- (12) Information Contacts
- (13) Related Programs
- (14) Examples Of Funded Projects
- (15) Criteria For Selecting Proposals

Responsibility for coordinating CFDA entries for DOE is assigned to the DOE Office of Contract Management, Information Management Systems Division, MA-623, Office of Procurement and Assistance Management.

## **1.4 Financial Assistance Career Development Program**

A Financial Assistance Career Development Program has been established at DOE in conjunction with the Acquisition Career Development Program. Information on the program can be found in [DOE O 361.1A](#) “Acquisition Career Development Program”.

## **1.5 Other Transaction Authority**

Section 1007 of the Energy Policy Act of 2005 gives the Secretary of Energy authority to enter into transactions (other than already existing statutorily defined instruments - contracts, cooperative agreements, and grants), subject to the same terms and conditions as those given to the Secretary of Defense under 10 U.S.C. §2371. The purposes of this authority are to reduce barriers that prevent some for-profit firms from participating in DOE’s research, development, and demonstration (RD&D) programs and broaden the technology base available to meet DOE mission requirements. A Technology Investment Agreement (TIA) is a special type of assistance instrument used to increase the involvement of commercial firms in the Department’s RD&D programs. A TIA may be either a type of cooperative agreement or a type of assistance transaction other than a cooperative agreement, depending on the intellectual property provisions.

On May 9, 2006, DOE published a final rule that establishes TIAs, guidance and procedures for their use, and describes how to craft the award instrument. Contracting Officers should follow the guidance in the final rule, as supplemented by FAL 2006-03, when considering the award of a TIA.

## **1.6 National Policy Requirements (4/08)**

A national policy requirement is a requirement that is prescribed by a statute, Executive order, policy guidance issued by the Executive Office of the President, or regulation that specifically refers to grants, cooperative agreements, or financial assistance in general. The requirement must also be either cross-cutting more than one agency’s awards or agency-wide, not program specific.

Applicants and recipients are required to comply with these requirements. Submission of an application provides an assurance that the applicant/recipient will comply with the requirements. Many of these public policies require flow down provisions to subrecipients and contractors.

The following subchapters provide general information on the more common public policy assurances. A complete list can be found at [http://management.energy.gov/business\\_doe/1374.htm](http://management.energy.gov/business_doe/1374.htm)

### **1.6.1 Non-Discrimination Statutes**

A number of statutes bar recipients of Federal financial assistance from excluding persons,

because of their race, sex, color, disability, age, or national origin, from participation in Federally supported activities. These include: Title VI of the Civil Rights Act of 1964 (barring discrimination on grounds of race, color, or national origin); Section 504 of the Rehabilitation Act (barring discrimination against individuals with disabilities); and the Age Discrimination Act. Title IX of the Educational Amendments of 1972 bars sex discrimination in Federally assisted education programs or activities. In addition to statutory prohibitions, Executive Order (E.O.) 11246 bars various types of discriminatory employment practices under grants for construction. The following sections discuss the application of each of these Acts and E.O. 11246.

#### (1) Civil Rights Act of 1964

Section 602 of the Civil Rights Act of 1964 ([42 USC § 2000d et seq.](#)) provides that no person in the U.S. shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance. Section 602 requires that each Government agency (empowered to extend such financial assistance) issue rules or regulations implementing Title VI of the Act with respect to such programs or activities administered by the agency.

#### (2) Rehabilitation Act

Section 504 of the Rehabilitation Act of 1973, as amended ([29 USC § 794](#)), provides that “no otherwise qualified individual with a disability in the United States...shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance....”

#### (3) Title IX - Sex Discrimination

Subject to certain exceptions regarding admission policies at certain religious and military organizations, Title IX of the Education Amendments of 1972 (20 USC §§1681-1686) prohibits the exclusion of persons on the basis of sex from any education program or activity receiving Federal financial assistance. All DOE recipients must comply with Title IX.

#### (4) Age Discrimination Act

The Age Discrimination Act of 1975, as amended ([42 USC §6101 et seq.](#)), provides that pursuant to regulations issued by the Department of Health and Human Services “no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.”

#### (5) Equal Employment Opportunity under E.O. 11246

E.O. 11246, as amended, requires contractors and subcontractors performing Federally assisted construction projects to provide equal opportunity, without regard to race, color,

religion, sex or national origin, to persons employed or seeking employment with them. This E.O. may apply to some DOE grants for construction depending on the authorizing statute for the project.

(6) The Architectural Barriers Act of 1968 (42 U.S.C. § 4151 et seq.)

Recipients must ensure that all persons have ready access to, and use, of buildings regardless of disability in the design, construction or alteration of buildings and facilities financed with Federal funds.

### 1.6.2 Environmental Policies

Environmental policy requires the recipient to protect the environment and human interaction with land, air, water or contact with certain substances.

(1) The Clean Air Act (42 U.S.C. § 7401, et. seq.) and Clean Water Act (33 U.S.C. § 1251, et. seq.), as implemented by Executive Order 11738 [3 CFR, 1971-1975 Comp., p. 799] and Environmental Protection Agency rules at 40 CFR part 32, Subpart J, are concerned with protecting and enhancing the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population and encouraging and promoting pollution prevention.

(2) Recipients must protect the quality of the human environment, including wetlands, and provide any help DOE may need to comply with the National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 et. seq.) and assist in preparing Environmental Impact Statements or other environmental documentation.

(3) Recipients must manage impacts on the following:

(a) Flood-prone areas, and comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. § 4001 et. seq.).

(b) Land and water resources of coastal zones, and comply with the Coastal Zone Management Act of 1972 (16 U.S.C. § 1451, et. seq.).

(c) Coastal barriers along the Atlantic and Gulf coasts and Great Lakes' shores, and comply with the Coastal Barriers Resource Act (16 U.S.C. § 3501 et. seq.), concerning preservation of barrier resources.

(d) Any existing or proposed component of the National Wild and Scenic Rivers system, and comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271 et seq.).

(e) Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and comply with the Safe Drinking Water Act (42 U.S.C. § 300h-3).

(4) Recipients must comply with applicable provisions of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4821-4846), as implemented by the Department of Housing and Urban Development (24 CFR part 35). The requirements concern lead-based paint in housing owned by the Federal Government or receiving Federal assistance.

(5) Recipients must comply with section 6002 of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. § 6962), and implementing regulations of the Environmental Protection Agency (40 CFR Part 247) which require the purchase of recycled products by States or political subdivision of States.

### 1.6.3. Protection of Human Subjects and Animals in Research

#### (1) Humans

The recipient is responsible for the protection of the rights and welfare of human subjects involved in activities supported by DOE. All research involving human subjects is subject to the requirements of DOE Policy 443.1A, Protection of Human Subjects; DOE Order 443.1A, Protection of Human Subjects; 10 CFR 745, Protection of Human Subjects; and 45 CFR Part 46, Protection of Human Subjects. Information is available at <http://humansubjects.energy.gov>.

#### (2) Animals

The recipient is responsible for the humane care and treatment of any animal used or intended for use in such activities as field or laboratory research, development, training, experiments, biological testing or for related purposes supported by DOE grants. Several Acts cover the treatment of animals in research including; the Animal Welfare Act (7 U.S.C. § 2131 et seq.) and the regulations promulgated thereunder by the Secretary of Agriculture (9 CFR 1.1-4.11) pertaining to the humane care, handling, and treatment of vertebrate animals held or used for research, teaching or other activities supported by Federal awards and the Endangered Species Act of 1973 and implementing regulations of the Departments of Interior (50 CFR parts 10-24) and Commerce (50 CFR parts 217-227).

### 1.6.4 Other National Policies

Numerous other policies are in place that promote ethical business practices, healthful workplaces and respect for people and property. These policies include:

- (1) Debarment and Suspension
- (2) Drug-free workplace
- (3) Lobbying
- (4) Research Misconduct
- (5) Native American graves protection and repatriation
- (6) Historic preservation

A complete list is located at [http://management.energy.gov/business\\_doe/1374.htm](http://management.energy.gov/business_doe/1374.htm)

## CHAPTER 2 – PRE-AWARD

### 2.1 Planning

#### 2.1.1 Selecting the Appropriate Award Instrument: Procurement Contract or Financial Assistance Agreement

(a) Responsibility. The Contracting Officer, based on input from the program official pertaining to the purpose of the award, is responsible for selecting the appropriate award instrument. This decision is significant because the laws and policies governing procurement generally differ from those governing financial assistance.

(b) Basis of Decision. In accordance with the FGCA, as codified in 31 U.S.C. §§ 6301 to 6308, the decision whether to use a contract or a financial assistance agreement must be based on the principal purpose of the award, including its intended primary beneficiary. The type of recipient (e.g., university, non-profit, or for-profit organization) or a requirement for cost sharing are not factors in determining the appropriate award instrument.

(1) Contract. The Contracting Officer should use a procurement contract when: (1) the principal purpose of the instrument is to acquire (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government; or (2) he/she decides in a specific instance that the use of a type of procurement contract is appropriate. If DOE/NNSA provides specifications for the project, is having the project completed based on its own identified needs, or will directly use the report or results of the project to support its mission objectives, then, in most cases, the principal purpose is to acquire property or services for the direct benefit or use of DOE/NNSA and the award instrument should be a contract.

31 U.S.C. § 6303 provides agencies the flexibility to select a procurement contract after a deliberate determination that it is more appropriate, even if the purpose of the award is to accomplish a public purpose of support or stimulation. For example, a Contracting Officer should select a procurement contract if the work is classified, even if the work serves a public purpose of support, to ensure that the appropriate FAR/DEAR security clauses are included in the award since the DOE financial assistance regulation does not include security requirements. Also, a Contracting Officer should select a procurement contract if the award has the characteristics of a contractual relationship and includes contract requirements such as: (1) technical direction, except when such direction is necessary to redirect the work because of the interrelationship of the project to other projects (See 2.1.2(f)(3)); (2) monthly reporting requirements, except when special award conditions are needed for high risk recipients; and (3) fee, except for SBIR/STTR awards or in accordance with [10 CFR 605.15](#).

(2) Financial Assistance Instrument (i.e., grant or cooperative agreement). The Contracting Officer should use a grant or cooperative agreement whenever the principal purpose of the relationship is the transfer of a thing of value to a recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring property or services for the direct benefit or use of the United States Government. The primary beneficiary under a grant or cooperative agreement is the

general public, as opposed to the United States Government. However, there may be situations where the Department expects to derive some use or benefit from the project activities. If the project will produce a benefit or use to DOE/NNSA that is only indirect or incidental in nature, a grant or cooperative agreement may be used.

(3) Decision Process. To ensure that the appropriate instrument is selected, the Contracting Officer should ask the following questions:

(a) Is the primary purpose of the award to acquire goods or services that will directly benefit or be used by the Department to further a specific DOE/NNSA mission or requirement? If the answer to this question is “yes,” then the award instrument should be a contract. If the answer is “no,” then the Contracting Officer should use a grant or cooperative agreement.

(b) Is the work to be performed by the recipient primarily for its own purposes in the furtherance of the public good, and DOE/NNSA is merely supporting this effort with financial or other assistance? If the answer to this question is “yes,” then the award instrument should be a grant or cooperative agreement. If the answer is “no,” then the award instrument should be a contract.

(c) Statutory Language Affect on Instrument Selection. A statute authorizing or providing appropriations for a program or activity occasionally may specify the use of a particular award instrument, notwithstanding the fact that, under the guidance provided in the FGCA, the purpose of the award would necessitate the use of a different type of instrument. In these situations, the Contracting Officer must attempt to harmonize the language of the two statutes. Unless the authorization or appropriation act provides that a particular award instrument will be used notwithstanding the provisions of the FGCA, the principles articulated in that statute and this guide generally should be applied to determine the appropriate award instrument. When confronted with conflicting statutory language, the Contracting Officer should consult with legal counsel to determine the appropriate course of action.

(d) Examples of Ambiguous Circumstances.

(1) Conferences. The appropriate instrument for funding conferences should be determined based on the statutory criteria (i.e., the principal purpose of the conference, including the intended primary beneficiary). For example, a conference whose primary purpose is to exchange and disseminate information to the public should be funded using a grant. While the awarding office may benefit from information exchanged at the conference, the principal intent of the award is to stimulate dissemination of knowledge to benefit the public. If, however, a conference is being conducted to benefit a Federal agency, funding should be provided under a contract. For example, a conference to provide specialized training to grantees that would otherwise be provided by Federal agency personnel should be funded by a contract. In this example, although the recipients of the training benefit from the conference, the principal purpose of the award is for the Government to procure training services in lieu of conducting its own training



program, thus meeting the FGCA contract standard of directly benefiting the Federal agency.

(2) Evaluations or studies. Evaluations or studies are other activities that, depending on the circumstances, can be appropriately awarded as either a financial assistance instrument or a contract. For example, a study to assess the benefits of solar energy for State and local communities should be funded using a grant if the primary beneficiaries are the State and local communities. However, if the study is being conducted to assist DOE in planning and forecasting its solar energy budget requirements or to prepare a mandated report for Congress, then a contract should be used. While the Federal Government might benefit from the information obtained from the study in the first scenario, the primary beneficiaries are the State and local communities. In the second scenario, the study is for the direct use of DOE, even though it may be disseminated to the general public and may be used by other organizations and governments in their own solar energy efforts.

#### 2.1.2 Selecting the Type of Financial Assistance: Grant or Cooperative Agreement

(a) Responsibility. The Contracting Officer, based on input from the program official on the extent of Federal involvement in the project, is responsible for selecting the appropriate financial assistance instrument.

(b) Differences. The primary distinguishing feature between a grant and cooperative agreement is that under a cooperative agreement substantial involvement is anticipated between the DOE/NNSA program office and the recipient during performance of the funded activity. As a general rule, a cooperative agreement has the same characteristics as a grant; however, cooperative agreements also involve the following features that are not typical of a grant:

(1) Substantial Federal involvement in and contribution to the technical aspects of the effort are necessary for its accomplishment. This involvement may include collaboration, participation in the management of the project, or intervention in the activity and is over and above the exercise of Federal stewardship responsibilities (See paragraph 2.1.2 (e)).

(2) The nature of the collaboration is clearly defined and specified in a special award condition entitled “Statement of Substantial Involvement.”

(c) OMB Policy on Substantial Involvement. Agencies should limit Federal involvement in cooperative agreement activities to the minimum consistent with program requirements.

(d) Decision Process. Anticipated substantial Federal involvement is a relative rather than an absolute concept. The determination to use a cooperative agreement, as opposed to a grant, should be based primarily on “programmatically” considerations as differentiated from management considerations. A cooperative agreement should not be used solely as a means of exercising greater control over a recipient or the project than would be the case under a

grant. The proposed Federal involvement must provide programmatic benefits that the recipient would not otherwise have available to it in carrying out the project. The general policy is:

(1) Substantial involvement is not anticipated if the recipient is expected to manage the project without agency collaboration, participation, or intervention, as long as it is run in accordance with the terms of the assistance instrument.

(2) Substantial involvement is anticipated if the project would not be possible without Federal collaboration or participation in the management of the project.

(e) No Substantial Involvement. Substantial involvement does not include the exercise of normal Federal stewardship responsibilities such as:

(1) Approving recipient plans prior to award.

(2) Providing technical assistance prior to the start of the activity and the recipient understands this prior to award, if requested by the recipient.

(3) Providing technical assistance to correct deficiencies in project or financial performance when reports or monitoring indicates some sort of problem.

(4) Performing site visits.

(5) Reviewing financial, performance, and audit reports.

(6) Performing technical reviews to determine whether to continue funding the next budget period.

(7) Reviewing performance to ensure that the objectives, terms, and conditions of the award are accomplished.

(8) Providing general administrative requirements, such as prior approvals required by the financial assistance regulations and/or OMB Circulars.

(9) Reviewing performance after completion.

(f) Substantial Involvement. Federal involvement would exist and depending on the circumstances could be substantial, if such involvement includes, for example:

(1) Review and approval of one stage before work can begin on a subsequent stage. Such review and approval is in addition to the exercise of the normal Federal stewardship responsibility to determine whether to continue funding the next budget period, which does not constitute substantial involvement. (See 2.1.2(e) for examples of no substantial involvement.)

(2) Collaboration or joint participation in the project, such as, sharing facilities and personnel or a jointly authored report or education curriculum product.

(3) Additional monitoring to permit specified kinds of direction or redirection of the work because of interrelationships with other projects.

(4) Substantial direct operational involvement or participation is anticipated to ensure compliance with statutory requirements such as environmental protection. Such participation must be over and above the normal exercise of Federal stewardship responsibilities. (See paragraph 2.1.2(e) for examples of no substantial involvement.)

(5) The power to immediately halt an activity if detailed performance specifications (e.g., construction specifications) are not met. In this case, the “Substantial Involvement Statement” must include provisions that go beyond the normal suspension remedies available to the Federal Government for nonperformance.

(g) Award Provision – Statement of Substantial Involvement. The project officer must prepare a “Statement of Substantial Involvement” for each cooperative agreement, which explicitly describes the nature, character, and extent of anticipated Federal involvement. Merely stating that “DOE will be substantially involved in the project” is not sufficient. These statements must be developed with care, ensuring that the Government’s responsibilities are described with sufficient specificity to avoid unnecessarily increasing the Department’s liability under the award. The Contracting Officer is responsible for ensuring that the involvement is substantial (i.e., over and above the normal stewardship responsibilities identified in paragraph (e)), and that the award provision clearly describes the nature and extent of the anticipated involvement.

(h) Program Announcement. If the Contracting Officer determines that only cooperative agreements will be awarded under a specific program announcement, the announcement must include a Statement of Substantial Involvement as a proposed award term. If the Contracting Officer determines that either a grant or a cooperative agreement may be awarded under the program announcement, the announcement must specify that either grants or cooperative agreements may be awarded and that cooperative agreements will include a Statement of Substantial Involvement to be determined prior to award.

### 2.1.3 Competition

(a) It is DOE policy to use competition in the award of grants and cooperative agreements to the maximum extent feasible. This policy conforms with 31 USC 6301(3) which encourages the use of competition in awarding all grants and cooperative agreements. Contracting Officers must use merit-based, competitive procedures to award grants and cooperative agreements to the maximum extent feasible. Merit review is discussed below at paragraph 2.4.2.

(b) The Contracting Officer may restrict eligibility to a type or types of applicant(s) if authorized by statute, program rule, or if appropriate to the activity to be funded. A decision to restrict eligibility shall be supported by the determination required by 10 CFR 600.6(b).

(c) The Contracting Officer may award a grant or cooperative agreement on a noncompetitive basis only if the application satisfies one or more of the selection criteria in [10 CFR 600.6](#).

(d) The responsible program official, in consultation with the Contracting Officer and local legal counsel, should prepare a Determination of Noncompetitive Financial Assistance (DNFA) explaining the basis for the proposed noncompetitive award. The determination should include the following information:

- The name of the sponsoring program office;
- The programmatic statutory authority for the award;
- The name of the awarding office;
- The type of award proposed (e.g., grant or cooperative agreement);
- The name of the proposed recipient;
- A description of the nature of the financial assistance to be provided (e.g., research, conference grant, etc.);
- The amount and availability of DOE funds required;
- Any cost-participation/sharing required or proposed;
- To the extent relevant, a discussion of the programmatic evaluation conducted and the results of that evaluation, including the overall merit and relevance to the DOE mission, the anticipated objectives and probability of success in meeting them, the quality of the proposed recipient's personnel and facilities, and the appropriateness and adequacy of the proposed budget;
- A brief description of the public purpose of support or stimulation to be served by the proposed award, and, in non-technical terms, identification of any particular significance or specialized character of the proposed activity to be funded;
- A statement of whether the application was solicited or not solicited and the nature of any significant preapplication contact between the applicant and DOE; and
- A statement of which of the criteria in [10 CFR 600.6](#) (Eligibility) are being relied upon to justify the action and an explanation in general, non-technical terms, of why each criterion identified applies.

#### 2.1.4 Intergovernmental Review

Executive Order 12372, "Intergovernmental Review of Federal Programs," was issued with the desire to foster intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development. The Executive Order is implemented at [10 CFR 1005](#). The Contracting Officer or program official that issues the program announcement should determine if a review is required. The program announcement must specify whether a review is or is not required.

#### 2.1.5 Reporting

(a) The DOE Project Officer is responsible for specifying the required management and scientific/technical reports on the Federal Assistance Reporting Checklist (DOE F 4600.2) and including this checklist in the Procurement Request Package. The DOE F 4600.2 and instructions are available at [http://management.energy.gov/business\\_doe/business\\_forms.htm](http://management.energy.gov/business_doe/business_forms.htm). The Project Officer and Contracting Officer should always use the DOE F 4600.2 posted on the Professionals Home Page to ensure that the current version of the form and the instructions are included in the award.

Project Officers should consider the scope, complexity, duration of the project, and program legislation, when establishing reporting requirements, and identify any special reporting requirements in the block, entitled "Special Instructions."

(1) Research, Development, Demonstration (RD&D), and Other Scientific/Technical Awards: RD&D and other scientific/technical awards should generally require periodic Progress Reports, Special Status Reports, and a final Scientific/Technical Report.

(a) Progress Reports: Progress Reports are management reports which provide information on project status. These reports are used by the DOE Project Officer to monitor the project and to provide early recognition of potential problem areas. These reports should not be sent to the Office of Scientific and Technical Information (OSTI), since any preliminary results may be incomplete or misleading. If the award requires a final Scientific/Technical Report, no Progress Report is required at the end of the final year. The frequency of these reports should be the minimum needed to monitor performance. Examples of reporting requirements for typical projects are:

- i. Basic research grants: Generally, these awards would require an annual Progress Report, a final Scientific/Technical Report, and Special Status Reports on an as needed basis.
- ii. Technology development grants: Generally, these awards would require an annual or semi-annual Progress Report, a final

Scientific/Technical Report, and Special Status Reports on an as needed basis.

iii. Large cooperative agreements: Generally, these awards would require quarterly Progress Reports, a final Scientific/Technical Report, and Special Status Reports on an as needed basis.

(b) Scientific/Technical Reporting: Scientific/technical reports and products provide the results of scientific and technical studies, investigations that relate to research, development, demonstration, and other specialized areas such as environmental and health protection and waste management. These reports/products must be accompanied by the appropriate DOE Form 241, "Announcement of Department of Energy Scientific and Technical Information".

i. Generally, the DOE Project Officer should request only a final Scientific/Technical Report.

ii. While the DOE Project Officer may require a Scientific/Technical Report at the end of a phase, he/she should not require annual reports. Progress Reports provide sufficient information to monitor progress.

(c) Special Status Reports: Special Status Reports provide notice of problems, delays, or adverse conditions which materially impair the recipient's ability to meet the objectives of the award or have a significantly unfavorable impact on the project.

(2) Non-R&D Awards: A Non-R&D award should generally require only periodic Progress Reports and Special Status Reports. A final Progress Report is usually sufficient to determine whether the objectives of a non-R&D project have been accomplished.

(b) The DOE Contracting Officer is responsible for

(1) Incorporating an appropriate Federal Assistance Reporting Checklist (DOE F 4200.2) and instructions in the award. This includes:

(a) Ensuring that the DOE Project Officer selected the minimum management and scientific/technical reports necessary to monitor progress and report results.

(b) Specifying the financial reporting requirements.

(c) Specifying closeout reporting requirements.

(2) Assessing a prospective award recipient's past performance to determine whether the recipient has a history of poor programmatic performance, is financially unstable, has inadequate management systems, or has not complied with the terms of previous awards, including providing the required reports. To determine whether the recipient has

submitted the required reports, Contracting Officers should review (1) local report tracking systems to identify delinquent reports; (2) the Procurement and Assistance Data System to review overage closeout actions, and/or (3) the Department's E-Link System to identify reports received.

(a) If serious or numerous performance deficiencies are found, the Contracting Officer should deny the award, unless law, regulation, or evaluation/selection criteria dictate otherwise.

(b) When denial of an award based on past performance is not deemed appropriate, the Contracting Officer should include special award conditions in the award (e.g., use a reimbursement payment method rather than advance funding and establish milestone payments associated with the progress of the work, set aside a portion of the award funding until deliverables are received, or require more frequent financial or progress reporting than otherwise required under the program or allowed by [10 CFR 600](#)). See [10 CFR 600.114](#), [600.212](#) and [600.304](#).

(3) Negotiating other terms and conditions when a prospective recipient is unable to comply with the requirement to submit scientific/technical reports in a PDF format via the E-link system (e.g., recipient may submit the report on a diskette or a CDROM or use one of the following acceptable formats: PDF image or regular (normal), TIFFG4, HTML, SGML, XML, Word, WordPerfect, Postscript.

(4) Until such time as the report is submitted, the recipient and the Contracting Officer may agree that the report can include proprietary data (limited rights data), classified information or information subjects to export control classification.

### 2.1.6 Project Management

As part of DOE's stewardship responsibilities for its financial assistance awards, Contracting Officers and program officials must consider program and project management. While DOE O 413.3, *Program and Project Management for Acquisition of Capital Assets*, does not apply to financial assistance, the basic principles outlined in the order can be applied. These principles include:

- Mission need defined;
- Alternatives to meeting the mission need considered, developed, and evaluated;
- Project objectives defined up front and used to judge project success;
- Project performance risks (technical, financial, and otherwise) identified and mitigated in the implementation strategy;
- Projects managed by qualified individuals;
- Scope, schedule, and budget established for each project; and
- Projects managed and reported against established scope, schedule, and budget.

Contracting Officers should be aware of specific program requirements and work with program officials to ensure that funding opportunity announcements (FOAs) are consistent with these requirements and the above principles. The FOA should include merit review criteria that assess the recipient's abilities to manage projects consistent with the level of risk involved in the project. For large research and development projects, the FOA template includes a "Project Management Plan." requirement that should be included in the FOA.

Special terms and conditions may be required for awards with project performance risks. These could include structuring budget periods around go/no-go decisions, special reporting requirements or payment schedules.

## **2.2 Announcement of Funding Opportunity**

### **2.2.1 Synopsizing the Opportunity**

The Contracting Officer is responsible for ensuring that all discretionary grant and cooperative agreement funding opportunity announcements and modifications to the announcements are posted to the Grants.gov FIND Internet site via the Industry Interactive Procurement System (IIPS) at the same time that the announcement is posted on IIPS. The Contracting Officer must:

- Develop the Funding Opportunity Announcement in accordance with paragraph 2.2.2 below.
- Ensure that the program office has a valid Catalog of Domestic Assistance (CFDA) number for the announcement.
- Go to "Create FA Opportunity" and complete the "Financial Assistance Form" (i.e., synopsis information). This form includes all the required data elements for posting a synopsis on Grants.gov FIND site.
- Ensure that "Yes" is checked for the field "Auto-Post Announcement to Grants.gov FIND Site?".
- Upload the announcement file to the "File Upload" section and click on "Submit Form."

Only those opportunities that will result in the receipt of applications should send a synopsis to Grants.gov. Contracting Officers may use FedBizOpps, the Federal Register, the special announcement feature of IIPS, or any other means to issue requests for information or similar actions.

### **2.2.2 Funding Opportunity Announcement**

#### **(a) Preparation**



A standard template has been developed for issuing DOE Funding Opportunity Announcements (FOAs). This template follows the standard format adopted by the Office of Management and Budget and required for all FOAs. The template is located on IIPS. Contracting Officers and Project Managers must use the standard DOE template to develop FOAs. Changes or additions to the template should be made selectively, announcement by announcement. At no time, should discretionary changes be made to any portion of the FOA. Local additions to the terms and conditions should be made only in coordination with the Office of Procurement and Assistance Policy.

#### (b) Publication

The FOA will be posted on IIPS <http://e-center.doe.gov> for each individual Funding Announcement and attached in the instruction block for the APPLY package on the Grants.gov website, [www.grants.gov](http://www.grants.gov) also for each individual announcement.

The FOA should be posted on IIPS at the same time the synopsis is created.

Once the synopsis is available under “Manage Opportunities” in Grants.gov, an Application package must be manually created. The FOA shall be posted as the application instructions. Creation of the Application package also includes choosing one of DOE’s forms template packages. Applications will be received at Grants.gov and transferred to IIPS for review and processing.

In FY 2006, 75% of all FOAs that have been synopsisized through Grants.gov FIND must be posted on the APPLY portion. Beginning in FY 2007, OMB has directed that 100% of FOAs be posted on Grants.gov APPLY.

#### (c) DUNS Number and CCR

After September 30, 2003, applications for new or renewal grants or cooperative agreements, including applications or plans submitted under mandatory grant programs, must include the applicant’s DUNS number. The applicant is not required to submit DUNS numbers for entities with which it may enter into sub-awards; thus only the primary applicant needs to provide a DUNS number. The DUNS number will supplement, not replace, other identifiers required by statutes or regulations, such as tax identification numbers.

Submission of an application through Grants.gov requires registration in the Central Contractor Registry (CCR). Registry in the CCR includes basic information for the company and will provide the points of contact for registration with Grants.gov. Information on registration can be found on the Grants.gov website at <http://www.grants.gov/GetStarted>.

## **2.3 Applications**

### **2.3.1 Pre-Applications**

Pre-applications are a useful tool for obtaining information, providing feedback and reducing the number of poor or non-responsive applications. The program announcement should indicate whether or not pre-applications are required. If pre-applications are required, the program announcement must state that it is a mandatory requirement and describe the content of the pre-application, page limitation, and how the pre-application will be evaluated and used.

### 2.3.2 Applications

An application is the written or electronic request for financial assistance. An application is required for all financial assistance projects or programs. In general, the application should include:

- (1) A face sheet containing basic identifying information. The face sheet shall be the Standard Form (SF) 424 or other Government-wide application form;
- (2) A detailed narrative description of the proposed project, including the objectives of the project and the applicant's implementation plan;
- (3) A budget with supporting justification; and
- (4) Any required pre-award assurances.

Instructions on the format and required forms for an application package must be included in the program announcement. The program announcement must also include instructions on where and how to submit the application.

### 2.3.3 Unsolicited Applications

An Unsolicited Application is an application for support of an idea, method, or approach, submitted by individuals, businesses, and organizations solely on the applicant's initiative, rather than in response to a Government program announcement. Financial assistance awards resulting from unsolicited applications are considered noncompetitive actions.

DOE encourages the submission of unsolicited applications that will contribute to its mission objectives. The Department considers proposals in all areas of energy and energy-related research and development with emphasis on long-term, high-risk, high-payoff technologies. An unsolicited application may be accepted by DOE if it:

- Demonstrates a unique and innovative concept, or demonstrates a unique capability of the applicant;
- Offers a concept or services not otherwise available to the Government; and,
- Does not resemble the substance of a recently completed, current or pending competitive announcement.

If an unsolicited application is accepted, a program official must prepare a DNFA citing the appropriate exception from [10 CFR 600.6](#). (See Chapter 2, paragraph 2.1.3)

A detailed booklet titled Guide for the Submission of Unsolicited Proposals that outlines the unsolicited application process can be accessed at <http://www.netl.doe.gov/business/usp/unsol.html>.

All unsolicited proposals must be submitted through the Unsolicited Proposal Manager. For more information, contact the Unsolicited Proposal Manager, John Augustine:

Mr. John Augustine  
Unsolicited Proposal Manager  
U.S. Department of Energy  
National Energy Technology Laboratory (PGH)  
P.O. Box 10940, MS 921-107  
626 Cochrans Mill Road  
Pittsburgh, PA 15236-0940  
Telephone: (412) 386-4524  
Fax: (412) 386-6137  
E-mail: [john.augustine@netl.doe.gov](mailto:john.augustine@netl.doe.gov)

## **2.4 Evaluation and Selection**

### **2.4.1 Initial Screening of Applications**

Upon receipt of applications, the Contracting Officer should perform an initial review to determine that: (1) the applicant is eligible for an award; (2) the information required by the announcement has been submitted; (3) all mandatory requirements are satisfied; and (4) the proposed project is responsive to the objectives of the funding opportunity announcement. Applications not meeting any of the requirements of the program announcement should be rejected and the applicant informed of the reason for the application not being evaluated.

### **2.4.2 Merit Review**

It is DOE policy that all discretionary financial assistance, competitive or noncompetitive, be awarded through a merit-based selection process. Merit review means a thorough, consistent, and objective examination of applications based on pre-established criteria by persons independent of those submitting the applications and knowledgeable in the field of endeavor for which support is requested.

Each Program Office conducting reviews must ensure (1) their merit review implementation policies require an objective merit review of noncompetitive as well as competitive applications, and (2) the policy is implemented for all discretionary financial assistance activities under their cognizance whether conducted in headquarters or at a field activity.

DOE has published the “Department of Energy Merit Review Guide for Financial Assistance and Unsolicited Proposals”. This Guide can be found at <http://management.energy.gov/documents/meritrev.pdf>.

#### 2.4.3 Program Policy Factors

Program Policy Factors may be used during the selection process to provide for consideration of factors that are not indicators of the application’s merit. The purpose of considering these factors is to maximize the effectiveness of available Government funding and to best achieve DOE program objectives. These factors should be as objective and clearly stated as possible. For example, program policy factors may reflect the desirability of selecting projects based on geographic distribution, diverse approaches, or complementary efforts. Such factors should be specified in the program announcement or program rule to notify applicants that factors essentially beyond their control will affect the selection process. A written justification of the application of the program policy factors should be prepared by the selection official or designated reviewer.

#### 2.4.4 Selection

The Selection Official reviews the Merit Review Summary Statements and Ranking Sheet, applies the program policy factors, and prepares a statement to document the selection of applications to receive funding. The selection statement should address the following items:

- (1) Title and number of program announcements
- (2) The Summary Statements for the Merit Review
- (3) The Merit Review Ranking Sheet
- (4) Justification on the application of program policy factors
- (5) Identification of selected applications and proposed funding
- (6) Other information as applicable

### **2.5 Award Considerations**

#### 2.5.1 Budget Review

(a) The budget review is performed after the Selection Official selects those applications to be considered for negotiation of an award. While budget reviews are the responsibility of the Contracting Officer (CO), he/she should rely heavily on the technical and cost input provided by the program/project office.

In conducting budget reviews, the CO may obtain pre-award audits or consult cost and/or technical specialists. Audits are not necessary or customary to complete the budget review and negotiate the award. However, audits may be helpful for recipients without approved indirect rates or prior experience obtaining funding from the Federal

Government, whether by grant or contract. COs should consider the cost of the audit in their determination to obtain outside audit services and review the relevant policy.

(b) The budget is a financial plan for the proposed project or program. A budget review is performed to determine whether the proposed activities are supported by adequate resources in this plan. The budget review is the process of verifying cost data, evaluating specific elements of the budget, examining data to determine allowability, allocability and reasonableness, and determining that proposed costs are consistently treated in accordance with generally accepted accounting principles and applicable cost principles. A budget review is not conducted in accordance with the proposal analysis requirements for cost and pricing data in FAR 15.404.

The extent of the budget review should not be determined solely on the basis of the amount of funds requested. Instead, it should be performed based on recent past experience with the prospective recipient; the size, nature and complexity of the project; information provided by the technical reviewers; and other known factors that may affect the organization's financial capabilities to operate under the award.

Subrecipients' budgets should be reviewed as part of the applicant's budget. Costs for contracts need to be reviewed only to ensure that the applicant meets applicable procurement standards. If the applicant's procedures are not adequate, the Contracting Officer should perform an in-depth review.

(c) Project Officers should prepare a technical evaluation of the budget. This evaluation should provide a comparison between the budget and the project narrative. An independent cost estimate may also be developed for the proposed project. An independent estimate may be particularly helpful for large demonstration projects.

(d) The following is a list of questions to be considered in performing the budget review. The list is not intended as a checklist but questions prompting analysis by the CO. The review should be documented in a written narrative. The checklist may not be included as a form for applicants to complete and submit with their application.

#### (1) General

- a. Is the total project cost reasonable for the effort?
- b. Are all costs proposed in accordance with any limitations, exclusions or special conditions set forth in the funding opportunity announcement?
- c. Are all costs proposed in accordance with generally accepted accounting principles and the applicable costs principles?
- d. Are all costs allocable and allowable?
- e. Have the applicant's proposed indirect rates been audited and approved?
- f. Has fee or profit been included in the project cost?
- g. Is the applicant in a partnership or consortium? If yes, have the relationships among each member been described and are all included in the budget?

(2) Personnel

- a. Have individuals or positions been identified?
- b. Are time commitments for individuals and/or positions stated? Are they reasonable?
- c. Are the time commitments less than 100%?
- d. Do the levels of personnel (experience/skill/education, etc.) correspond to the project description? Will the personnel be able to successfully perform the project?
- e. Is the compensation consistent with that paid similarly skilled employees internal and external the applicant organization?

(3) Travel

- a. Are the proposed trips identified and a purpose indicated?
- b. Are the proposed trips reasonable in number for the purpose(s) stated?
- c. Are the number of people traveling on each trip reasonable?
- c. Are less expensive methods such as video conferencing, webcasts or conference calls available?
- d. Are the travel costs consistent with the applicant's established travel policy?  

(Remember applicants do not have to conform to federal per diem rates and are not eligible for federal rates on airfare or at hotels.)
- e. If business or first class airfares are included, have they been sufficiently justified to determine reasonableness?

(4) Equipment

- a. Is the unit cost for each item to be purchased clearly indicated?
- b. Is the need for the equipment adequately justified?
- c. Are the cost estimates for equipment purchases reasonable?

(5) Contracts

- a. Have the goods or services to be acquired been described?
- b. Do the costs appear reasonable?
- c. Are the goods or services procured in accordance with the applicable standards in 10 CFR 600? (The applicant, not DOE, is responsible for justifying the acquisition and costs of contracts. The Contracting Officer needs to determine whether the

applicant has followed the appropriate procedures. Audits and detailed analysis are not required.)

### 2.5.2 Financial Management Assessment

A financial management assessment should be undertaken by the Contracting Officer to assess the applicant's ability to manage the financial aspects of an award and its plans to accomplish project activities with reasonable economy and efficiency. The standards for acceptable financial management systems are found at [10 CFR §§ 600.121, 600.220, and 600.311](#). This assessment should take place when:

- (1) DOE has not previously funded the organization;
- (2) The applicant is a newly organized concern; or
- (3) The organization is known or suspected to have operational and/or financial difficulties or inadequacies.

If an assessment is undertaken, it should be based on the standards in 10 CFR §600 and include a review of:

- (1) The applicant's accounting system to determine whether it is adequate for the accumulation and segregation of costs on a project-by-project basis and whether its books of account are adequate for and suited to the organization's business;
- (2) The applicant's purchasing procedures to determine if they exist in written form and whether they result in effective, economical, and well-documented procurement;
- (3) The applicant's personnel practices and procedures to determine if they exist in written form, whether they provide for adequate separation of responsibilities for hiring, dismissal, promotion, etc., and whether the organization can meet the cost principle standards for documenting its payroll;
- (4) The existence and adequacy of other written procedures governing travel, use of consultants, and property management;
- (5) The organizational structure and assignment of functional responsibilities to determine whether the organization can adequately safeguard its assets, provide accurate and dependable financial and cost data, and whether employees can adequately discharge their responsibilities and adhere to established policies.

In addition, a business review of the application should be undertaken to:

- (1) Determine the allowability, allocability and reasonableness of proposed costs (both Federal and non-Federal funds) based on applicable cost principles and program regulations, including consistent treatment of proposed costs.

- (2) Determine if a cognizant Federal agency has established an indirect cost rate. If a rate is not available, additional reviews will be required to evaluate, negotiate and determine an appropriate rate.
- (3) If cost sharing is required, review the source and amount of the proposed contribution and assess the likelihood of the applicant being able to provide the required cost sharing.
- (4) Review applicant's plans for contracts and subawards.

In those cases where applicants are unable to comply with the financial management standards or the business review indicates problems or a lack of understanding of costs issues, the Contracting Officer may determine that the applicant is high risk and incorporate special restrictive terms and conditions into the award. See Subchapter 2.5.4 for information on high risk recipients.

### 2.5.3 Determination of Responsibility

Prior to making award, Contracting Officers must make an affirmative determination of responsibility. This determination includes the financial management assessment and business review discussed above in paragraph 2.5.2, review of audits under [OMB Circular A-133](#), and review of activities under previous awards, especially submission of required reports.

Applicants should be screened for responsibility after selection and before award. The extent of this screening depends on if DOE has any prior experience; e.g., a favorable credit determination for the past three years or an on-going favorable relationship with the applicant.

The responsibility determination considers if the contractor has the administrative and programmatic capabilities to perform.

The term "administrative capability" means the capability of an applicant or recipient to develop and implement administrative systems required by 40 CFR Part 30, including systems related to financial management, property management, procurement standards, financial reporting, record-keeping, and submission of administrative reports/certifications for grant closeout.

The term "programmatic capability" means the technical capability of an applicant or recipient to successfully carry out a project taking into account such factors as the applicant's:

- (1) Performance in successfully completing federally and/or non-federally funded projects similar in size, scope, and relevance to the proposed project,
- (2) History of meeting reporting requirements on prior or current assistance agreements with federal and/or non-federal organizations and submitting acceptable final technical reports,
- (3) Organizational experience and plans for timely and successful achievement of the objectives of the project, and
- (4) Staff expertise/qualifications and resources or the ability to obtain them, to successfully achieve the goals of the project.



#### 2.5.4 High Risk Recipients

Contracting Officers may discover, while assessing responsibility, that a potential recipient exhibits factors that indicate a high degree of risk in the successful completion of the award. The following factors tend to indicate high risk:

- (1) Poor financial stability (i.e., insolvency or threat of insolvency).
- (2) Inexperience such as may occur in newly formed organizations or in those which have not previously received Federal financial assistance awards.
- (3) Financial dependence on Federal support (i.e. 80% or more of the organization's revenues are expected to be derived from Federal awards in the forthcoming year).
- (4) Serious deficiencies in program or business management systems (e.g., substantial failure to comply with the financial management standards or procurement standards in 10 CFR § 600).
- (5) A history of unsatisfactory performance, material violations of award terms and conditions, or large cost disallowances on previous awards from the same or other Federal programs.

Contracting Officers should consider incorporating special award conditions of a programmatic and/or administrative nature if an organization exhibits one of these risk factors. The potentially adverse impact of a particular special condition(s) on an awardee's ability to carry out the program must be considered and be balanced with the need to protect the Government's interests. Any special conditions shall be promptly removed once the conditions that prompted them have been corrected. Special award condition(s) may include, but are not limited to, one or more of the following, as appropriate for the specific award or awardee:

- (1) Use of a reimbursement payment method rather than advance funding.
- (2) More frequent financial or progress reporting than otherwise required.
- (3) Technical assistance from DOE or access to additional resources from DOE.
- (4) Required insurance or bonding on construction awards.

### 2.5.5 Payment Methods (4/08)

Payment may be made by either advance or reimbursement. The determination of the payment method is dependent upon the results of the financial management assessment. Advance payment may be made only if the minimum standards in [10 CFR 600.122](#) are met for non-profits, universities and hospitals. Advance payment to for-profit organizations may be used only in exceptional circumstances as prescribed in [10 CFR 600.312\(b\)\(2\)](#) and as approved by the Contracting Officer.

Advance payment, via the Treasury Department's [Automated Standard Application for Payment](#) (ASAP) system, is the preferred method of payment for grants and cooperative agreements with non-profits, universities and hospitals. The Contracting Officer may determine that payment by reimbursement is appropriate if special conditions are applicable to the award.

### 2.5.6 Cost Sharing

A Department-wide cost sharing requirements is established by Section 988 of the Energy Policy Act (EPAAct) of 2005 for most research, development, demonstration, and commercial application activities initiated after the date of enactment of EPAAct 05 (August 8, 2005). Some programs authorized in other sections of EPAAct 05 may have specific cost sharing requirements. The Secretary has been granted the authority to reduce or eliminate cost sharing requirements for applied research and development as necessary and appropriate. The Secretary may reduce, but not eliminate, cost sharing requirements for demonstration and commercial application activities as necessary and appropriate, taking into consideration any technological risk relating to the activity.

#### 1. Applicability

The cost sharing requirements of Section 988 applies to awards of grants and cooperative agreements; agreements under the Other Transactions Authority (OTA) of Section 1007 of EPAAct 05; and contracts and task orders. This requirement also applies to renewal awards for grants and cooperative agreements, but not to continuation awards for on-going grants and cooperative agreements.

The requirements of Section 988 do not apply to (1) a cooperative research and development agreement under the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.); (2) a fee charged for the use of a Department facility; or (3) an award under the small business innovation research program or the small business technology transfer program. Section 988 is also not applicable to management and operating contracts.

#### 2. Contracting Officer Responsibilities

##### a. Solicitations and Award Agreements

Contracting officers shall include the requisite cost sharing requirement and information in

any funding opportunity announcement (FOA) for research and development, demonstration, and commercial application programs and activities.

Contracting Officers should incorporate the cost sharing requirement and the agreed upon cost share amount (dollar or percentage) in all grants, cooperative agreements, and technology investment agreements for research and development, demonstration, and commercial application programs and activities.

#### b. Calculation of Amount

In accordance with section 988 (d), Calculation of Amount, when calculating the amount of the non-Federal contribution, the Contracting Officer:

i) may include the following costs as allowable in accordance with the applicable cost principles:

- (a) cash;
- (b) personnel costs;
- (c) the value of a service, other resource, or third party in-kind contribution determined in accordance with the applicable circular of the Office of Management and Budget;
- (d) indirect costs or facilities and administrative costs; or
- (e) any funds received under the power program of the Tennessee Valley Authority (except to the extent that such funds are made available under an annual appropriation Act); and

ii) shall not include--

- (a) revenues or royalties from the prospective operation of an activity beyond the time considered in the award;
- (b) proceeds from the prospective sale of an asset of an activity; or
- (c) other appropriated Federal funds.

The terms and conditions of the contract, grant, or other agreement should include appropriate provisions on cost allowability.

### 3. Royalties and Repayment

The Federal share of a cost shared activity under section 988 shall not be required to be repaid as a condition of award. Royalties should not be used to repay or recover the Federal share, but may be used as a reward for technology transfer activities.

### 4. Reduction and Exclusion

Section 988 generally requires a cost share of not less than 20 percent for research and development and not less than 50 percent for demonstration and commercial application

activities. The percentage of cost share may be reduced or eliminated according to the following standards:

Research or Development Activities of a Basic or Fundamental Nature – If an appropriate officer of the Department determines that a research or development activity is of a basic or fundamental nature, then the activity is excluded from the cost sharing requirement.

Research or Development Activities of an Applied Nature - The Secretary may reduce or eliminate non-Federal cost sharing if he/she determines that the reduction is necessary and appropriate.

Demonstration and Commercial Application – The Secretary may reduce non-Federal cost sharing if he/she determines the reduction to be necessary and appropriate, taking into consideration any technological risk relating to the activity.

### 2.5.7 Competition and Merit Review

(a) Section 989 of EAct 05 requires competitive awards to 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).

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

2) 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 subchapter, 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 EPAct 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.

#### (b) Additional Considerations

##### 1. Conflict of Interest

DOE Program Officials and Contracting Officers need to consider conflicts of interest when determining if Labs are eligible to compete in accordance with Section 989. Conflicts of interest may exist due to previous efforts performed by the Labs or assistance provided in program direction and other mission related activities.

A request for Labs to identify potential conflicts should be included in the FOA. The award file should include a written determination that no conflicts exist or conflicts have been satisfactorily mitigated prior to award to a Lab.

## 2. Pre-Award Costs

DOE Labs are not authorized to incur or be reimbursed for pre-award costs. Labs should not incur costs, other than Bid and Proposal costs, prior to receipt of a work authorization under DOE O 412.1A, Work Authorization System.

## 3. Bid and Proposal Costs

Bid and proposal costs should be handled in accordance with DEAR 970.3102-05-18 and the Labs' standard accounting procedures.

## 4. Merit Review Criteria

Merit review criteria must be crafted to ensure that the information requested for review does not provide an unfair advantage to the Labs due to their unique relationship with DOE. For example, facilities and equipment may provide an advantage to the Labs because of this unique relationship. Care must be taken to make the merit review criteria as fair and objective as possible. If necessary, state in the FOA how any advantages would be mitigated during the evaluation and selection phases.

Merit review criteria should not include consideration of cost or cost share if Labs are eligible under an FOA. Cost and/or cost share should only be considered in the selection decision.

## 5. Award Document/Terms and Conditions

Award to a DOE Lab under an FOA is made against their existing prime contract with the Department through the work authorization system as outlined in DOE O 412.1A. DOE O 481.1, Work for Others, is not applicable. A new grant, cooperative agreement, contract, or technology investment agreement should not be awarded. DOE Labs remain bound by the terms and conditions of their contract with DOE.

## 6. Approvals

A DOE Lab must obtain the approval of their cognizant DOE Contracting Officer to submit an application under an EPOA FOA. The approval must be in writing and submitted with the application. The following wording is recommended for this authorization:

Authorization is granted for the \_\_\_\_\_ Laboratory to submit an application for the proposed project. The Project proposed is consistent with or complimentary to the missions of the laboratory and will not adversely impact the execution of the DOE assigned programs at the laboratory.

### 2.5.8 Eligibility Requirements

Section 2306 of EPACT 1992 established 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 XX through XXIII. In August 2005, Congress passed EPACT 2005, which established a new set of Departmental priorities. 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. In fact, Section 1005 of EPACT 2005 requires the Secretary to carry out research, development, demonstration and commercial application projects authorized by the Act in accordance with the provisions of previous Acts, including EPACT 1992. Therefore, the eligibility requirements of EPACT 1992 must still be considered.

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, apply.

### 2.5.9 Intellectual Property Considerations

In order to promote more uniformity in financial assistance patent and data rights requirements, GC-62 and field Patent Counsels have developed standard sets of IP provisions for the various types of financial assistance awards. These IP provisions are located at [http://www.gc.doe.gov/financial\\_assistance\\_awards.htm](http://www.gc.doe.gov/financial_assistance_awards.htm).

The DOE-wide announcement template on the Industry Interactive Procurement System (IIPS) provides a link to the GC web site where the IP provisions are maintained. Thus, awarding offices are not required to include the various patent and data rights provisions in announcements of funding opportunities. Applicants are able to access the IP requirements by clicking the link in the announcement.

The Contracting Officer must:

- a. Ensure that appropriate patent and data provisions are included in an award.
- b. Consult with Patent Counsel if the applicable standard set of IP provisions is not appropriate or if there are unique mission requirements.
- c. Negotiate, in consultation with Patent Counsel and the DOE/NNSA Project Director, special patent and data clauses if necessary to satisfy the mission requirements of a particular program.
- d. Ensure that the Final Invention and Patent Report, if required, is identified on the Federal Assistance Reporting Checklist in the award and is submitted to DOE.

#### 2.5.10 Fixed Obligation Awards

As provided in [10 CFR 600.29](#), Fixed Obligation Awards, DOE Contracting Officers may make grants and cooperative agreement awards on a fixed obligation basis for projects that do not require Federal monitoring or reviewing of actual costs incurred. Fixed Obligation awards may not exceed \$100,000 nor be more than one year in length.

The proposed recipient should submit a budget and sufficient documentation to allow the Contracting Officer to determine that the amount requested is fair and reasonable for the project description and the deliverable(s) identified. A written analysis should be made on the allowability, allocability and reasonableness of the budget. The award document should indicate only the total dollar value approved. No budget should be included in the agreement, however any special restrictions due to budget concerns should be documented in the agreement.

Fixed obligation awards may not include mandatory cost share. Any other cost sharing, such as program income, should be evaluated as part of the budget review, but need not be identified in the maximum obligations clause. If applicable, direction should be provided to add program income to the funds committed to the project, and to use program income to further eligible project objectives.

The budget period and project period identified on the Notice of Financial Assistance Award, DOE F 4600.1, must indicate the same time period and be no more than 12 months.

Extensions to fixed obligations awards require a deviation to [10 CFR 600.29](#). The award document must not authorize extensions in accordance with [10 CFR 600.26\(d\)](#).

#### 2.5.11 Program Income

Program income means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in [10 CFR 600.124](#) (e) and (h) for educational institutions, hospitals, and nonprofits, see [600.225](#) for state and local governments and [600.314](#) for for-profit organizations). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of DOE funds is not program income.

Generally, program income earned during the project period shall be retained by the recipient and, in accordance with program regulations or the terms and conditions of the award, shall be used in one or more of the following ways.

- (1) Added to funds committed to the project and used to further eligible project objectives.



- (2) Used to finance the non-DOE share of the project.
- (3) Deducted from the total project allowable cost in determining the net allowable costs on which the share of costs is based.

#### 2.5.12 Lobbying

As a general rule, Federal funds may not be used to support lobbying activities. Costs for lobbying activities are unallowable costs. Care should be taken so that funds are authorized only for eligible activities. Eligible activities include those activities that describe and promote the understanding of scientific and technical aspects of specific energy technologies. Ineligible activities include those activities that encourage or support political activities such as the collection and dissemination of information related to potential, planned, or pending legislation.

Applications shall be reviewed to ensure that inappropriate lobbying activities are not proposed. Applications that contain ineligible lobbying activities shall not be funded.

Contracting officers shall ensure that the Funding Opportunity Announcement includes a reference to the “National Policy Assurances To Be Incorporated As Award Terms.”

#### 2.5.13 NEPA/Environmental Considerations

The program/project office and the contracting office should coordinate any solicitations or new awards for projects with an expected environmental, health or safety impact with Environmental, Safety, & Health (ES&H) staff to ensure the action will comply with National Environmental Policy Act (NEPA) and other ES&H requirements. It is also incumbent upon the applicant to identify in its application any potential adverse impacts which may result from project activities. When appropriate, applications should be reviewed for compliance with NEPA procedural requirements at 10 CFR 1021.

### **2.6 Notifications**

#### 2.6.1 Congressional Notification

Notification of award is made via the Advanced Award Notification System and DOE F 4220.10. The instructions to DOE F 4220.10 provide the dollar thresholds for notification but in general, any award to a nonprofit, educational institution or state, local or tribal government of \$50,000 or more, or an award of \$500,000 or more for any other entity, needs to be reported.

#### 2.6.2 Notification to Successful and Unsuccessful Applicants

Contracting Officers should ensure that notification is made to all applicants on the selection or non-selection of their applications. Unsuccessful applicants should be notified in writing that their applications were not selected for award and provided with a brief explanation as to why. After consultation with the Contracting Officer, the notification to the unsuccessful applicants should be prepared and signed by the Selection Official, with a copy to the Contracting Officer for the official record. Successful applicants should be notified as soon as possible to commence negotiation leading to the execution of the Notice of Financial Assistance Award.

## **2.7 FAADS**

The Bureau of the Census operates the Federal Assistance Award Data System (FAADS), which is the central source of data on domestic assistance programs of the Federal government. These domestic assistance programs are detailed in the Catalog of Federal Domestic Assistance (CFDA). The Department reports its financial assistance data to FAADS through the Procurement and Assistance Data System (PADS). All awards should be reported to PADS within five working days of execution by completion of an Individual Procurement Action Report. The IPAR and the IPAR handbook are available at [http://management.energy.gov/policy\\_guidance/1395.htm](http://management.energy.gov/policy_guidance/1395.htm).

Additional information on reporting is available at [Federal Assistance Award Data System](#).

## CHAPTER 3 – AWARD

### 3.1 Notice of Financial Assistance Award/Terms and Conditions

In order to promote more uniformity in DOE and NNSA financial assistance awards and ensure that awards include appropriate award terms and reporting requirements, the Office of Procurement and Assistance Policy and the major grant-making offices developed standard Special Terms and Conditions for Use in Most Grants and Cooperative Agreements, National Policy Assurances to Be Incorporated as Award Terms, and standard reporting instructions.

Contracting Officers should:

- A. Use the Notice of Financial Assistance Award, DOE F 4600.1, dated July 2005.
- B. Ensure that the National Policy Assurances To Be Incorporated As Award Terms are incorporated by reference in financial assistance awards to domestic organizations. Contracting Officers, with the assistance of their legal counsel, may modify the national policy terms, if an award is made to a foreign entity.
- C. Ensure that the appropriate standard special terms and conditions are included in financial assistance awards.
- D. Negotiate additional special award terms if necessary to satisfy the mission requirements of a particular program or to address responsibility concerns (e.g., a recipient is not financially stable, has a history of poor performance, has a management system that does not meet the standards prescribed, or is not otherwise responsible).
- E. Ensure that the Federal Assistance Reporting Checklist and Instructions are included in financial assistance awards, unless there is a program rule that specifies other reporting requirements or there are none. Contracting Officers may add additional reporting requirements and instructions if necessary to satisfy specific program requirements or to address responsibility concerns.

The current version of all these items can be found on [http://management.energy.gov/business\\_doe/business\\_forms.htm](http://management.energy.gov/business_doe/business_forms.htm).

### 3.2 Pre-Award Costs

Recipients may charge for pre-award costs incurred within the 90-day period immediately preceding the effective date of the award, if such costs would be reimbursable under the agreement if incurred after award. Pre-award expenditures are made at the recipient's risk and do not impose an obligation on DOE: (1) in the absence of appropriations; (2) if an award is not made; or (3) if an award is made for a lesser amount than the recipient anticipated.

Requests for pre-award costs for periods exceeding 90 calendar days must be approved in advanced by the Contracting Officer. The decision to approve pre-award costs exceeding 90 days should consider items such as: (1) time between selection and award, if competitive; (2) time between receipt of application and award, if non-competitive; (3) value to the overall success of the project; (4) severability of funded project to recipient's overall activities; (5) effect on total budget; and (6) statutory authorization and appropriations for the programmatic area.

The effective date is the date specified in the grant notice. If no effective date is specified, then the beginning date of the project period for the grant is the effective date. Pre-award costs for renewal awards should specify an effective date; generally the date of award, not the budget/project period starts.

### **3.3 Budget and Project Periods**

(a) Project periods for both grants and cooperative agreements should generally be no longer than five (5) years in length, unless the Head of Contracting Activity approves otherwise. A determination and findings that the longer project period is necessary for the success of the project should be included in the file.

Recipients, other than SBIR and fixed obligation award recipients, may authorize a one-time extension of the expiration date of the agreement of up to 12 months if additional time beyond the established project and final budget period is required to assure adequate completion of the original project scope within the funds already made available. This one-time extension may not be exercised merely for the purpose of using unexpended funds. Recipients are not authorized to extend an award that contains a zero balance. The recipient shall notify DOE in writing of the extension, providing supporting reasons for the extension and the revised expiration date, at least ten days prior to the expiration date specified in the agreement. The award instrument should be modified to indicate the new project period end date. A one-time extension does not require HCA approval, even if the total project period is extended past five years.

(b) The budget period is the interval of time, specified in the award, into which a project is divided for budgetary purposes. Typically, budget periods are established on an annual basis. In some cases, shorter or longer budget periods may be established for compelling programmatic or administrative reasons, such as to allow for project phases not evenly divisible with 12-month increments or to provide program personnel with logical decision points to evaluate whether the project should proceed. Project periods less than 12 months should have co-extensive budget and project periods.

### **3.4 Post-award Orientation**

A post-award orientation meeting is a useful tool to communication roles and responsibilities under an agreement. Such meetings are especially appropriate for new recipients or for large, complex awards. The contracting officer should set up the meeting and include appropriate governmental officials such as the DOE project officer, general counsel, patent counsel, environmental officers, and property officials. Items such as reporting and payment should be discussed. If the award is a cooperative agreement, the Statement of Substantial Involvement should be reviewed for each party's responsibilities.

## CHAPTER 4 - ADMINISTRATION

### 4.1 Monitoring Project Performance

#### 4.1.1 Recipient Responsibilities

A recipient has full responsibility for the conduct of the project or activity supported and for the results achieved. The recipient should monitor the performance of the project to assure adherence to performance goals, time schedules or other requirements as appropriate to the project or the terms of the agreement. The recipient is responsible for monitoring the activities of and pass through requirements to any sub-recipients.

#### 4.1.2 Federal (DOE) Responsibilities

It is DOE policy to limit involvement between itself and the recipient in the performance of a project to the minimum necessary to achieve program objectives and ensure conformance with requirements of the grant or cooperative agreement. DOE's role is that of a partner where the Government provides the financial assistance and the recipient carries out the project activities.

Monitoring is a process whereby the programmatic progress and financial and business management aspects of a financial assistance award are reviewed by assessing information gathered from program and financial reports, site visits, teleconferences, and other means. DOE requires financial assistance recipients to have adequate management systems to ensure that project objectives are met and funds are properly spent. To the extent possible, financial assistance award monitors rely on the management systems of the financial assistance recipients to meet project objectives, comply with award terms and conditions, and account for funds.

#### 4.1.3 Lobbying

Contracting officers should monitor recipient performance to ensure inappropriate activities are not conducted and no lobbying costs are incurred. Performance may be monitored through the review of performance, technical and financial reports. Site visits are recommended for high risk recipients, e.g. recipients who (1) are non-profit organizations, (2) have lobbying affiliates, (3) have ongoing projects with DOE to promote specific energy technologies and (4) rely on DOE to provide the major source of income.

A special audit or review of the recipients records may be requested to make cost determinations if the summary level information provided is insufficient to determine whether costs have been expended for inappropriate actions. Special audits are performed at

the request of the Contracting Officer and are in addition to the recipient's requirement to arrange for an annual single audit or annual indirect cost audit.

## **4.2 Revisions and Extensions**

### **4.2.1 Project Revisions**

Contracting Officers must provide prior written approval before the recipient may make any of the following project changes;

- (1) A change in scope or objectives of the project, even if there is no associated budget revision.
- (2) The absence or change of the Principal Investigator/Project Director. An absence of a continuous period of more than 3 months or a 25 percent reduction in time devoted to the project.
- (3) The need for additional Federal funding to complete the approved project.
- (4) The transfer of a significant part of the research or programmatic effort.

Contracting Officers should consider the value to the overall success of the project or increased significance and value of the amended project when reviewing request(s) for project revisions.

Project revisions to awards from a competitive announcement must remain within the programmatic boundaries of the announcement and should be considered meritorious under the merit review criteria of the announcement. Substantial changes to the project's scope or objectives will require a determination of non-competitive financial assistance if the changes would not be acceptable under the original announcement.

### **4.2.2 Project Period Revisions**

The end date of the project period may be changed as a result of a no-cost extension, or, in some cases, by a renewal modification. See Subchapter 3.3 - Budget and Project Periods and Subchapter 4.4-Renewal Awards.

### **4.2.3 Budget Revisions**

The Contracting Officer must approve budget revisions when the revision results from changes to the scope or objectives of the project, additional funds are required to complete the project, or prior approval is required by the applicable OMB cost circular.

### **4.3 Continuation Awards**

Continuation award means a non-competitive award for a succeeding or subsequent budget period after the initial budget period of an approved project period. Funding for continuation awards is contingent on DOE approval of a continuation application. The content of the continuation application should be included in the agreement's terms and conditions.

Continuation funding is contingent on (1) availability of funds; (2) satisfactory progress towards meeting the objectives of the approved application; (3) submittal of required reports; and (4) compliance with the terms and conditions of the award. The Contracting Officer and Project Officer review a continuation application for the adequacy of the awardee's progress and planned conduct of the project in the subsequent budget period. A continuation application shall not be required to compete against any other application. The amount and award of continuation funding is subject to the availability of appropriations.

### **4.4 Renewal Awards**

Renewal awards "add" one or more budget periods and extend the project period. Discretionary renewal awards may be made on the basis of a solicitation; or on a noncompetitive basis when reviewed for merit and justified in accordance with [10 CFR 600.6\(c\)](#), Eligibility. Renewal applications should be submitted no later than six months prior to the scheduled expiration of the project period unless a program rule or other document establishes a different application deadline. Before DOE may make a renewal award or a formula award, the recipient must submit a revised or amended State plan in accordance with program rules and other instructions from DOE.

### **4.5 Audit Requirements for States, Local Governments and Non-Profit Organizations**

#### **4.5.1. General**

All States, Local Governments and Non-Profit Organizations that expend over \$500,000 in Federal funds in any year are required to have a single audit conducted in accordance with OMB Circular A-133. This requirement flows down to subrecipients that meet the dollar threshold. An independent auditor shall perform the audit in accordance with the Government Auditing Standards and must: 1) audit and provide opinions on the fair presentation of the financial statements and the schedule of expenditures of Federal awards; 2) gain an understanding of internal control over Federal programs and 3) audit and provide an opinion on compliance with requirements for major programs.

Any entity that does not meet the threshold for expenditures is not required by OMB Circular A-133 to have a single audit performed. However, if a Contracting Officer determines



special circumstances make a review or audit necessary, such a requirement should be included in the terms and conditions of the award as a special condition.

(a) **Audit Objective.** The single audit provides an independent, cost-effective tool for obtaining information on the recipient's financial management practices and administration of Federal funds. The audit does not provide detailed information on individual awards but will show whether or not the recipient has an adequate accounting system and management controls, financial statements prepared in accordance with general accepted practices, accurate and reliable reports, and expenditure of Federal funds in accordance with Federal laws and regulations.

(b) **Reporting Requirements.** The Single Audit Report is submitted to the Federal Audit Clearinghouse (<http://harvester.census.gov/sac>) via the Internet and Standard Form SAC (SF-SAC) "Data Collection Form for Reporting on Audits of States, Local Governments and Non-profits Organizations."

The single audit report includes:

- the financial statements;
- a schedule of expenditures of Federal awards;
- auditor's opinions on the fair presentation of the financial statements and schedule of expenditures of Federal awards;
- auditor's report on internal control and compliance pertaining to financial reporting;
- auditor's report on internal control and opinion on compliance pertaining to major programs;
- auditor's schedule of findings and questioned costs;
- auditee's corrective action plans; and
- a summary schedule of prior audit findings which includes planned and completed corrective actions.

#### 4.5.2 Recipient and Auditor Responsibilities

(a) **Recipient Responsibilities.** Recipients are responsible for managing their Federal awards. This is accomplished by establishing and maintaining internal controls that provide assurances that all requirements can be met; establishing and maintaining an accounting system that uses general accepted accounting principles and that can adequately accumulate and segregate costs; and promptly and accurately preparing financial statements and other related documents.

Recipients are responsible for identifying Federal awards received and expended and for preparing financial statements and a Schedule of Expenditures of Federal Awards. Recipients are responsible for ensuring that the audit required by OMB Circular A-133 is completed and submitted to the Clearinghouse on SF-SAC within nine months of the end of its fiscal year.

Recipients are responsible for retaining an independent auditor; providing the auditor with all necessary information for the audit; and submitting the audit to the Clearinghouse.

Recipients are responsible for follow-up and corrective action on all audit findings. As part of this responsibility, the recipient shall prepare a summary schedule of prior audit findings. The recipient shall also prepare a corrective action plan for current year audit findings. The summary schedule of prior audit findings shall report the status of all audit findings included in the prior audit's schedule of findings and questioned costs relative to Federal awards. The summary schedule shall also include findings reported in the prior audit's summary schedule of prior audit findings except findings listed as corrected. Subpart C, Section .315 of OMB Circular A-133 provides specifics on the summary schedule and the correction action plan.

Recipients are also responsible for monitoring sub-recipients that are required to submit an audit based on the expenditure of Federal funds under their project.

(b) Auditor Responsibilities. The auditor is responsible for performing the audit in accordance with generally accepted government auditing standards, i.e. "The Yellow Book"; assessing whether the auditee has complied with laws, regulations and agreement provisions that have a direct effect on the Federal programs where funds have been expended; testing the internal controls and financial management systems; and follow-up on prior audit findings and assess the reasonableness of the corrective plans and actions.

The auditor is responsible for preparing a report which includes an opinion on whether the financial statements are presented fairly; statements on internal controls; a statement on compliance which includes an opinion as to whether the auditee complied with the laws, regulations and agreement provisions; and a schedule of findings.

Audit findings are required to include: (1) a deficiency in internal controls; (2) a material noncompliance with the laws, regulations or agreement provisions; (3) detected fraud; (4) misrepresentation of the status of a prior finding; (5) questioned costs which exceed \$10,000 for non-major programs; and (6) questioned costs which exceed \$10,000 for each type of compliance requirement for major programs.

The auditor is required to assist the recipient in the preparation of the data collection form, SF-SAC, by completing specific components and sections.

(c) Responsibilities of Pass-Through Entities. A pass-through entity is responsible for monitoring its subrecipient(s) and ensuring that those that expend Federal funds meet the requirements of OMB Circular A-133.

#### 4.5.3 Agency Responsibilities

Federal agencies are responsible for ensuring that audits are completed and reports received in a timely manner and in accordance with the requirements of this part; for providing technical advice and counsel to auditees and auditors as requested; for issuing a management decision on audit findings within six months after receipt of the audit report; and for ensuring that the recipient takes appropriate and timely corrective action. Agencies are also responsible for providing annual updates to the A-133 compliance supplement.

An agency may have additional responsibilities depending on the amount of funding provided to a recipient. An agency is given the designation of cognizant agency or oversight agency if it has provided the most direct funding to the recipient. The cognizant designation is used when the funding level is over \$50 million.

If a program specific audit is required, the agency is responsible for all levels of agency responsibilities. This includes providing program specific audit requirements.

#### 4.5.4 Contracting Activity Responsibilities

Each Contracting Activity is responsible for ensuring agency compliance with the requirements of OMB Circular A-133 at the local level. Each Contracting Activity should designate a responsible person for retrieving audits with findings under that activity's cognizance. The named person will be required to have a password and user ID for the secured portion of Clearinghouse database. Passwords and user IDs should be coordinated through the Office of Procurement and Assistance Policy.

Each Contracting Activity should implement and maintain a tracking system that ensures that audit findings and recommendations are monitored through resolution for each recipient that reports audit findings that affect awards made at that activity. SF-SAC Part III, Item 9 identifies the Federal agencies which have relevant findings in the audit report. The tracking system should be able to track the recipient, the fiscal year(s) and the stage of completion of the corrective action plan(s). The system should be searchable to aid in the completion of management reports required by OMB Circular A-133.

#### 4.5.5 Contracting Officer Responsibilities

The Contracting Officer is responsible for including the appropriate audit requirements in the award instrument; monitoring compliance with audit requirements; reviewing problem audits; and approving and monitoring corrective action plans to resolve audit findings and recommendations. The Contracting Officer should ensure that audits are completed and submitted as part of the administration of the award's reporting requirements.

#### 4.5.6 Other Uses for the Clearinghouse

(a) Pre-Award. Contracting Officers are responsible for determining the business and financial management capabilities of potential recipients. The SF-SAC in the Clearinghouse database can assist the Contracting Officer in making the determination that a potential recipient has an acceptable accounting system and internal controls.

Contracting Officers should check the database for previous audit reports, questioned costs, corrective action plans and their resolution, and document the file with the findings from the review. Copies of the supporting audits may be obtained from the Clearinghouse if not previously received by the Contracting Officer.

Potential recipients with prior audit findings and corrective action plans should be considered for special conditions, payment by reimbursement or other controls to ensure that the funding is properly used.

(b) During the Project Period. The Clearinghouse should be checked when reviewing the continuation award package just as in the pre-award phase. Recipients that were held to special conditions or controls that have shown improvement in their audits should have those conditions or controls lessened or removed. New conditions or controls should be placed on recipients that have had negative audit findings since the start of the project or that have not submitted the audit(s).

(c) Post-Award and Close-out. Audits should be reviewed during the close-out process to ascertain if any negative audit findings will affect the agreement. An agreement should not be retired if the audit findings would impact the budget or other terms and conditions.

#### **4.6 Reporting**

(a) Generally, the DOE Project Officer is responsible for monitoring Progress Reports and Special Status Reports and the Contracting Officer is responsible for monitoring the receipt of other reports.

(1) The Contracting Officer should ensure that these roles are clearly understood and that the DOE Project Officer understands his/her responsibilities for monitoring the receipt of reports and the required follow-up actions.

(2) Contracting Officers and DOE Project Officers should keep each other informed if reports are not received.

(3) Each Contracting Activity must establish procedures that ensure reports are received and that Scientific/Technical Reports are sent to OSTI. Contracting Activities are encouraged to send reminders to appropriate recipient officials a few weeks before a reporting period ends. This will prevent reporting delinquencies due to mere oversight on the part of the recipient and so reduce the need for follow-up action.

(b) Contracting Officers should take the following actions for overdue reports:

1. Immediate follow-up action: When a report has not been received by the terms of the award, the Contracting Officer should contact the recipient by telephone or electronic mail to advise of the delinquency.
2. First Letter: If a report is overdue by 30 days, the Contracting Officer must send a letter to the recipient notifying it of the delinquency and requesting the report. This letter may be sent electronically. The letter must state that, if the report cannot be submitted promptly, the recipient should explain the reason and state the date by which DOE will receive the report.
3. Second Letter: If neither a report nor an acceptable explanation for not submitting it is received from the recipient within 30 days of the date of the first letter, the Contracting Officer must send (by certified mail, return receipt requested) a written notice of noncompliance, as required by [10 CFR 600.24](#). Among other things, this notice must state what enforcement action will be taken if the report is not received within 30 days (e.g., suspension or termination of the award if still active, withholding of any additional funds for the project, etc.). Enforcement actions are set forth in [10 CFR 600.162, 600.243 and 600.352](#).
4. Funds Cutoff: If neither the report nor an acceptable explanation is received within 30 days of the second letter, no additional funds shall be awarded for the project while the report remains overdue and the award, if still active, shall be suspended. The suspension notice must set a final date by which the report must be received. If the report or an acceptable explanation is not received by that date, the suspension shall be converted into a termination. (See [10 CFR 600.25](#) Suspension and Termination)
5. Final Reports: If a final report has not been obtained after taking all the actions set forth above, the Contracting Officer may annotate the award file noting the performance noncompliance, withhold any monies not previously paid, and proceed to close out. The apparent willful failure of the recipient to perform according to the terms of the award shall be reported immediately to the Department's debarment and suspension official (i.e., the Director, Procurement and Assistance Management, or the Director, Acquisition and Supply Management) with a recommendation to consider debarment of the recipient.
6. Waivers and Extensions: If at any time the recipient provides an acceptable explanation of why the overdue report cannot be submitted promptly, the reporting requirement may be waived or a new due date set. Further extensions of the due date should also be given if justified. However, if, without an acceptable explanation, the recipient fails to submit a report once overdue by a new due date, the funds cutoff action in paragraph (b)4. should be taken without the delay of further warning letters. Any letter setting a new due date shall advise the recipient of this and the possibility for additional or more severe enforcement actions.

## 7. Additional Actions:

- (a) Converting to a reimbursement method of payment if the conditions are met for using this payment method. (See [10 CFR 600.122\(n\)](#)).
  - (b) Withholding any additional awards for the project or program ([See 10 CFR 600.162, 600.243 and 600.352](#)).
  - (c) Making a site visit to determine whether the recipient is violating other terms of the award or performing an audit of the award.
  - (d) Awarding no discretionary funds while the report is overdue for all or some of the other eligible projects or activities conducted by the recipient.
  - (e) Consulting with the legal counsel to consider legal action for recovery of funds and other legal remedies that may be available.
- (c) When a report is overdue, the only acceptable reasons for waiving the reporting requirement or setting a new due date shall be that: 1) the report cannot be furnished in a timely manner for reasons legitimately beyond the control of the recipient; or 2) the purposes for which the report is to be used will be accomplished through other means. The recipient should be informed or reminded of this policy in the first letter sent when a report becomes overdue or in the notice of payment withholding.

### **4.7 Indirect Rates**

- (a) Except as otherwise provided, all project grants and cooperative agreements awarded by the Department shall include funds for the amount of indirect costs applicable to the grants, based on the most current rate(s) available at the time of the award.
  - 1. Indirect cost reimbursement on grants awarded under programs with statutory prohibitions or limitations against the reimbursement of indirect costs shall be made in accordance with the restrictions.
  - 2. The total amount awarded (direct plus indirect) shall constitute a ceiling on the amount payable to the grantee for a grant. The award of a grant shall not obligate the Government to make any supplemental or other award for additional indirect costs or for any other purpose.
  - 3. Funds should be included for indirect costs associated with any additional direct costs awarded for the expansion or extension of a project. Additional direct costs awarded for other reasons may be accompanied by associated indirect costs at the granting agency's option.
- (b) During the project period, reimbursement of indirect costs, while generally based on the current approved rate, is not dependent on the rate used to negotiate the total project cost.

Reimbursement is however limited by the budgeted dollar amount for indirect costs. If during the project period, indirect costs are less than the budgeted amount, recipients may use the difference to pay additional direct costs. Recipients are expected to manage their indirect costs, DOE will not amend an award solely to provide additional funds for changes in indirect cost rates.

(c) At the completion of the agreement, the closeout process will include audits of indirect rates and incurred costs. If the DOE share of the incurred costs is less than the amount reimbursed under the agreement, the recipient shall refund the difference to DOE. If the DOE share of the incurred costs is greater than the amount reimbursed, but less than the total cumulative obligations, the recipient may request payment of the difference. If the DOE share of the incurred costs is greater than the total cumulative obligations, DOE will not make additional obligations, reimbursements or payments.

## **4.8 Property (4/08)**

### **4.8.1 Types of Property**

Property means, unless otherwise stated, real property, equipment, intangible property and debt instruments. Property is divided into two basic types: real and personal.

(1) Real Property means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

(2) Personal Property means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

Tangible personal property is further divided into equipment and supplies.

(1) Equipment means personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. (A recipient may use its own definition of equipment provided the definition would include all articles of equipment as defined in this paragraph).

Equipment does not become part of a structure or building if it is movable and stands alone.

(2) Supplies means all personal property, excluding equipment, intangible property, and debt instruments as defined in 10 CFR 600, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement (“subject inventions”), as defined in 37 CFR part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements.”

Supplies are generally consumable items used in the normal course of business.

Intangible property is most generally thought of as intellectual property, but may also include debt instruments. Intellectual property is discussed in Subchapter 2.5.9.

#### 4.8.2 Acquired, Federally-Owned and Exempt Property

Property is also classified in accordance with how it is bought to be used under an award

- (1) Acquired Property is purchased under the award with Federal funds.
- (2) Federally-Owned property is property provided to the recipient for its use by the Government.
- (3) Exempt, or excepted, property means tangible personal property acquired in whole or in part with Federal funds, where the Federal awarding agency has statutory authority to vest title in the recipient without further obligation to the Federal Government.

#### 4.8.3 Title to Acquired Property

Unless otherwise specified in the grant or agreement, title to property acquired under an award generally vests in the recipient subject to standard conditions until funding for the project ceases or until the property is no longer needed for the purposes of the project (see 10 CFR §§ 600.132, 600.232 and 600.321). Those conditions include using the property for authorized purposes on the project, not encumbering the property without the Contracting Officer's approval, and requesting disposition instructions that generally will require reimbursing the Federal Government for its share of the fair market value of the property.

Title may not vest unconditionally in the recipient without statutory authority. DOE may vest title unconditionally for tangible personal property to a nonprofit institution of higher education or in a nonprofit organization whose primary purpose is conducting scientific research without further obligation to the Federal Government under the Federal Grant and Cooperative Agreement Act (31 U.S.C. § 6306.) DOE does not have any other blanket authority to unconditionally vest title. Individual programs, i.e. Clean Coal, may have such authority.

#### 4.8.4 Property Management Standards

Recipients are responsible for maintaining systems that account for property. The property management system shall include all of the following:

- (1) Equipment records shall be maintained accurately and shall include the following information.
  - a. A description of the equipment.
  - b. Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.
  - c. Source of the equipment, including the award number.
  - d. Whether title vests in the recipient or the Federal Government.
  - e. Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.



- f. Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).
  - g. Location and condition of the equipment and the date the information was reported.
  - h. Unit acquisition cost.
  - i. Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the Federal awarding agency for its share.
- (2) Equipment owned by the Federal Government shall be identified to indicate Federal ownership.
  - (3) A physical inventory of equipment acquired under the award shall be taken and the results reconciled with the equipment records at least once every two years. An annual inventory is required for Federally-owned property. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.
  - (4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient shall promptly notify the Federal awarding agency.
  - (5) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.
  - (6) Where the recipient is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.

Recipients must also maintain adequate levels of insurance on property.

#### 4.8.5 Disposition of Property

When the award is over or the property is no longer needed for the purposes of the project, the recipient must request disposition instructions unless title has been vested unconditionally, the fair market value of equipment is less than \$5000 or the aggregate value of supplies is less than \$5000. The recipient must indicate in the request whether or not it wishes to retain title to the property.

Disposition instructions shall inform the recipient if they should keep, sell, transfer, or return the property. If the property will be retained by the recipient or sold, the recipient shall reimburse the Government for its share of the fair market value. For property to be sold, the recipient may be allowed to use the proceeds to purchase replacement property.

DOE has 120 days to provide disposition instructions after receipt of the final inventory. For exempt property, if DOE fails to respond within the 120 days, there is no further obligation on the part of the recipient. For acquired equipment and property, if DOE fails to respond within the 120 days, the recipient shall sell the equipment and reimburse DOE an amount computed by

applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program.

## CHAPTER 5 – ENFORCEMENT AND TERMINATION

### 5.1 Suspension and Termination

(a) In accordance with [10 CFR 600.25](#) (Suspension and Termination), DOE may suspend or terminate an award for cause. Before suspending or terminating an award, DOE provides the recipient a separate written notice sent by means that provide proof of delivery (e.g., certified mail, return receipt requested) prior to the effective date of the suspension or termination. The notice should be sent at least ten days prior to the effective date, and would include, as appropriate the following information and instructions:

The factual and legal bases for the suspension or termination;

The effective date or dates of the DOE action;

A description of the activities affected by the action (e.g., entire award or selected activities);

Instructions concerning which costs will be allowable during the period of suspension, or instructions concerning allowable termination costs, and instructions concerning costs for any subawards or contracts;

Instructions concerning required final reports and other closeout actions for the terminated award;

A statement of the recipient's right to appeal a termination for cause; and

The signature of the DOE Contracting Officer and dated signed.

(b) Suspension. Unless DOE and the recipient agree otherwise, no period of suspension should exceed 90 days. DOE may cancel the suspension at any time, up to and including the date of expiration of the period of suspension, if the recipient takes satisfactory corrective action before then or gives DOE satisfactory evidence that corrective action will be taken. If the suspension has not been canceled by the expiration date of the period of suspension, the recipient may resume the suspended activities or project, unless, prior to the expiration date, DOE notifies the recipient in writing that the period of suspension will be extended or that the award will be terminated.

As of the effective date of suspension, DOE will withhold further payments and should allow new obligations to be incurred by the recipient during the period of suspension only if such costs were authorized in the notice of suspension or in a subsequent letter.

If the suspension is canceled or expires and the award is not terminated, DOE will reimburse the recipient for any authorized allowable costs incurred during the suspension and, if necessary, may amend the award to extend the period of performance.

(c) Termination. In addition to any situation where a termination for cause is appropriate, the recipient may initiate a termination of an award (or portion thereof). The recipient must notify DOE in writing and specify the reasons for requesting the termination, the proposed effective

date, and in the case of a partial termination, a description of the activities to be terminated with an appropriate budget revision. If DOE determines that the remaining activities under a partially terminated award would not accomplish the purpose of the original award, DOE may terminate the entire award.

The award may also be terminated by the mutual agreement. DOE and the recipient shall agree on the termination conditions, including the effective date, and in the case of partial termination, the portion to be terminated.

The recipient will incur no new obligations after the effective date of the termination of an award, or portion thereof, and shall cancel as many outstanding obligations as possible. DOE will allow full credit to the recipient for the DOE share of noncancellable obligations properly incurred by the recipient prior to the effective date of the termination.

## **5.2 Noncompliance**

Contracting officers shall follow the noncompliance procedural requirements specified at [10 CFR 600.24](#) (Noncompliance) when it has been determined that a recipient has not complied with the applicable requirements of 10 CFR Part 600, any applicable program statute or rule, or with any other term or condition of the award. Except for noncompliance with nondiscrimination requirements under 10 CFR Part 1040, contracting officers are responsible for providing the recipient with a detailed written notice of the noncompliance.

When a review of the recipient's performance reveals an apparent failure to conform to the terms of the award, the issue(s) should immediately be discussed with the recipient. The recipient should be asked to provide an explanation and a correction action plan or remedy. If the recipient is unable to provide a satisfactory explanation and a satisfactory correction plan or remedy, the contracting officer will then provide to the recipient a written notice of noncompliance and the expected corrective actions to be taken.

The notice should contain (as a minimum):

- The factual and legal bases for the determination of noncompliance;
- Corrective actions that must be taken and the date (e.g. not less than 30 days after the date of the notice), by which they must be taken; and
- Which remedial actions authorized under 10 CFR [600.122\(n\)](#), [600.162\(a\)](#) or [600.243\(a\)](#), DOE may take if the recipient does not achieve compliance by the time specified in the notice, or does not provide satisfactory assurances that actions have been initiated that will achieve compliance in a timely manner.

The notice should be sent by means that provide proof of delivery (e.g., certified mail, return receipt requested) and which can establish the "count down" period for corrective action. Contracting officers should coordinate noncompliance activities with the project officer and legal counsel.

The Contracting officer may initiate any of these remedies concurrently with the written notice or with less than a 30 day period for correction: (1) whenever there is evidence that the award was obtained by fraud; (2) the recipient ceases to exist or becomes legally incapable of performing its responsibilities under the award; (3) or if there is serious mismanagement or misuse of award funds necessitating immediate action.

## CHAPTER 6 – CLOSEOUT

### 6.1 Closeout (4/08)

#### 6.1.1 General

Closeout is the process by which DOE determines that all applicable administrative actions and all required work under the award have been completed. The process includes verifying that the following have been accomplished at the expiration of the acquisition or assistance instrument: (1) all terms and conditions have been fulfilled, (2) all property issues have been resolved, (3) all patent and data issues have been resolved, (4) all necessary reports have been submitted to the government, and (5) all required financial data and other related information has been submitted and resolved.

When all conditions have been met and the final cost has been determined, final payment can be made to the recipient and the instrument may be closed out. Close out of awards should occur within a reasonable period of time after the completion date of the award or date of termination. This should normally be accomplished within nine months. In the event a final audit has not been performed prior to the closeout of the grant, DOE reserves the right to recover appropriate amounts after fully considering the recommendations on disallowed costs resulting from the final audit.

Closeout requirements applicable to financial assistance recipients are contained in [10 CFR 600.171-173](#) for universities, hospitals and non-profits, [10 CFR 600.250-252](#) for governmental entities and [10 CFR 600.361-363](#) for for-profit organizations. Within 90 days after the expiration or termination of a financial assistance award, the recipient must submit all financial, performance and other reports required as a condition of the award. These reports may include, but are not limited to,: (1) the final performance or progress report, (2) the Financial Status Report (SF-269), (3) the Final Request for Payment (SF-270), if applicable, (4) the patent certification, if applicable, and (5) a listing of property furnished by DOE or acquired under the award.

The financial assistance award file should be reviewed for completeness to assure that it contains sufficient information on which to base the decision to close out the award. Closeout activities include financial/audit reconciliations and clearances; acceptance of required reports including submission of technical reports to the Office of Science and Technical Information, as applicable; property reconciliation and disposal; and intellectual property/patent reconciliation and clearance.

#### 6.1.2 Required Clearances

##### a) Final Report submitted to OSTI

The final Technical Report should be submitted electronically via the Office of Scientific and Technical Information's (OSTI) [E-Link system](#). OSTI will notify the cognizant Contracting Officer and project officer by email that a report is ready for review and release in E-Link. The

cognizant program official should conduct a review to ensure that the report/product is the required final scientific/technical report or other final scientific/technical product, e.g., conference paper/proceedings. After verification, a Final Technical Clearance, similar to that below, needs to be signed by the project officer and returned to the Contracting officer.

#### FINAL TECHNICAL CLEARANCE

The final technical report has been received and is considered to be satisfactory.  
No Personally Identifiable Information was detected during the review of the report.

\_\_\_\_\_  
DOE Project Officer

\_\_\_\_\_  
Date

The Contracting Officer should review the Clearance and any comments made by the DOE Project Officer, review the final report to ensure that there is no Personally Identifiable Information (PII) included in the final report, and provide a release to OSTI if all is in order. If PII is detected or suspected during the review, it should be marked by the Project Officer and brought to the Contracting Officer's attention. The Contracting Officer will review the information, obtain additional reviews, if necessary, and/or request the submitter to change the report to delete or modify the sections in question.

It is vital that no PII information be made public. PII is any information about an individual, including but not limited to, education; financial transactions; medical, criminal or employment history; and information that can be used to distinguish or trace an individual's identity, such as his/her name, social security number, date and place of birth, mother's maiden name, biometric data (e.g., fingerprint, iris scan, DNA), etc., and including any other personal information that is linked or linkable to a specific individual. If PII information is contained in a final report, the recipient/author must be requested to remove the information and provide a report releasable to the public.

If during the review, it appears that the report may contain Unclassified Controlled Nuclear Information (UCNI); U.S. export controlled information, or classified information, additional clearances may be required, see DOE G 241.1-1A.

#### b) Property Clearance (Other than Intangible Property)

Recipients are required to complete the Financial Assistance Property Closeout Certification that can be found at <http://www.management.energy.gov/documents/PropertyCertFINAL.doc>. If the recipient has residual Federally-owned property in its possession, then the recipient is required to provide an inventory.

Contracting Officers may be required to give disposition instructions in order to complete the closeout of property. Depending on the type of property, its condition, fair market or residual value and the usefulness of the property for other projects (whether DOE's or another recipient), disposition may include taking title to the property, compensation by the recipient for DOE's share, allowing the recipient to use the property on another project, or instructing the recipient to turn-over the equipment to a third party (with compensation to the recipient for their share of the fair

market value). Sections CFR 600.130-137, 600.231 and 600.320-325 of Title 10 of the Code of Federal Regulations provide more detailed instructions.

#### c) Intellectual Property

If applicable, the recipient must provide a final DOE F 2050.11, Patent Certification, <http://www.netl.doe.gov/business/forms/Patent%20Certification%20DOE%20F%202050-11.doc> at the end of the project period. The Patent Certification should be forwarded to the cognizant patent counsel for review and clearance. The list designating cognizant patent counsel can be found at <http://www.gc.doe.gov/documents/IPServiceProviders.pdf>.

#### d) Financial Reports

Recipients must complete the financial reports identified on the Financial Assistance Reporting Checklist in accordance with the report instructions identified in the basic award. These reports include the Financial Status Report (SF 269), the Federal Cash Transactions Report (SF 272) and the Federal Financial Report (FFR). These required reports should be reviewed to ensure appropriate use of the funds provided under the award and for verifying that the cost share requirements were fulfilled.

The Contracting Officer should determine if other financial reports, such as the annual indirect cost submission and the audit required by OMB Circular, A-133, have been submitted by the recipient.

For large dollar or complex awards, the Contracting Officer may wish to have an incurred cost audit performed to verify funds were spent appropriately.



## Chapter 7 Additional Information

### 7.1 Freedom of Information Act Requests (4/08)

The Freedom of Information Act (FOIA)(5 U.S.C. § 552) provides that any person or organization (excluding Federal agencies) has the right to request access to Federal agency records. In general, all agency records must be made available to the public unless they fall under one of nine FOIA exemptions:

1. Properly classified as secret;
2. Related to an agency's internal personnel rules and practices;
3. Specifically exempted by law;
4. Trade secrets and commercial or financial information obtained from a person which is privileged or confidential;
5. Interagency or intra-agency communications that are protected by a legal privilege;
6. Personnel and medical files that would constitute a clearly unwarranted invasion of personal privacy;
7. Compiled for law enforcement purposes;
8. Contained in records concerning financial institutions; or
9. Geological or geophysical-related documents concerning wells.

#### 7.1.1 The FOIA Process

Any agency employee who receives a request for agency records should immediately direct the requester and/or any written request to the applicable FOIA Officer. After receipt of a formal FOIA request, the FOIA Officer will coordinate with the appropriate Contracting Officer and project personnel to identify and review responsive documents, and to contact relevant submitters for input concerning the applicability of potential FOIA exemptions.

When DOE determines requested information should be protected from public disclosure by one of the FOIA exemptions, the documents will be properly withheld or redacted. The applicable Authorizing or Denying Official will ultimately respond to the FOIA requester with a determination letter identifying the documents being produced, withheld or redacted, and explaining the application of any FOIA exemptions.

Because these activities are subject to statutorily imposed time deadlines, prompt attention to FOIA requests is imperative.

#### 7.1.2 Commonly Requested Information

The following list identifies some of the most commonly requested documents requested under FOIA related to financial assistance transactions:

1. Applications
2. Grant application reviewer information (comments, evaluations, reviewer lists)
3. Lists of applicants
4. Selection Statements
5. Procedures for the Review of Applications
6. Reports

Information contained in financial assistance applications and awards may be releasable under FOIA. Often, however, information contained in the award file falls within the protective scope of one or more of the FOIA exemptions. It is therefore critical that these documents be reviewed by the appropriate FOIA Officer and knowledgeable Contracting Officer, project and legal personnel before any information is released.

Although any of the nine FOIA exemptions may address all or part of a particular document, the provisions of Exemption 3 (exempted by statute), Exemption 4 (confidential business and financial information), Exemption 5 (deliberative process privilege) and Exemption 6 (unwarranted invasion of personal privacy) are those most often applicable. (5.U.S.C. § 552(b)(3), (b)(4), (b)(5)and (b)(6)).

A. As a matter of general guidance, information that may be released in an award file includes:

1. The Notice of Financial Assistance Award.
2. The names of the project director and other key staff as well as general descriptions of the duties/activities of staff or the qualifications of key positions when these are specified in the application.
3. The resumes or vitae of staff working on a project when they are included in the application. These documents must be reviewed and redacted as appropriate for the types of personal information that would fall under Exemption 6 of the FOIA (5 U.S.C. §552(b)(6)).
4. Limited information regarding the project's total budget figures. Although the total project cost, DOE's total cost share amount, and the recipient's cost share may be broken out separately, other itemized budgetary information is most often protected from disclosure under FOIA by the provisions of Exemption 4.
5. Requests submitted by a recipient to amend its original award and the response to the request.
6. General award documents, such as informal notes taken by the program staff from telephone discussions with grantees, e-mails, post-it note reminders on a particular matter, site visit reports, and customized forms that are used as part of managing and monitoring a grant and which are later placed into the official file.
7. Merit review consensus comments, which are provided to recipients following the merit review process. The names of any reviewers, however, are protected from public disclosure under FOIA Exemptions 5 and 6, and must be redacted from the completed consensus forms.

B. Information that may not be released in applications includes:

1. Private information about individuals who are working on a grant project which would constitute a clearly unwarranted invasion of privacy such as:

- a. Names and other personal information of individuals that are the subject of research activities;
  - b. Names of spouses and children of project personnel;
  - c. Home and personal cellular phone numbers;
  - d. Home and personal email addresses;
  - e. Social Security numbers;
  - f. Medical records; and
  - g. Dates of birth.
2. The salaries and fringe benefits of project staff.
  3. Confidential commercial or financial information that may cause competitive harm to a person or organization. Information that fall under this category could be:
    - a. Trade secrets (a formula, an exclusive design, a computer program);
    - b. Research and development activities; and
    - c. Commercial or other financial data of an organization.
    - d. Information concerning a recipient's actual costs, direct and indirect costs, pricing strategies, break-even calculations, profits, profit rates, or profit margins; e. Workforce data that reveals labor costs, fringe benefits, or names of consultants or subcontractors.

**Note:** Prior to releasing information that may fall within Exemption 4, DOE is required by Executive Order to seek the views of the person or organization who submitted the information regarding its potential confidential nature. The appropriate FOIA Officer is responsible for obtaining the submitter's views, including supporting justification for an assertion of competitive harm, prior to DOE's determination regarding public release of the requested information. The FOIA Officer must also inform the submitter of DOE's determination prior to releasing such information.

### 7.1.3 Withholding Exempted Information

In some instances, all of the information in a FOIA request is exempt from disclosure. In other cases, documents can be released if the exempted material is redacted. When information must be redacted from the document by blocking out with a marker or removing the entire page from the materials, care must be taken to ensure that all redacted information cannot be seen. When the documents are in a digitized format, particular care should be taken to ensure that withheld information cannot be recovered by the requester.

As previously noted, it is important that all DOE procurement and project personnel work closely with the appropriate FOIA Officer and legal counsel to provide a timely response to any FOIA request.

## APPENDIX 1 - GLOSSARY

**Application.** A written request for financial assistance.

**Amendment.** An amendment is the written document executed by a DOE contracting officer that changes one or more terms or conditions of an existing financial assistance award. Amendments are used to approve changes to the budget or in project activities, increase funding, and extend budget or project periods. A financial assistance amendment is similar to a bilateral modification in an acquisition contract.

**Approved Budget.** A budget and any revision that has been formally approved by DOE for carrying out the proposed project or activity.

**Assistance.** Money, property, services, or anything of value transferred to a recipient to accomplish a public purpose of support or stimulation authorized by Federal statute.

**Budget Period.** An interval of time, specified in the award, into which a project is divided for budgeting and funding purposes. A budget period is generally a 12-month period beginning on the effective date of the award. The budget period may be other than 12 months to accommodate project phases or other requirements in the agreement. A continuation award is required to initiate subsequent budget periods. The budget for all periods may be approved at award. If a budget for an out-year period was not approved at award, it should be approved as part of the continuation award.

**Cognizant Agency.** The Federal department or agency responsible for negotiating indirect cost rates, conducting audits, and ensuring correction of system deficiencies of a particular recipient organization.

**Continuation Award.** An award for a budget period after the initial budget period for a multi-year project. The continuation award authorizes the expenditure of funds for the project to be performed during that for that period of time. A continuation award does not require competition. A continuation award is subject to the availability of appropriated funds.

**Contract.** A written procurement contract executed by a recipient or subrecipient for the acquisition of property or services under a financial assistance award.

**Contracting Officer.** An official of DOE authorized to execute awards on behalf of DOE and who is responsible for the business management and non-program aspects of the financial assistance process.

**Cooperative Agreement.** A financial assistance instrument used by DOE to transfer money or property when the principal purpose of the transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute, and substantial involvement between DOE and the recipient during the performance of the contemplated activity is anticipated.

**Discretionary Award.** An award under authority of a Federal statute that permits DOE to exercise judgment in selecting the recipient and the project to be supported, and in determining the amount of the award.

**Effective Date.** The date specified in the grant notice on or after which expenditures may be charged to the grant. If no effective date is specified, then the beginning date of the project period for the grant is the effective date.

**Extension.** An amendment of an award which would otherwise expire, to provide additional time.

**Financial Assistance.** Transfer of money or property to a recipient or subrecipient to accomplish a public purpose of support or stimulation authorized by Federal statute through grants or cooperative agreements and subawards. In DOE, it does not include direct loans, loan guarantees, price guarantees, purchase agreements, Cooperative Research and Development Agreements (CRADAs), or any other type of financial incentive instrument.

**Formula Grant.** A grant DOE is required to make to one or more eligible applicants who meet statutory prerequisites for award. The amount of the award is generally determined by a formula specified in authorizing legislation or program regulations.

**Grant.** A financial assistance instrument used by DOE to transfer money or property to a recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute, when no substantial involvement is anticipated between DOE and the recipient during the performance of the contemplated activity.

**Head of Contracting Activity.** A DOE official with senior management authority for the award and administration of financial assistance instruments within one or more DOE organizational elements.

**NEPA/Environmental Considerations.** The program/project office and the contracting office should coordinate any solicitations or new awards for projects which have an expected environmental, health or safety impact with Environmental, Safety, & Health (ES&H) staff to ensure the action will comply with National Environmental Policy Act (NEPA) and other ES&H requirements. It is also incumbent upon the applicant to identify in its application any potential adverse impacts which may result from project activities. When appropriate, applications should be reviewed for compliance with NEPA procedural requirements at 10 CFR 1021.

**Post-Award Orientations.** Use of a post-award letter or orientation meeting should be consistent with the project dollar amount, complexity, and experience of the recipient in financial assistance administration. If resources permit, procurement staff should attend any technical "kick-off" meeting(s) with the project manager. A post-award letter can be used to identify areas in the award that should be highlighted. Areas for discussion include reporting requirements and due dates, payment procedures, special terms and conditions, prior approval requirements, special restrictive conditions, and any other topics that would aid in award administration.

**Principal Investigator.** the researcher, scientist or other individual designated by the recipient to direct the research and development aspects of the project.

**Procurement Request.** A request prepared and submitted by a program or project office which authorizes a contracting officer to initiate a solicitation, make a new award, or modify an existing award.

**Project.** The set of activities described in an application, State plan, or other document that is approved by DOE for financial assistance (whether such financial assistance represents all or only a portion of the support necessary to carry out those activities.)

**Project Period.** The total amount of time for which the Department promises to fund an agreement and authorizes the recipient to conduct the approved work of the project described in the application. Project periods of more than 18 months are usually divided into 12-month budget periods. When the Department awards a multi-year award, it obligates funds for only the first budget period.

**Recipient.** The organization, individual, or other entity which receives an award from DOE and is financially accountable for the use of any DOE funds or property provided for the performance of the project, and is legally responsible for carrying out the terms and conditions of the award.

**Renewal Award.** An award which adds one or more additional budget periods to an existing project. Discretionary renewal awards may be made either on the basis of a funding opportunity announcement or on a noncompetitive basis when justified (see 10 CFR 600.6). Renewal applications should be submitted no later than six months prior to the schedule expiration of the project period unless a program rule or other document establishes a different application deadline. Before DOE may make a renewal award for a formula grant, the recipient must submit a revised or amended State plan in accordance with program rules and other instructions from DOE.

**Solicitation.** A document which requests the submission of applications for financial assistance and which describes program objectives, recipient and project eligibility requirements, desired performance activity, evaluation criteria, award terms and conditions, and other relevant information about the financial assistance opportunity.

**Subaward.** An award of financial assistance by a recipient to an eligible subrecipient when specifically authorized by statute or program rule. The term does not include a contract under a financial assistance award.

**Subrecipient.** An organization, individual, or other entity that receives a subaward.

**Terms and Conditions.** The rights and obligations of the awarding party and the recipient or subrecipient set forth in statute, program rule, or otherwise set forth or incorporated by reference in the award or subaward document.

**Total Project Costs** The sum of all Federal and non-Federal contributions and the basis for determining cost share percentages.

**Unsolicited Application/Proposal.** A written request for DOE support of a project which is submitted without a solicitation made by DOE.