



**Department of Energy
Financial Assistance Regulation**

**No. 2005-03
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FINANCIAL ASSISTANCE LETTER

This Financial Assistance Letter is issued under the authority of the DOE and NNSA Procurement Executives

SUBJECT: Eligibility Determination Required by Section 2306 of the Energy Policy Act

What is the Purpose of this Financial Assistance Letter (FAL)?

This FAL supplements the guidance in 10 CFR 600, Subpart F, entitled "Eligibility Determination for Certain Financial Assistance Programs – General Statement of Policy," which implements the requirements of section 2306 of the Energy Policy Act (EPACT) of 1992 (42 U.S.C 13525).

When is this FAL Effective?

This FAL is effective 10 days after the date of issuance. This FAL supersedes and cancels FAL 96-02.

When does this FAL Expire?

This FAL remains in effect until superseded or canceled.

Who is the Point of Contact?

Contact Trudy Wood of the Office of Procurement and Assistance Policy by telephone at (202) 287-1336 or by email at trudy.wood@hq.doe.gov.

What is the Background?

Section 2306 of EPACT (42 U.S.C. 13525) imposes eligibility requirements on companies seeking financial assistance under Titles XX through XXIII of the EPACT. The Department of Energy implemented the EPACT eligibility requirements in 10 CFR 600, Subpart F – Eligibility Determination for Certain Financial Assistance Programs – General Statement of Policy. This subpart establishes policy, including procedures and interpretations, to guide DOE officials in making mandatory pre-award determinations of eligibility for awards made under Titles XX through XXIII of the EPACT. Those titles relate to research, development, demonstration, and commercialization programs in diverse areas of energy efficiency, energy supply, and related basic research.

Section 2306 provides for a two-part determination. An applicant must be found to satisfy the conditions of both parts in order to be eligible. The first part (section 2306(1)) involves a finding that the award is in the economic interest of the United States (See 10 CFR 600.502(a)). 10 CFR 503 provides some illustrative examples of the kinds of evidence that would support such a finding: investments in the United States in research, development, and manufacturing; significant contributions to employment in the United States; and agreements, with respect to any technology arising from the financial assistance provided, to promote the manufacture within the United States of products resulting from that technology and to procure parts and materials for such manufacture from competitive suppliers.

The second part of the determination, section 2306(2), involves two subparts, one of which must be satisfied (See 10 CFR 600.502(h)). The first subpart is satisfied if the applicant is a "United States-owned company." The second subpart is satisfied if the applicant is found to be incorporated in the United States and the applicant's parent company is incorporated in a foreign country that: (a) affords opportunities to United States-owned companies comparable to those afforded to any other company to participate in government-supported joint ventures in energy research and development; (b) affords opportunities to United States-owned companies comparable to those afforded to any other company with regard to general investment opportunities; and (c) affords adequate and effective protection of intellectual property rights owned by United States-owned companies.

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I. Implementing Policy for Section 2306 of EPACT

10 CFR 600, Subpart F, entitled “Eligibility Determination for Certain Financial Assistance Programs – General Statement of Policy,” implements section 2306 of EPACT. It provides a general statement of policy, definitions, a list of what DOE may consider in determining that a financial assistance award would be in the economic interest of the United States, information on what an applicant must submit, and other information DOE may consider. This subpart provides a decision making framework to guide DOE officials in making a determination that a particular applicant complies with the eligibility requirements of section 2306 of EPACT.

II. Applicability

The requirements of 10 CFR 600, Subpart F, apply to new and renewal grants and cooperative agreements made to a company under a covered program, except for awards that are equal to or less than \$100,000 or awards executed under the authority of the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs. A company is defined in 10 CFR 600.501 as any business entity other than an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. §501(c)(3)). The EPACT eligibility requirements do not apply to non-profit organizations described in section 501(c)(3) of the Internal Revenue Code of 1954 or State, local, or tribal governments.

III. Covered Programs

10 CFR 600.501 defines a covered program as a program under Titles XX through XXIII of the Act. A list of covered programs is provided as Attachment 1 to this FAL.

IV. Authority to Make Eligibility Determinations

The Secretary has delegated the authority to make the eligibility determinations required by EPACT to the Director of the Office Procurement and Assistance Management. The Director of the Office of Procurement and Assistance Management, by memorandum dated April 11, 1995, re delegated this authority to the Heads of Contracting Activities (HCAs).

V. Contracting Officer's Responsibilities

Contracting Officers must ensure that:

- Program announcements for covered programs include the Energy Policy Act Eligibility Requirements in Part III of the announcement. (See DOE Announcement Template on the Professionals Homepage at <http://professionals.pr.doe.gov/ma5/MA-5Web.nsf/FinancialAssistance/Financial+Assistance+Forms?OpenDocument>.)
- Companies applying for financial assistance under a covered program submit with the application, or at such later time as specified in the program announce, the EPACT Representation provided as Attachment 2 to this FAL. In order to minimize the administrative burden on applicants, Contracting Officers would usually require an EPACT Representation only from those applicants that have been selected for award. In the event that the information in the EPACT Representation is inadequate to support an eligibility determination, the Contracting Officer should request such additional information as may be required. The applicant is responsible for providing sufficient information to permit the HCA to make an appropriate determination concerning economic interest and ownership status.
- The HCA provides a written determination that an applicant under a covered program meets the eligibility requirements in 10 CFR 600, Subpart F. A sample format for making this determination is provided as Attachment 3 to this FAL.
- The determination is included in the award file.

VI. Eligibility Determinations

1. In determining if a company's participation is in the economic interest of the United States, an HCA must consider:

- Individually the contributions of all companies participating in a joint venture application.
 - For applications that propose “team” arrangements, the contributions of all team members as a whole, including any subrecipient, contractor or supplier that an applicant has named and relied upon in its application.
2. In determining the ownership status, the HCA’s special findings regarding foreign-owned companies are required only for the applicant or, if a joint venture application is received, for each company participating in the joint venture. These findings are not required for a subrecipient, contractor or supplier that an applicant has named and relied upon in its application. However, if the facts submitted with an application disclose that foreign-owned companies are doing the majority of the work and getting the majority of the benefits of the program, but may have formed relationships with a U.S.-owned company to avoid the scrutiny of a reciprocity finding, the HCA may consider “team” members as appropriate, in making the determination.
3. If, in making the Eligibility Determination under 10 C.F.R. 600.502, it is found that the Applicant’s parent company is foreign-owned, the HCA will determine whether the country of which the parent is incorporated satisfies the reciprocity requirements of 10 C.F.R. 600.502(b)(2). In making this determination the HCA should rely upon the following information; (1) U.S. Trade Representative Inventory of Foreign Trade Barriers, (2) U.S. Trade Representative Special 301 Report, and, (3) such other relevant information available to the HCA. The links to this information currently are as follows:
http://www.ustr.gov/Document_Library/Reports_Publications/2004/2004_Special_301/Section_Index.html ;
http://www.ustr.gov/Document_Library/Reports_Publications/2005/2005_NTE_Report/Section_Index.html. The EPACT determination must address each of the eligibility criteria and explain why or why not the company meets the criteria. If the HCA is unable to make a determination based on the available information, he/she should seek the assistance of the U.S. Trade Representative through the Office of the Assistant General Counsel for Technology Transfer and Intellectual Property (GC-62).

ATTACHMENTS:

- 1. LIST OF COVERED PROGRAMS**
- 2. EPACT REPRESENTATION**
- 3. SAMPLE FORMAT - “DETERMINATION OF ELIGIBILITY FOR FUNDING REQUIRED BY 10 CFR 600, SUBPART F”**

<u>COVERED PROGRAMS</u>	<u>EPACT SECTIONS</u>
<u>Fossil Energy R & D Petroleum:</u> All Programs	§ 2011, 2012
<u>Gas: Natural Gas Research</u> All Programs, including:	§ 2013-2015, 2112
Resource & Extraction	§ 2013, 2014
Delivery & Storage	§ 2013, 2014
Utilization	§ 2112
Turbines	§ 2013, 2014
Environmental Research & Regulatory Analysis	§ 2013, 2014
Midcontinent Energy Research Center*	§ 2013, 2015
<u>Fuel Cells:</u>	§2115
All Programs, including:	
Advanced Research	§ 2115
Molten Carbonate Systems	§ 2115
Advanced Concepts	§ 2115
<u>Energy Conservation:</u>	
Transportation	§ 2021-2025, § 2027
Alternative Fuels Utilization	§ 2021, 2023
Materials Development	§ 2021
Heat Engine Development	§ 2021, 2112
Electric & Hybrid Propulsion	§ 2021, 2025
Development Implementation & Deployment	§ 2021
Management	§ 2021
Capital Equipment	§ 2021
Advanced Automotive Fuel Economy	§ 2021, 2022
Biofuels User Facility*	§ 2021, 2024
Advanced Diesel Emissions Program*	§ 2021, 2027
Telecommuting Study*	§ 2021, 2028
<u>Utility: All Programs</u>	§ 2101-2108
<u>Industry:</u>	§ 2101-2108
All Programs, including:	
Industrial Wastes	§ 2101
Municipal Solid Wastes	§ 2101
Cogeneration	§ 2101
Electric Drives	§ 2101, 2105

Materials and Metals Processing	§ 2101, 2107
Other Process Efficiency	§2101
Process Heating & Cooling	§ 2101, 2102
Implementation & Deployment	§ 2101
Management	§ 2101
Capital Equipment	§ 2101
National Advanced Manufacturing Tech *	§ 2101, 2202
Initiative Pulp & Paper*	§ 2101, 2103
Steel, Aluminum, and Metal Research*	§ 2101, 2106
Energy Efficient Environmental Program*	§ 2101, 2108
<u>Buildings</u>	§ 2101-2108
All Programs, including:	
Federal Energy Management Program	§ 2101
Implementation & Deployment	§ 2101
Management and Planning	§ 2101
Capital Equipment	§ 2101
Advanced Buildings for 2005*	§ 2101, 2104
Building Systems	§ 2101
Building Envelope	§ 2101
Building Equipment	§ 2101
Codes and Standards	§ 2101
<u>Energy Supply R & D: Energy Research</u>	
Fusion Energy	§ 2114
All Programs, including:	
Confinement Systems	§ 2114
Development & Technology	§ 2114
Applied Plasma Physics	§ 2114
Planning & Projects	§ 2114
Inertial Fusion Energy	§ 2114
Program Direction-Op Exp	§ 2114
Capital Equipment & Construction	§ 2114
<u>Basic Energy Sciences:</u>	§ 2203
All Activities, including:	
Materials Sciences	§ 2203
Chemical Sciences	§ 2203
Energy Biosciences	§ 2203
Engineering & Geosciences	§ 2203
Applied Math Sciences	§ 2203, 2204
Advanced Energy Projects	§ 2203
Program Direction	§ 2203
Capital Equipment	§ 2203

Advisory & Oversight/Program Direction	§ 2203
Energy Research Analysis	§ 2203
University & Science Education Programs	§ 2203
Experimental Program to Stimulate Competitive Research*	§ 2203
Laboratory Technology Transfer	§ 2203
Multi-Program Laboratory Support	§ 2203
<u>Nuclear Energy</u>	
Light Water Reactor	§ 2123, 2126
Advanced Reactor R&D Facilities	§ 2121, 2122, 2124, § 2126
<u>Solar & Renewables:</u>	
Solar & Other Energy	§ 2021, 2026, 2111, 2117
All Programs, including:	
Photovoltaics	§ 2111
Biofuels	§ 2021, 2013, 2024
Solar Technology Transfer	§ 2111
Program Direction- Other Solar Energy	§ 2111
Solar Building Technology Research	§ 2111
Solar Thermal Energy Systems	§ 2111
Wind Energy Systems	§ 2111
Ocean Energy System	§ 2111
International Solar Energy Program	§ 2111
Resource Assessment	§ 2111
Program Support	§ 2111
Geothermal	§ 2111
Hydrogen Research	§ 2026
Electric Energy Systems including: Superconductivity	§ 2117, 2111
Energy Storage Systems	§ 2111
<u>Environmental Restoration & Waste Management</u>	
Facility Transition-Fast Flux Test Facility	§ 2116
Civilian Waste R & D	§ 2113
Electric & Magnetic Fields Research and Public Dissemination Program*	§ 2118
Spark M. Matsunga Renewable Energy & Ocean Technology Center*	§ 2111, 2119

*Direct citation from Title XX-XXIII.

**EPACT REPRESENTATION
FOR COVERED AWARDS OVER \$100,000**

Section 2306 of the Energy Policy Act of 1992, as implemented in 10 CFR, Subpart F, establishes eligibility requirements for companies to participate in certain financial assistance programs covered under Titles XX through XXIII of the EPACT. For this purpose, "company" means any business entity other than an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 [26 U.S.C. Section 501(c)(3)].

In order for the Department of Energy (DOE) to make an award to a company under a covered program, DOE must determine that the company's participation will be in the economic interest of the United States and, if the company is not a United States-owned company, that the parent company is incorporated in a foreign country that: affords national treatment to United States-owned companies with regard to access to Government-supported joint ventures in energy research and development; affords national treatment to United States-owned companies with regard to general investment opportunities; and affords protection to intellectual property rights owned by United States-owned companies. To assist DOE in making these determinations, the applicant must answer the following questions and make the representation provided therein. In the event the information submitted is inadequate for DOE to make a determination, DOE will request such additional information as may be required.

Company Ownership Information:

(Include this information for each participant in a joint venture.)

1. Company Name: _____

2. Project Title: _____

3. Is your company a United States-owned company? Yes No

(U.S.-owned company means (1) a company that has majority ownership by individuals who are citizens of the United States, or (2) a company organized under the laws of a State that either has no parent company or has a parent company organized under the laws of a State.)

4. Identify the city, state, and year in which your company is incorporated or organized.

City: _____ State: _____ Year: _____

5. Is a majority of your company's stock owned or controlled by U.S. Citizens? Yes
No

6. Does your company have a parent company? Yes No
7. If yes, identify the parent company and the country in which the parent company is incorporated or organized.

Parent company: _____

Country: _____

Economic Interest Information:

1. Will this project result in investments in the U.S. in research and development? Yes
No

If the answer is yes, what percentage of the total estimated cost of the project will be expended in the U.S.? (Contractor and supplier costs are to be included in total estimated costs.) Also, express in terms of dollars. _____% \$ _____

2. Will this project result in investments in U.S. in manufacturing? Yes No

If the answer is yes, what percentage of the total estimated cost of the project including contractor and supplier costs will be expended in U.S. manufacturing? Also, express in terms of dollars. _____% \$ _____

3. Will this project contribute to U.S. employment? Yes No

If the answer is yes, briefly describe how.

4. Does the applicant agree that it will promote the manufacture within the U.S. of products resulting from any resultant technology and competitively procure parts and materials? Yes No

Briefly describe plans, if any, for any manufacturing of products arising from the program supported research and development, including the location where such manufacturing is expected to occur.

If your answer is no, please explain.

What other benefits to the U.S. will result from this project?

Applicant Representative: _____

Title: _____

Signature: _____

Date: _____

**DETERMINATION OF ELIGIBILITY FOR FUNDING
REQUIRED BY 10 CFR 600, SUBPART F**

[INSERT PROJECT TITLE]

[TYPE OF ASSISTANCE ACTION] DE-[INSERT AWARD NO.]

Proposing Entity: [INSERT COMPANY NAME AND ADDRESS]

Company Profile:

[COMPANY NAME] is a U.S.-owned company, headquartered in [CITY AND STATE], with the majority of its stock owned or controlled by U.S. Citizens.

[OR]

[COMPANY NAME] was incorporated in [STATE] in [YEAR], and has no parent company.

[OR]

[COMPANY NAME] was incorporated in [STATE] in [YEAR]. Its parent company, [NAME], was incorporated in [STATE], in [YEAR].

[OR]

[COMPANY NAME] was incorporated in [STATE] in [YEAR]. [COMPANY NAME] has a parent company, [NAME], which is incorporated (or organized) in [COUNTRY].

Program Objectives:

The overall program objective is to develop [BRIEF DESCRIPTION].

ELIGIBILITY REQUIREMENTS AND JUSTIFICATION:

Section 2306 of the Energy Policy Act (42 U.S.C. 13525), as implemented by the DOE Financial Assistance Regulations (10 CFR 600.500 - 505), sets forth two requirements for a company to be eligible to receive an award of financial assistance under Section 2306 covered programs.

Eligibility Requirement No. 1: The company's participation in the covered program must be in the economic interest of the United States.

Finding: Award to [COMPANY NAME] satisfies the requirement for the following reasons:

The total estimated cost of the effort under this program is \$[VALUE]. Of that amount,

[\$VALUE], or [PERCENT]% will be invested in the U.S. in research and development. [IF APPLICABLE: An additional \$[VALUE], or [PERCENT]% will be invested in manufacturing.] The balance of the cost will be invested as follows: [PROVIDE A BRIEF DESCRIPTION OF EFFORT TO BE PERFORMED OUTSIDE OF THE U.S.]. [COMPANY NAME] agreed to promote the manufacture within the U.S. of products resulting from the technology, taking into account the goals of promoting competitiveness of U.S. industry. [COMPANY NAME] agreed to procure parts and materials from competitive suppliers. This project will also contribute to U.S. employment by [PROVIDE A BRIEF DESCRIPTION OF EMPLOYMENT OPPORTUNITIES TO BE CREATED].

Intellectual Property Agreement: [Applicable only if the award is made to a United States-Owned Corporation, incorporated and doing 100% of their business in the U.S. If the company is foreign-owned or if the proposed project has foreign involvement at any level, see your Patent Counsel, for modifications and language that may be required.]

[COMPANY NAME] may request, and may subsequently receive, a waiver of Government patent rights to inventions made under the proposed award. However, as a condition of the waiver [COMPANY NAME] will agree that products, processes or services which embody subject inventions under the award must be manufactured, practiced or provided substantially in the United States, unless it is commercially infeasible and some other economic benefit to the United States will result. In the event [COMPANY NAME] does not request and receive a waiver, title to [COMPANY NAME] inventions under this award will be retained by the Government to use as it sees fit.

Eligibility Requirement No. 2: The company must either be a United States-owned company or incorporated or organized under the laws of any state and have a parent company which is incorporated or organized under the laws of a country that affords treatment to United States-owned companies that is comparable to treatment the United States affords foreign-owned companies in the following areas: access to government-supported joint ventures in energy research and development, general investment opportunities, and protection of intellectual property rights.

Finding: Based on the representation provided by [COMPANY NAME], (Attached), it is hereby determined that it is a United States-owned company and therefore satisfies the second eligibility requirement.

[OR]

[Describe the facts and approvals supporting a determination for other than a United States-owned Company]

DETERMINATION

Based on the forgoing findings, I determine that award to [COMPANY NAME] satisfies the requirements of Energy Policy Act 2306 as set forth in 10 CFR 600, Subpart F. I therefore determine that [COMPANY NAME] is eligible to receive financial assistance under this program.

Name of HCA
Head of Contracting Activity

Date