



Financial Assistance Awards (Grants/Cooperative Agreements)

End of Year NCMA-WPI Federal Contractor Update

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Federal Financial Assistance

2 CFR 200.40 Federal financial assistance.

(a) Federal financial assistance means assistance that non-Federal entities receive or administer in the form of:

- (1) Grants;
- (2) Cooperative agreements;
- (3) Non-cash contributions or donations of property (including donated surplus property);
- (4) Direct appropriations;
- (5) Food commodities; and
- (6) Other financial assistance (except assistance listed in paragraph (b) of this section).

(b) For §200.202 Requirement to provide public notice of Federal financial assistance programs and Subpart F—Audit Requirements of this part, Federal financial assistance also includes assistance that non-Federal entities receive or administer in the form of:

- (1) Loans;
- (2) Loan Guarantees;
- (3) Interest subsidies; and
- (4) Insurance.

(c) Federal financial assistance does not include amounts received as reimbursement for services rendered to individuals as described in §200.502 Basis for determining Federal awards expended, paragraph (h) and (i) of this part.

Financial Assistance Regulations

TITLE 2—Grants and Agreements

- **Subtitle A** – **Office of Management and Budget Guidance for Grants and Agreements**
 - **2 CFR 200** Uniform Administrative Requirements, Cost Principles, and Audit Requirements For Federal Awards
- **Subtitle B** – **Federal Agency Regulations for Grants and Agreements**
 - CHAPTER III (2 CFR 300) – DEPARTMENT OF HEALTH AND HUMAN SERVICES
 - CHAPTER IV (2 CFR 400) – DEPARTMENT OF AGRICULTURE
 - CHAPTER VI (2 CFR 600) – DEPARTMENT OF STATE
 - **CHAPTER IX—DEPARTMENT OF ENERGY**
 - 910 Uniform Administrative Requirements, Cost Principles, and Audit Requirements For Federal Awards
 - CHAPTER LIX (2 CFR 5900)—GULF COAST ECOSYSTEM RESTORATION COUNCIL

Financial Assistance Regulations

TITLE 32—National Defense

- **Subtitle A—Department of Defense**

- SUBCHAPTER A – Acquisition
- SUBCHAPTER B – Reserved
- SUBCHAPTER C – DoD GRANT AND AGREEMENT REGULATIONS (DODGARS)
 - Parts 21, 22, 26 and 28 —General Matters, Award & Administration, Drug-Free Workplace, Lobbying
 - **Part 32** – Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations
 - **Part 33** – Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
 - **Part 34** – Administrative Requirements for Grants and Agreements with For-profit Organizations
 - Part 37 – Technology Investment Agreements

Financial Assistance Definitions

Funding Opportunity Announcement (FOA) – For competitive grants and cooperative agreements, the Federal awarding agency must announce specific funding opportunities by providing information in a public notice.

DOE EERE Funding Opportunity Exchange <https://eere-exchange.energy.gov/Default.aspx>

Advanced Research Projects Agency – Energy (ARPA-E) Funding Opportunity Exchange
<https://arpa-e-foa.energy.gov/#be363c9a-ef01-4b77-956a-6e31b54621cd>

Catalog of Federal Domestic Assistance (CFDA) – Government wide compilation of information about domestic assistance programs. Department of Defense and other Federal agencies are required to provide certain information about their domestic assistance programs to the OMB and the General Services Administration (GSA). The GSA makes this information available to the public by publishing it in the CFDA.

Financial Assistance Definitions

Cooperative Agreement – legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that, consistent with 31 U.S.C. 6302-6305:

- (a) Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the awarding agency or pass-through entity to the non-Federal entity to **carry out a public purpose authorized by a law of the United States** (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal Government or pass-through entity's direct benefit or use;
- (b) provides for **substantial involvement** between the awarding agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.
- (c) does not include “cooperative research and development agreements” as defined in 15 U.S.C. 3710a

Grant – a legal instrument of financial assistance between a awarding agency or pass-through entity and a non-Federal entity that, consistent with 31 U.S.C. 6302, 6304.

- (a) Same as above
- (b) **No substantial involvement**

Financial Assistance Definitions

§21.680 Technology Investment Agreements – A special class of assistance instruments used to increase involvement of commercial firms in defense research programs and for other purposes related to integrating the commercial and defense sectors of the nation's technology and industrial base. Technology investment agreements include one kind of cooperative agreement with provisions tailored for involving commercial firms, as well as one kind of other assistance transaction.

§200.15 Class of Federal awards – Class of Federal awards means a group of Federal awards either awarded under a specific program or group of programs or to a specific type of non-Federal entity or group of non-Federal entities to which specific provisions or exceptions may apply

Financial Assistance Definitions

§200.17 Cluster of programs – Cluster of programs means a grouping of closely related programs that share common compliance requirements. The types of clusters of programs are research and development (R&D), student financial aid (SFA), and other clusters. “Other clusters” are as defined by OMB in the compliance supplement or as designated by a state for Federal awards the state provides to its subrecipients that meet the definition of a cluster of programs. When designating an “other cluster,” a state must identify the Federal awards included in the cluster and advise the subrecipients of compliance requirements applicable to the cluster, consistent with §200.331 Requirements for pass-through entities, paragraph (a). A cluster of programs must be considered as one program for determining major programs, as described in §200.518 Major program determination, and, with the exception of R&D as described in §200.501 Audit requirements, paragraph (c), whether a program-specific audit may be elected.

Proposal – FOA Requirements

- Technical Volume –
 - Project Overview (Background, Goal, Impact), Technical Description, Work Plan, Market Transformation/Commercialization Plan
- Application (Standard Form 424)
- Budget Justification (Standard Form 424A)
 - Required for both Prime and Subrecipients
- Summary for Public Release
- Summary Slide
- Budget for Federally Funded Research and Development Centers (FFRDC) – Field Work Proposal
- Written Authorization from CO for FFRDC
- Business Assurances and Disclosure Forms
- U.S. Manufacturing Plan

Proposals – Cost / Budget

- Agencies require pricing by major cost elements
 - Labor Hours, Labor Dollars, Indirect Costs, Subcontractor, Travel, Materials
 - Agency cost/price analysts review costs for reasonableness and connection to proposed SOW
 - Can ask for additional information related to indirect rate structure and composition
 - Forward Pricing Rate memos or Provisional Billing Rate memos can be used as support for reasonableness
 - Each agency has a specific cost/basis of estimate template that is required to accompany the formal bid submission
 - FOA documentation includes the template format
- DOE awards require prior written approval if transferring funds between direct cost categories in excess of 10% of total project costs
 - Written approval is also required for cost transfers between direct and indirect categories

Financial Assistance – Preaward

Notification of Selection for Award – Congratulations!

- Government contacts
- Specific instructions or general guidance on the process
- Communication with Prime's Principal Investigator / Contractual POC
- DOE/ARPA-E Preaward Authorization (90 days prior to award of the contract)

Statement of Work (SOW) / Statement of Project Objectives (SOPO) –

- Level of detail is dependent on agency.
- DOE/ARPA-E establish Go/NoGo decision points / performance metrics
- May require onsite meeting with the entire team (prime & subrecipients)

Budget Review and Substantiation – Prime and Subrecipients

Environmental Impact – National Environmental Policy Act (NEPA)

- Evaluation of environmental impact of the program of the entire team to determine if the project qualifies for categorical exclusion
- Approval required prior to performance and when any additional performance locations are identified.

Financial Assistance – Preaward

Cost Share Requirements

- Dependent upon the FOA requirements – Early stage development vs high Technology Readiness Level (TRL)
- ARPA-E – Early Stage Development: For-Profit $\geq 20\%$, University/Nonprofit $\geq 5\%$, Small Business 0% - 10%
- FFRDC do not provide cost share
- No Fee or Profit

US Manufacturing Plan

- Products embodying or produced through the use of subject inventions (i.e., inventions conceived or first actually reduced to practice under funding agreements) must be substantially manufactured in the United States
- Incorporated in the award
- For Small Business, Educational and NonProfits does not apply to articles that are manufactured for use or sale overseas.

Special Terms and Conditions

DOE / ARPA-E Award

- Department of Energy (DOE) Financial Assistance Regulations, 2 CFR Part 200, as amended by Part 910
- Part 910 DOE specific regulations
 - §910.352 Cost Principles
 - §910.360 Real property and equipment.
 - §910.362 Intellectual property
 - Subpart F—Audit Requirements for For-Profit Entities

DODGARS

- 32 CFR 21 through 32 CFR 37
- Part 32 – Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations
- Part 33 – Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
- Part 34 – Administrative Requirements for Grants and Agreements with For-profit Organizations

Special Terms and Conditions

Cost Regulations

- 2 CFR 200 Subpart E (DoE) – 32 CFR Subchapter C
 - Similar and references to FAR Part 31 cost principals
 - 910.352 Cost Principles (For Profit Entities) contained in 48 CFR 31.2 (Contracts with Commercial Organizations) must be followed in lieu 2 CFR 200.400 - 200.475
- Costs must be reasonable and allocable
- Proper segregation and reporting of direct vs indirect costs
- Unallowable costs
 - DoE - 2 CFR 200.420 establishes allowability of specific cost components (Alcohol, Fringe Benefits, Employee Health and Welfare, etc)
 - DoD – FAR Part 31 and DFARS Part 231 apply
- Actual Rates / ICS Submission & Audit
 - Typically the established cognizant audit agency will perform the review/audit
 - Use established rates for all contract agreements

Special Terms and Conditions

Project Accounting

- Requirements are similar to any cost-type contract
- Time and project cost are to be recorded by project (government vs non-government) including unallowable expenses
- 2 CFR 200 and 32 CFR Subpart C describe standards for financial management systems
- Typically contracts call for quarterly submission of reports that show financial position of the contract (DoE – SF425)
- ARPA-E programs require tracking of Technology Transfer & Outreach (TT&O) costs

Special Terms and Conditions

Cost Share

- Regulations in 2 CFR 200.306, 2 CFR 910.130 and 32 CFR C 34.13
- Costs must be verifiable, allowable, necessary, provided for in the approved budget, and not included on other federal awards
- Final contract will specify amount of required cost share contribution as part of total contract value (Fed vs Non-Fed funds)
- Individual proposed costs can be tagged as cost share:
 - Equipment – prototype components, software, lab fees
 - Labor – Individual labor costs supported by time records
- Can apply cost share percentage of total budget to all incurred costs

Special Terms and Conditions

Budget Period / Period Of Performance (POP)

- Project Period – Full POP
- Budget Period – performance period with specific Go/No Go decision points
- Funding may be provided by Budget Period (Incremental / Fully Funded)
- Authorization (contract mod) required to move to on to next budget period

Substantial Involvement (Cooperative Agreement)

Substantial involvement in work performed under the Award. “Agency” does not limit its involvement to the administrative requirements of this Award. Instead, “agency” has substantial involvement in the direction and redirection of the technical aspects of the project as a whole. Substantial involvement includes the following:

- Shares responsibility for the management, control, direction, and performance of the Project.
- May intervene in the conduct or performance of work under this Award for programmatic reasons. Intervention includes the interruption or modification of the conduct or performance of project activities.
- May redirect or discontinue funding the Project based on the outcome of agency’s evaluation of the Project at the Go/No Go decision point.
- Participates in major project decision-making processes.

Special Terms and Conditions

Go/No Go Decisions

SOW / SOPO establishes Go/No Go decision points. For each Go/No Go decision point, EERE must determine whether the Recipient has fully and satisfactorily completed the work described in SOW/SOPO. As a result of a Go/No Go review, in its discretion, “agency” may take one of the following actions:

- (1) authorize Federal funding for the next budget period for the Project;
- (2) recommend redirection of work under the Project;
- (3) place a hold on the Federal funding for the Project, pending further supporting data; or
- (4) discontinue providing Federal funding for the Project beyond the current budget period as the result of insufficient progress, change in strategic direction, or lack of available funding.

Special Terms and Conditions

Continuation Application

A continuation application is a non-competitive application for an additional budget period within a previously approved project period. At least sixty (60) days before the end of each budget period, the Recipient must submit to the DOE Technology Manager/Project Officer and the DOE Award Administrator its continuation application, which includes the following information:

- (1) A report on the Recipient's progress towards meeting the objectives of the project, including any significant findings, conclusions, or developments, and an estimate of any unobligated balances remaining at the end of the budget period;
- (2) A detailed budget and supporting justification if there are changes to the negotiated budget;
- (3) A description of any planned changes from the negotiated Statement of Project Objectives and/or Milestone Summary Table.

Special Terms and Conditions

Technology Transfer and Outreach

ARPA-E – Activities required to accelerate the commercial deployment of ARPA-E funded technologies.

- Requirement that a budget of a minimum of 5% of the federal funding be planned in commercialization and outreach activity by the recipient.

NEPA Requirements

Consistent with DOE's National Environmental Policy Act (NEPA) Implementing Regulations (10 C.F.R. Part 1021), the NEPA Compliance Officer is required to assess the impact of the work on the human environment and determine whether the work requires the preparation of an Environmental Assessment (EA) or Environmental Impact Statement ("EIS"), or is categorically excluded from preparation of either an EA or EIS.

- May not start work until a written determination is complete
- Significant changes to the scope of work or locations may require the NEPA Compliance Officer to re-evaluate the impact of the work

Special Terms and Conditions

Performance of Work in United States

Recipient must expend 100% of the total project cost in the United States.

- Request Waiver for Work Outside the U.S. – Recipient must demonstrate to the satisfaction of the Contracting Officer that the performance of work outside the U.S. would further the purposes of the FOA under which it was selected and is in the economic interests of the U.S.
 - Rationale for performing the work outside the U.S
 - Description of the work proposed to be performed
 - Proposed budget of work to be performed
 - Countries in which the work is proposed to be performed

Procurement Standards

- Compliance of recipients' procurements that use Federal funds with applicable Federal statutes and executive orders.
- Proper stewardship of Federal funds used in recipients' procurements.
- Consistent with approved Budget Justification
- To the greatest extent practicable, all equipment and products purchased with funds made available should be made in the U.S.

Special Terms and Conditions

Property Standards

- 2 CFR 200.310 through 2 CFR 200.316 / 34.21 through 34.25
- Generally, Title will vest upon acquisition in the non-Federal entity
- 2 CFR 200.310 Insurance - provide equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided to property owned by the non-Federal entity
- 200.311 Real property
- 2 CFR 910.360 Real Property / Equipment requirements, For-Profit recipients.
 - Requires filing UCC Financing Statements
- 2 CFR 200.313 Equipment
 - Includes inventory and control system requirements, for equipment
 - Disposition when equipment is no longer needed
 - Fair Market Value < \$5,000 may be retained, sold or otherwise disposed of.
 - Fair Market Value > \$5,000 may be retained but Federal entity should be reimbursed based on agency's percentage of participation

Special Terms and Conditions

Reporting

- Research Performance Progress Report – Quarterly (30 days after reporting period)
- SF-425, Federal Financial Report – Quarterly, Final
- Intellectual Property Management Plan – 6 weeks after award
- Intellectual Property Disclosure (iEdison)
- Intellectual Property Interim Reports – annually
- Final Invention and Patent Certification – 90 days after completion
- Subject Invention Utilization Report – annually, as request, up to 10 years
- Scientific/Technical Conference Papers/Proceedings
- Final Property Report – SF428
- Final Scientific/Technical Report – 90 days after completion

Reporting sites: EERE Project Management Center (PMC), ePIC, Office of Scientific and Technical Information (OSTI)

Special Terms and Conditions

Compliance Audits

- 2 CFR 200.500 and 32 CFR C 34.16 require annual audit of financial assistance awardees by an independent outside audit firm
 - Applicable when \$750K+ of federal award expenditure during contractor fiscal year
- Audit costs are paid by the contractor but can be recovered
- Test contractor internal controls to ensure compliance with applicable federal statutes, regulations and contract terms
- Subcontractor monitoring is major focus of the auditor
- Auditor submits an audit report with opinion and any findings/deficiencies if applicable

Intellectual Property Provisions

910.362 Intellectual property.

Policies with regard to disposition of rights to data and to inventions conceived or first actually reduced to practice in the course of, or under, a grant or cooperative agreement made to a For-Profit entity by DOE.

- **Patents Rights (Small Business Firms and Nonprofit Organizations)**
small business concern and receives a grant, cooperative agreement, subaward, or contract for research, developmental, or demonstration activities, then, unless there are “exceptional circumstances” as described in 35 U.S.C. 202(e), the award must contain this clause in Appendix A which provides to the recipient the right to elect ownership of inventions made under the award.
- **Patent Rights (Large Business Firms)—No Waiver**
For-profit organization other than a small business concern, as defined in 35 U.S.C. 201(h) and receives an award or a subaward for research, development, and demonstration activities, then, pursuant to statute, the award must contain the standard clause in appendix A which provides that DOE owns the patent rights to inventions made under the award.

Intellectual Property Provisions

910.362 Intellectual property.

- Patent Rights (Large Business Firms)—Waiver

- (i) DOE grants a class waiver for a particular program under 10 CFR part 784

- (ii) The applicant requests and receives an advance patent waiver under 10 CFR part 784.

- (iii) A subaward is covered by a waiver granted under the prime award

- (b) Allocation of Principal Rights.

Whereas DOE has granted a waiver of rights to subject inventions to the Recipient, the Recipient may elect to retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 202 and 203. With respect to any subject invention in which the Recipient elects to retain title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

Intellectual Property Provisions

910.362 Intellectual property.

- (c) Invention disclosure, election of title, and filing of patent applications by Contractor

Shall disclose each subject invention to the Patent Counsel within six months after conception or first actual reduction to practice... (iEdison submission)

Shall elect in writing whether or not to retain title to any such invention by notifying the Patent Counsel at the time of disclosure or within 8 months of disclosure, as to those countries (including the United States) in which the Contractor will retain title...

Shall file its United States patent application on an elected invention within 1 year after election...

Intellectual Property Provisions

910.362 Intellectual property.

- (g) Subcontracts

Unless otherwise directed by the Contracting Officer, the Contractor shall include the patent rights clause required by 2 CFR 910.362(b), suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or nonprofit organization organization, except where the work of the subcontract is subject to an Exceptional Circumstances Determination by DOE. In all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work, the Contractor shall include the patent rights clause required by 2 CFR 910.362(c), suitably modified to identify the parties.

The Contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

In the case of subcontractors at any tier, the Department, the subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Department with respect to those matters covered by this clause.

Intellectual Property Provisions

910.362 Intellectual property.

- (t) U. S. Competitiveness

The Recipient agrees that any products embodying any waived invention or produced through the use of any waived invention will be manufactured substantially in the United States, unless the Recipient can show to the satisfaction of DOE that it is not commercially feasible to do so. In the event DOE agrees to foreign manufacture, there will be a requirement that the Government's support of the technology be recognized in some appropriate manner, e.g., recoupment of the Government's investment, etc. The Recipient further agrees to make the above condition binding on any assignee or licensee or any entity otherwise acquiring rights to any waived invention, including subsequent assignees or licensees. Should the Recipient or other such entity receiving rights in any waived invention undergo a change in ownership amounting to a controlling interest, then the waiver, assignment, license, or other transfer of rights in any waived invention is suspended until approved in writing by DOE.

Intellectual Property Provisions

910.362 Intellectual property.

- Rights in Data – Programs covered under Special Data Statutes

The Recipient may, with the concurrence of DOE, claim and mark as protected data, any data first produced in the performance of this award that would have been treated as a trade secret if developed at private expense.

Any such claimed “protected data” will be clearly marked with the Protected Rights Notice, and will be treated in accordance with such Notice.

Protected data may not be published, disseminated, or disclosed to others outside the Government until three - five years after it was generated, unless express written authorization is obtained from the recipient.

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Financial Assistance

Questions?

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