



**Technical Assistance Workshop
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Managing Financial Assistance Awards

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Topics of Discussion

- What is Financial Assistance (FA)?
- Types of FA Instruments
- Competitive vs. Non-Competitive
- Roles and Responsibilities
- Unsolicited Applications
- Cost Sharing
- Required FA Forms
- FA Regulations



What is Financial Assistance ?

- Financial Assistance is the transfer of money or property to a recipient to accomplish a public purpose of support or stimulation authorized by Federal Statute through grants or cooperative agreements.
- Contracts- Benefit to the Government



Types of FA Instruments

- Grants
- Cooperative Agreements



Competitive vs. Non-Competitive

- Funding Opportunity Announcement (FOA)
- Determination for NonCompetitive Financial Assistance (DNFA)



Pre-award (Competitive)

- A FOA is developed and includes:
 - Program description
 - Available funding, the number of possible awards, and period of performance.
 - Eligibility Information
 - Application and submission Information
 - Evaluation Information
 - Award terms and conditions
- FOAs are posted to www.grants.gov.
- Applications due dates vary after a FOA is posted.
 - Some programs, such as Office of Science and Advance Research Project Agency-Energy (ARPA-E), have annual open FOAs where applications can be submitted throughout the year.



Evaluation (Competitive)

- Merit Review
- Program Policy Factors may be used. These include:
 - projects which represent a diversity of technical approaches, methods, applications and/or market segments;
 - complementary and/or duplicative efforts or projects, which, when taken together, will best achieve the research goals and objectives; and
 - geographic distribution.
- A risk assessment of each applicant is also conducted prior to award which considers the applicant's:
 - Financial stability
 - History of performance
 - Audit reports
 - Ability to successfully perform the project.



Pre-award (Non-Competitive)

- Proposals are submitted directly to the DOE Program Office.
- A determination is made by the DOE Program Office based on the following:
 - Supports mission
 - Activities proposed can be supported by financial assistance
 - Cost effective



Selection/Award (Non-Competitive)

- The DOE Program Office submits a Merit Review and Determination of Non-competitive Financial Assistance Award (DNFA) to the Contracting Officer and General Council.
- General Counsel reviews the Statutory Authority and the Non-competitive Federal financial assistance criteria which can be found at 2 CFR 910.126 (c).
- The Contracting Officer drafts award documents, terms and conditions, and reporting requirements to distribute to the grantees for final signature.



Post Award

- **Monitoring the grant/cooperative agreement**
- **The DOE award may be terminated or ended in whole or in part as follows:**
 - By DOE for cause;
 - By DOE for lack of appropriations;
 - Mutual agreement; and
 - Request of awardee.



Unsolicited Application

- **If an unsolicited application is accepted, a program official must prepare a DNFA. 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.**
- **Mail to:**
 - Unsolicited Proposal Manager
 - U.S. Department of Energy
 - National Energy Technology Laboratory
 - P.O. Box 10940, MS 921-107
 - 626 Cochrans Mill Road
 - Pittsburgh, PA 15236-0940
 - E-mail:DOEUSP@NETL.DOE.GOV



Cost Sharing

- **Statute requires cost sharing by recipients for all DOE financial assistance awards for research, development, demonstration and commercial application programs.**
 - For research and development, the cost share must be not less than 20% of the cost of the activity.
 - Basic or fundamental research may be excluded by the Program. (Science)
 - For demonstration and commercial application programs, the cost share must be not less than 50% of the cost of the activity.
- **Cost sharing requirements may be waived by the Secretary.**



Roles and Responsibilities Federal

Contracting Officer

- Official authorized to execute financial assistance awards on behalf of DOE.
- Responsible for the business management and non-program aspects of the financial assistance process.

Technical Project Officer (TPO)

- Designated in writing by the Contracting Officer
- Develop the programmatic aspects of a proposed announcement,
- Participate in the technical review and evaluation of applications; and
- Monitor the programmatic aspects of project performance



Roles and Responsibilities Grantee

Grantee

- Grantee/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.
- Grantee/recipient is responsible for monitoring the activities of and pass through requirements to any sub-recipients.
- Grantee/recipient is responsible for ensuring the understanding of the terms of the agreement which includes reporting requirements



Required FA Forms

Forms required from recipient:

- SF-424 (Application)
- SF-424A(Budget Information)
- Certs and Assurances
- OCR Questionnaire

Additional required forms from recipient:

- PMC123.1 Form (Budget Justification) threshold \$1M or more
- Cost Share Verification Letter
- Indirect Rate Agreement
- Other supporting documentation based on proposed cost requested by the Contracting Officer
- Subs performing \$100,000 or more must provide budget information such as SF-424A, budget justification and any supporting documentation.



Award-Documentation

New Awards non-competitive and competitive:

- Assistance Agreement Cover Page
- Special Terms and Conditions/ body
- Statement of Work (SOW)/Statement of Project Objectives (SOPO)/Project Description
- Intellectual Property
- SF-424A(Budget Information)
- Financial Assistance Reporting Requirements Checklist
- Technical Project Officer Designation Memo

**** Note:** Substantial Involvement – can be an attachment or included in the clause. If included as an attachment should go after SOW/SOPO/Project Description

Any other attachments program is requiring would be inserted as well.



FA Regulations

- OMB Circular 2 CFR 200 amended by 2 CFR 910

Agency Supplemental

- Department of Energy Guide to Financial Assistance(04/07/2017)



Resources

- **Financial Assistance laws and policies:**
 - <https://energy.gov/management/office-management/operational-management/financial-assistance>
 - <https://www.grants.gov/web/grants/learn-grants/grant-policies.html>



NSPAA Technical Assistance Workshop
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Managing Financial Assistance Awards

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U.S. DEPARTMENT OF ENERGY, OFFICE OF THE GENERAL
COUNSEL



Overview

- Pre-award: selection of financial assistance instrument, competition requirements (DNFAs)
- Post-award: understanding terms and conditions of the agreement, national policy assurances and flow down provisions
- Costs: pre-award costs and allowable costs
- Administration of the Award: recipient responsibilities of performance
- Identifying and Addressing Conflicts of Interest
- Performance and Non-Compliance Issues



Post Award



Award Terms and Conditions

- The Award Agreement consists of several forms, including but not limited to:
 - Special Award Conditions for Use in Most Grants and Cooperative Agreements
 - Statutory and National Policy Assurances (2 CFR § 200.300)
 - Incorporated directly into award or by reference
 - E.g.,
 - Non-discrimination statutes
 - Environmental Policies
 - Lobbying (e.g., Byrd Amendment)
 - Standardized Federal-Wide Research Terms and Conditions
- Legal Authority and Effect of Award (2 CFR § 910.127)
 - Award is valid only if it is in writing and is signed, either in writing or electronically, by a DOE Contracting Officer.
 - A request to draw down DOE funds or acknowledgement of award documents by the Recipient's authorized representative = Recipient's acceptance of the terms and conditions of the Award.



Cost Issues



Pre-award Costs

- Incurred prior to the effective date of the award
- Directly pursuant to the negotiation and in anticipation of the award
- Such costs must be necessary for efficient and timely performance of the approved project
- Allowable only if:
 - Incurred after the date of the Federal award, and;
 - By written consent of Contracting Officer
- All costs incurred before DOE makes the award are at the recipient's risk (2 CFR § 200.458)
 - No obligation to reimburse if recipient does not receive award or if the Federal award is less than anticipated



Allowable vs. Unallowable Costs

- 2 CFR Part 200 Subpart E: covers nonprofits, institutions of higher education, states, local governments, Indian tribes
- FAR Part 31: covers for-profit cost principles
- Costs must meet all of the following criteria, as determined by the CO:
 - Reasonable for the performance of the award
 - Allocable: chargeable or assignable to that Federal award or cost objective
 - Allowable
- Special cost considerations for institutions of higher education (2 CFR §§ 418-419)
- Consideration for selected items of cost (2 CFR § 200.420)



Special or Unusual Costs

➤ Prior written approval (2 CFR § 200.407):

- Under any given Federal award, the reasonableness of costs and allocability of certain items of cost may be difficult to determine.
- Thus, the recipient may seek prior written approval of the CO in advance of the incurrence of special or unusual costs to avoid subsequent disallowance or dispute based upon unreasonableness or nonallocability.



Conflicts of Interest



Conflicts of Interest (COI)

- COIs can arise at the personal and business level. There are two types.
- (1) Personal Conflict of Interest: currently no formal definition in the context of DOE Financial Assistance awards. The FAR is used by analogy.
 - Definition: a situation in which a covered employee has a financial interest, personal activity, or relationship that could impair the employee's ability to act impartially and in the best interest of the Government when performing under the contract. FAR 3.1101.
 - Covered employee: one who performs a function associated with the grant/contract.
 - Exception: de minimis interest that would not "impair the employee's ability to act impartially and in the best interest of the Government." FAR 3.1101.



COI Examples

2 CFR § 200.318 - examples of conflicts may include:

- When an employee, officer, or agent of the non-federal entity (recipient) participates in the selection, award, or administration of a contract supported by a Federal award.
- When the employee, officer, or agent, any member of his or her immediate family, his or her partner . . . or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.
- When officers, employees, and/or agents of the non-Federal entity (recipient) solicit or accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.



COI Examples (Cont.)

- Employee of recipient is an officer. His role as an officer includes selecting subcontractors, including a company that such employee is a partner of. That subcontractor then bills the grant recipient for consultant fees that are paid with Federal grant funds.
- Issues:
 - Personal/Financial interest in subcontract/vendor selection
 - Real conflict, not apparent
 - Requirement of COI Mitigation Plan to demonstrate how procedures will address present and future conflicts
 - Mitigate COI, if possible
 - Employee of the recipient is directly benefiting from all work given by recipient to the subcontractor and must remove himself from the role of selecting the subcontract



Organizational Conflicts of Interest (OCI)

- Second type of Conflict: addressed at FAR Subpart 9.5 (by analogy for grants)

- FAR Definition (FAR 2.101)
 - “An OCI means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person’s objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.”

- Three types: (1) Biased ground rules; (2) Impaired objectivity, and; (3) Unequal access to information



OCI Example

- Example: a non-federal employee obtains a copy of a draft FOA and is asked to provide technical input. A few months later the FOA is released and his company is interested in applying. How can this be resolved?
- OCI Mitigation Plan written by applicant/recipient and approved by CO
 - Implement a “firewall” so the employee does not participate in the application process
 - Or, the company may choose to not apply to avoid an appearance issue
- These situations are handled on a case-by-case basis according to the facts presented
- Identify and address potential conflicts ASAP



Noncompliance Issues



Addressing Awardee Noncompliance

- Informal dispute resolution is encouraged (2 CFR § 910.128)

- Disputes and Appeals: formal procedures for addressing noncompliance (2 CFR 910.128(c))

- 2 CFR § 910.128 requires written notice from the CO to the recipient, which must include:
 - (1) A summary of the dispute, including a statement of the issues and of the positions taken by DOE and the party or parties to the dispute; and the factual and legal bases for a determination of noncompliance,
 - (2) The factual, legal and, if appropriate, policy reasons for DOE's disposition of the dispute.



Remedies for Noncompliance

- If a non-federal entity fails to comply with Federal statutes, regulations or the terms and conditions of the award, the Federal awarding agency or pass-through entity may impose additional conditions, as described in 2 CFR § 200.207.
- If there is a determination that noncompliance cannot be remedied by imposing specific conditions, one or more of the following actions may taken by DOE under 2 CFR § 200.338:
 - Whole or partial suspension of award
 - Whole or Partial termination of award with cause
 - Withholding payment
 - Disallow costs for all or part of the cost of the activity or action not in compliance
 - Debarment and Suspension
 - Take “other remedies that may be legally available”



Hearings and Appeals

- Under 2 CFR § 910.128(c), a final determination issued by the CO triggers the appeals process.
- Appeals to the Senior Procurement Executive (SPE) allowed for:
 - Noncompliance determination by CO
 - Decision not to make a continuation award based on noncompliance by CO
 - Termination of an award (whole or part) by CO
 - Ex. For cause due to noncompliance with special Ts&Cs and reporting requirements
 - Determination that award is void or invalid by CO
 - Indirect cost rate application by CO
 - DOE's disallowance of costs by CO



Hearings and Appeals (Cont.)

- However, the SPE does not have jurisdiction for:
 - Pre-award disputes
 - *Ozdemir v. U.S.*, 89 Fed.Cl. 631
 - Holding that COFC jurisdiction under the Tucker Act for protests challenging federal agency solicitations is not limited to procurement matters.
 - Denial of deviation request
 - Denial of request for budget revision or change in approved project
 - Authorized enforcement actions (except for withholding of future awards for project/program)
 - Awardee procurement actions requiring DOE approval



Guidance Affecting Financial Assistance at DOE

The DOE Guide to Financial Assistance (revised April, 2017)

- Provides guidance on the implementation of regulatory and statutory requirements for financial assistance
- <https://energy.gov/management/downloads/financial-assistance-guide>

The Merit Review Guide for Financial Assistance and Unsolicited Proposals

- Provides guidance on the procedures for conducting merit reviews required for all discretionary financial assistance awards
- <https://energy.gov/management/downloads/merit-review-guide-financial-assistance-and-unsolicited-proposals-current>

Financial Assistance Letters (FALs)

- Provides guidance and direction to the Contracting Officer - issued by the Office of Procurement Policy (MA-611)
- <https://energy.gov/management/policy-flashes>



Resources

- Financial Assistance laws and policies:
 - <https://energy.gov/management/office-management/operational-management/financial-assistance>
 - <https://www.grants.gov/web/grants/learn-grants/grant-policies.html>
- Reporting waste, fraud and abuse:
 - <https://energy.gov/ig/ig-hotline>
 - <https://energy.gov/ig/complaint-form>
- Fraud Awareness:
 - <https://www.grants.gov/web/grants/learn-grants/grant-fraud.html>
- According to the DOE OIG, issues that should be reported include:
 - Abuse of funds
 - Contract, Procurement, and Grant Fraud
 - Bribery, Kickbacks, and Gratuities
 - False Statements and False Claims
 - Conflicts of Interest and Ethics Violations
 - Theft and/or Abuse of Government Property



Conclusion



Back up Slides



Type of Award: Financial Assistance vs. Procurement Contract

- Financial Assistance (FA) is:
 - (1) the transfer of money or property to a recipient or subrecipient (2) to accomplish a public purpose of support or stimulation and is (3) authorized by federal statute.

- Compare with Procurement Contracts
 - Used where the principle purpose of the instrument is to acquire property or services for the direct benefit or use of the U.S. Government

- Federal Grants and Cooperative Agreements Act of 1977, 31 U.S.C. §§ 6301-6308 (FGCAA)

- An Agency must have statutory authority to issue an award



Financial Assistance: Grants and Cooperative Agreements

➤ Grant

- The principal purpose of the relationship is to transfer a thing of value to [a non-federal entity] to carry out a *public purpose of support or stimulation authorized by a law of the United States*.

➤ Cooperative Agreement

- The above language and;
- *Substantial involvement* is expected between the executive agency and the [non-federal entity] when carrying out the activity contemplated in the agreement.



Substantial Involvement by Executive Agencies

- DOE Guide to Financial Assistance Examples:
 - (1) Review and approval of one stage before work can begin on a subsequent stage.
 - (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.

- Statement of Substantial Involvement
 - The Technical Project Officer (TPO) must prepare a “Statement of Substantial Involvement” for each cooperative agreement, which explicitly describes the nature, character, and extent of anticipated Federal involvement.



Competition Requirements

- Competition Encouraged: “DOE shall solicit applications for financial assistance in a manner which provides for the maximum amount of competition feasible.” 2 CFR § 910.126(a)

- Merit Review: process for reviewing FA applications and selecting applicants

- Exceptions to Competition Requirements
 - Restricted Eligibility – limiting competition to certain types of applicants
 - Determination of Noncompetitive Financial Assistance (DNFA)



Competition Requirements (Cont.)

- DNFAAs must satisfy at least one of eight criteria in 2 CFR 910.126(c), as determined by DOE.
 - For example:
 - “The proposed project was submitted as an unsolicited proposal and represents a unique or innovative idea, method, or approach that would not be eligible for financial assistance under a recent, current, or planned notice of funding opportunity, and if, as determined by DOE, a competitive notice of funding opportunity would not be appropriate.” Id. at (c)(7).

- Directed award without competition: DOE directed to award by statute to applicants who meet statutory prerequisites (e.g., Formula/Block grants).