



FINANCIAL ASSISTANCE LETTER

AUTHORITY

This Financial Assistance Letter is issued by the Procurement Executive pursuant to a delegation from the Secretary.

- I. **Purpose.** The purpose of this Financial Assistance Letter is to provide implementation guidance on section 2306 of the Energy Policy Act, (EPAc) 42 U.S.C. 13525. A Final Rulemaking on section 2306 was published on December 20, 1995 (60 FR 65509). It sets forth a general statement of policy including procedures and interpretations concerning implementation of the requirements of section 2306. This guidance is consistent with the final rule. Section 2306 is applicable to financial assistance. This Financial Assistance Letter cancels and supersedes Financial Assistance Letters 94-1, 94-1R and 95-01.

- II. **Background.** Section 2306 of EPAc imposes eligibility requirements on companies seeking financial assistance under Titles XX through XXIII of the EPAc. In order for DOE to make an award to companies that apply for financial assistance under a covered program, the Secretary must make two determinations. First, the Secretary must determine that the applicant's participation will be in the economic interest of the United States. The second determination can be satisfied in one of two ways. The Secretary may determine that the applicant is a United States-owned company. If the applicant is not a United States-owned company, it must meet two other tests:
 1. It must be incorporated or organized in the United States, and
 2. Its parent company must be incorporated or organized in a foreign 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, local investment opportunities, and protection of intellectual property rights.

The Secretary has delegated the authority to make such eligibility determinations as required by EPAc to the Deputy Assistant Secretary for Procurement and Assistance Management. The Deputy Assistant Secretary for Procurement and

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Management, by memorandum dated April 11, 1995, re delegated authority to make EAct eligibility determinations to the Heads of Contracting Activities (HCAs).

III. **Guidance.**

A. Applicability

The requirements of section 2306 of the Energy Policy Act of 1992, Pub. L. 102-486 and this Financial Assistance Letter apply to EAct covered new and renewal awards of financial assistance to companies that are effected on or after October 24, 1992, the effective date of EAct.

The Department of Energy (DOE) has determined that programs executed under the authority of the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs are not programs covered under EAct. Therefore, SBIR and STTR programs are not subject to the eligibility requirements of section 2306.

B. Definitions. For the purposes of making the determinations required by section 2306 of EAct, the following definitions of terms shall apply:

Company means any business entity other than an organization of the type described in section 501c of the Internal Revenue Code of 1954 [26 U.S.C. Section 501(c)(3)].

Covered Program means a program under Titles XX through XXIII of EAct as listed separately in Attachment 1 and updated by DOE for each fiscal year.

Parent Company means a company that (1) exercises ultimate ownership of the applicant company either directly, by ownership of a majority of that company's voting securities, or indirectly, by control over a majority of that company's voting securities through a series of one or more intermediate subsidiary companies, and (2) is not itself subject to the ultimate ownership control of another company.

United States means the fifty states, the District of Columbia, and all commonwealths, territories, and possessions of the United States.

United States-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.

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Voting security, which is referred to in the definition of "Parent Company", has the meaning given the term in the Public Utility Holding Company Act (15 U.S.C. 15b(17)).

C. Contracting Officer Responsibilities. Before the award of any grant or cooperative agreement involving any of the program areas covered by Titles XX through XXIII of EPAct, the contracting officer shall ensure a determination is made by the HCA that such action is consistent with the eligibility requirements of section 2306.

The applicant shall use the appropriate representation form to submit the information that the HCA uses to make his eligibility determination. A simplified representation has been developed for use for awards under \$100,000. For awards of \$100,000 and above, the information which an applicant submits in its representation should be sufficient to permit the HCA to make an eligibility determination. In the event the information submitted by an applicant is inadequate to support such a determination, the contracting officer should request such additional information as may be required.

The contracting officer shall make certain that solicitations contain as part of the application package the applicable EPAct representation form(s). Sample representations to be used in solicitations for covered programs are included as Attachment 2.

D. Reporting. Because of Congressional interest in this area and continuing requests for information, it is important for the Department to maintain centralized records. Accordingly, once an EPAct 2306 determination has been made, the contracting officer shall forward within thirty days of award a copy of such determination together with the applicable representation to the Headquarters Office of Clearance and Support, HR-52.

E. Eligibility Determinations. In determining whether a company's participation is in the economic interest of the United States, an HCA will consider individually the contributions of all companies participating in any joint venture application. In addition, for applications which set out "team" arrangements, the HCA will consider the contributions of all team members as a whole, including any contractors or suppliers that an applicant has named and relied upon in its application.

In all instances the applicant shall have the burden of providing sufficient information to permit the HCA to make an appropriate determination concerning economic interest and ownership status.

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The special findings regarding foreign-owned firms will be required only for applicants, and each company participating in an applicant joint venture. These findings will not be separately required for each of the contractors or suppliers 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 bulk of the work and getting the bulk 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" and lower tier subcontractors, as appropriate, in making the determination.

When an applicant submits evidence that it is a foreign-owned company in either the simplified or expanded representation, the contracting officer shall contact the Headquarters Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, GC-62, for assistance in determining whether the country of the parent company satisfies the requirements of EAct.

A copy of a sample format is included as Attachment 3 for your use in making the determinations of eligibility required by EAct section 2306.

- IV. **Effective Date.** This Financial Assistance Letter is effective on the date shown on page 1. The listing of covered programs under section 2306 will be updated annually by letter.
- V. **Expiration Date.** This Financial Assistance Letter will remain in effect until otherwise canceled or superseded.

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ATTACHMENT 1

COVERED PROGRAMS - § 3002

**EPACT
SECTIONS**

Fossil Energy R & D

Petroleum

Enhanced Oil Recovery All Programs Including:

§ 2011

Heavy Oil

§ 2011

Light Oil

§ 2011

Tar Sands

§ 2011

Advanced Extraction & Process Tech All Programs Including:

§ 2011

Geological Science/Extract Research

§ 2011

SPT Technology/Environmental Research

§ 2011

University Geoscience Research

§ 2011

Oil Shale All Programs:

§ 2012

Gas

Natural Gas Research All Programs Including:

§ 2013-2015

Resource & Extraction

§ 2013, 2014

Delivery & Storage

§ 2013, 2014

Utilization

§ 2013, 2014

Environmental Research & Regulatory Analysis

§ 2013, 2014

Midcontinent Energy Research Center*

§ 2013, 2015

Fuel Cells All Programs Including:

§ 2115

Advanced Research

§ 2115

Phosphoric Acid Systems

§ 2115

Molten Carbonate Systems

§ 2115

Advanced Concepts

§ 2115

Energy Conservation

Transportation All Programs Including:

§ 2021-2025,

§ 2027, 2028,

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	§ 2112
Alternative Fuels Utilization	§ 2021, 2023
Materials Development	§ 2021
Heat Engine Development	§ 2021, 2112
Electric & Hybrid Propulsion Development	§ 2021, 2025
Implementation & Deployment	§ 2021
Management	§ 2021
Management-Capital Equipment	§ 2021
Advanced Automotive Fuel Economy	§ 2021, 2022
Biofuels User Facility*	§ 2021, 2024
Advanced Diesel Emissions Program*	§ 2021, 2027
Telecommuting Study*	§ 2021, 2028
Utility All Programs Including:	§ 2101
Integrated Resource Planning	§ 2101
Program Direction-IRP	§ 2101
Energy Management Control	§ 2101
Industry All Programs Including:	§ 2101-2108
Industrial Wastes	§ 2101
Municipal Solid Wastes	§ 2101
Cogeneration	§ 2101
Electric Drives	§ 2101, 2105
Materials Processing	§ 2101, 2107
Separations	§ 2101
Sensors & Controls	§ 2101
Bioprocessing	§ 2101
Enabling Materials	§ 2101
Improved Combustion Efficiency	§ 2101, 2107
Process Heating & Cooling	§ 2101, 2102
Implementation & Deployment	§ 2101
Management	§ 2101
Management-Capital Equipment	§ 2101
National Advanced Manufacturing Tech Initiative*	§ 2101, 2202
Pulp & Paper*	§ 2101, 2103
Steel, Aluminum, and Metal Research*	§ 2101, 2106
Energy Efficient Environmental Program*	§ 2101, 2108

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<u>Buildings</u> All Programs Including:	§ 2101-2108
Solar Technologies	§ 2101
Materials & Structures	§ 2101
Lighting & Appliances	§ 2101
Heating & Cooling Equipment	§ 2101, 2102
Indoor Air Quality	§ 2101
Building Systems Research	§ 2101
Federal Energy Management Program	§ 2101
Implementation & Deployment	§ 2101
Management	§ 2101
Management-Capital Equipment	§ 2101
Advanced Buildings for 2005*	§ 2101, 2104

Energy Supply R & D

Energy Research

<u>Fusion Energy</u> All Programs Including:	§ 2114
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> All Programs Including:	§ 2203
Materials Sciences	§ 2203
Chemical Sciences	§ 2203
Energy Biosciences	§ 2203
Engineering & Geosciences	§ 2203
Applied Math Sciences	§ 2203, 2204
Advanced Energy Projects	§ 2203
Advanced Neutron Source	§ 2203
Program Direction	§ 2203
Capital Equipment	§ 2203
Advisory & Oversight/Program Direction	§ 2203
Energy Research Analysis	§ 2203
University & Science Education Programs	§ 2203

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ATTACHMENT 1

Experimental Program to Stimulate Competitive Research* § 2203
Laboratory Technology Transfer § 2203
Multi-Program Laboratory Support § 2203

Nuclear Energy

Light Water Reactor § 2123, 2126
Advanced Reactor R&D § 2121, 2122
§ 2124, 2126
Facilities § 2126

Solar & Renewables

Solar & Other Energy All Programs Including: § 2021, 2026,
§ 2111, 2117

Photovoltaics § 2111
Biofuels § 2021
Solar Technology Transfer § 2111
NREL § 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

Environmental Restoration & Waste Management

Facility Transition-Fast Flux Test Facility § 2116

Civilian Waste R & D § 2113

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ATTACHMENT 1

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 AWARDS UNDER \$100,000

Check one block and complete as applicable.

_____(Hereinafter called the "Applicant") represents that it is a United States-owned company. (A company that has majority ownership by individuals who are citizens of the United States or 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.)

_____(Hereinafter called the "Applicant") represents that it or its parent company is incorporated or organized in the following country: _____

The applicant hereby agrees to comply with Section 2306 of the Energy Policy Act (Pub. L. 102-486). In accordance with the above law, the applicant represents that its participation in this financial assistance program would be in the economic interest of the United States based upon its investments in the United States in research, development, and manufacturing, and its contributions to employment in the United States. The applicant agrees with respect to any technology arising from this financial assistance to promote the manufacture of products within the United States and to procure parts and materials from competitive suppliers.

Applicant _____

Title _____

Signature and date _____

