

### **1.3 Catalog of Federal Domestic Assistance (CFDA)**

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.

## 1.6 National Policy Requirements

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).

## **Additions to Chapter 2**

### 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.

## **4.8 Property**

### **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.

## 6.1 Closeout

### 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 part (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

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.