

with the DOE intellectual property statutes (*i.e.*, Bayh-Dole statute and 42 U.S.C. §§2182 and 5908, as implemented in 10 CFR 600.325); or

(b) An assistance transaction other than a cooperative agreement, if its intellectual property provisions vary from the Bayh-Dole statute and 42 U.S.C. §§2182 and 5908, which require the Government to retain certain intellectual property rights, and require differing treatment between large businesses and nonprofit organizations or small businesses.

APPENDIX A TO PART 603—APPLICABLE FEDERAL STATUTES, EXECUTIVE ORDERS, AND GOVERNMENT-WIDE REGULATIONS

Whether the TIA is a cooperative agreement or a type of assistance transaction other than a cooperative agreement, the terms and conditions of the agreement must provide for recipients' compliance with applicable Federal statutes, Executive Orders and Government-wide regulations. This appendix lists some of the more common requirements to aid in identifying ones that apply to a specific TIA. The list is not intended to be all-inclusive, however; the contracting officer may need to consult legal counsel to verify whether there are others that apply (*e.g.*, due to a provision in the appropriations act for the specific funds in use or due to a statute or rule that applies to a particular program or type of activity).

A. CERTIFICATIONS

All financial assistance applicants, including applicants requesting a TIA must comply with the prohibitions concerning lobbying in a Government-wide common rule that the DOE has codified at 10 CFR part 601. The "List of Certifications and Assurances for SF 424(R&R)" on the DOE Applicant and Recipient page at <http://grants.pr.doe.gov> includes the Government-wide certification that must be provided with a proposal for a financial assistance award, including a TIA.

B. ASSURANCES THAT APPLY TO A TIA

Currently the DOE approach to communicating Federal statutes, Executive Orders and Government-wide regulations is to provide potential applicants a list of "National Policies Assurances to be Incorporated as Award Terms" in the program announcement (This list is available on the Applicant and Recipient Page at <http://grants.pr.doe.gov> under Award Terms). The contracting officer should follow this approach for announcements that allow for the award of a TIA. The contracting officer should normally incor-

porate by reference or attach the list of national policy assurances to a TIA award. Of these requirements, the following four assurances apply to all TIA:

1. Prohibitions on discrimination on the basis of race, color, or national origin in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, *et seq.*) as implemented by DOE regulations at 10 CFR part 1040. These apply to all financial assistance. They require recipients to flow down the prohibitions to any subrecipients performing a part of the substantive RD&D program (as opposed to suppliers from whom recipients purchase goods or services).

2. Prohibitions on discrimination on the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101, *et seq.*) as implemented by DOE regulations at 10 CFR part 1040. They apply to all financial assistance and require flow down to subrecipients.

3. Prohibitions on discrimination on the basis of handicap, in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) as implemented by DOE regulations at 10 CFR part 1041. They apply to all financial assistance and require flow down to subrecipients.

4. Preferences for use of U.S.-flag air carriers in the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118), which apply to uses of U.S. Government funds.

C. OTHER ASSURANCES

Additional assurance requirements may apply in certain circumstances, as follows:

1. If construction work is to be done under a TIA or its subawards, it is subject to the prohibitions in Executive Order 11246 on discrimination on the basis of race, color, religion, sex, or national origin.

2. If the RD&D involves human subjects or animals, it is subject to the requirements codified by the Department of Health and Human Services at 45 CFR part 46 and implemented by DOE at 10 CFR part 745 and rules on animal acquisition, transport, care, handling and use in 9 CFR parts 1 through 4, Department of Agriculture rules and rules of the Department of Interior at 50 CFR parts 10 through 24 and Commerce at 50 CFR parts 217 through 277, respectively. See item a. or b., respectively, under the heading "Live organisms" included on the DOE "National Policy Assurances To Be Incorporated As Award Terms" on the Applicant and Recipient Page.

3. If the RD&D involves actions that may affect the environment, it is subject to the National Environmental Policy Act, and may also be subject to national policy requirements for flood-prone areas, coastal zones, coastal barriers, wild and scenic rivers, and underground sources of drinking water.

Department of Energy

§ 605.2

4. If the project may impact a historic property, it is subject to the National Historic Preservation Act of 1966 (16 U.S.C. 470, *et seq.*).

APPENDIX B TO PART 603—FLOW DOWN REQUIREMENTS FOR PURCHASES OF GOODS AND SERVICES

A. As discussed in § 603.705, the contracting officer must inform recipients of any requirements that flow down to their purchases of goods or services (e.g., supplies or equipment) under their TIA. Note that purchases of goods or services differ from subawards, which are for substantive RD&D program performance.

B. Appendix A to 10 CFR part 600, subpart D lists eight requirements that commonly apply to firms' purchases under grants or cooperative agreements. Of those eight, two that apply to all recipients' purchases under a TIA are:

1. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*. A contractor submitting a bid to the recipient for a contract award of \$100,000 or more must file a certification with the recipient that it has not and will not use Federal appropriations for certain lobbying purposes. The contractor also must disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. For further details, see 10 CFR part 601, the DOE's codification of the Government-wide common rule implementing this amendment.

2. *Debarment and suspension*. Recipients may not make contract awards that exceed the simplified acquisition threshold (currently \$100,000) and certain other contract awards may not be made to parties listed on the General Services Administration (GSA) "List of Parties Excluded from Federal Procurement and Nonprocurement Programs." The GSA list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and parties declared ineligible under statutory or regulatory authority other than Executive Orders 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235). For further details, see subparts A through E of 10 CFR part 606, which is the DOE's codification of the Government-wide common rule implementing Executive Orders 12549 and 12689.

C. One other requirement applies only in cases where construction work is to be performed under the TIA with Federal funds or recipient funds counted toward required cost sharing:

1. *Equal Employment Opportunity*. If the TIA includes construction work, the contracting officer should inform the recipient that Department of Labor regulations at 41 CFR 60-1.4(b) prescribe a clause that must be incorporated into construction awards and sub-

awards. Further details are provided in Appendix B to 10 CFR 600 subpart D, item 1.

PART 605—THE OFFICE OF SCIENCE FINANCIAL ASSISTANCE PROGRAM

Sec.

- 605.1 Purpose and scope.
- 605.2 Applicability.
- 605.3 Definitions.
- 605.4 Exceptions.
- 605.5 The Office of Science Financial Assistance Program.
- 605.6 Eligibility.
- 605.7 [Reserved]
- 605.8 Solicitation.
- 605.9 Application requirements.
- 605.10 Application evaluation and selection.
- 605.11 Additional requirements.
- 605.12 Funding.
- 605.13 Cost sharing.
- 605.14 Limitation of DOE liability.
- 605.15 Fee.
- 605.16 Indirect cost limitations.
- 605.17 [Reserved]
- 605.18 National security.
- 605.19 Continuation funding and reporting requirements.
- 605.20 Dissemination of results.

APPENDIX A TO PART 605—ENERGY RESEARCH PROGRAM OFFICE DESCRIPTIONS

AUTHORITY: Section 31 of the Atomic Energy Act, as amended, Pub. L. 83-703, 68 Stat. 919 (42 U.S.C. 2051); sec. 107 of the Energy Reorganization Act of 1974, Pub. L. 93-438, 88 Stat. 1240 (42 U.S.C. 5817); Federal Non-nuclear Energy Research and Development Act of 1974, Pub. L. 93-577, 88 Stat. 1878 (42 U.S.C. 5901 *et seq.*); secs. 644 and 646 of the Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Federal Grant and Cooperative Agreement Act, as amended (31 U.S.C. 6301 *et seq.*).

SOURCE: 57 FR 40583, Sept. 3, 1992, unless otherwise noted.

§ 605.1 Purpose and scope.

This part sets forth the policies and procedures applicable to the award and administration of grants and cooperative agreements by the DOE Office of Science (SC) for basic and applied research, educational and/or training activities, conferences and related activities.

[57 FR 40583, Sept. 3, 1992, as amended at 79 FR 76046, Dec. 19, 2014]

§ 605.2 Applicability.

(a) This part applies to all grants and cooperative agreements awarded after the effective date of this amended rule.