



**Department of Energy  
Financial Assistance Regulation**

**No. 2004-03  
Date 02/12/04**

# **FINANCIAL ASSISTANCE LETTER**

Financial Assistance Letter is issued under the authority of the Procurement Executives of DOE and NNSA

## **Subject: Intellectual Property**

### **What is the purpose of this Financial Assistance Letter (FAL)?**

This FAL provides Contracting Officers, Patent Counsel, and other grants personnel guidance regarding intellectual property (IP) requirements in financial assistance awards and lists the Contracting Officer's responsibilities. It supplements the guidance in 10 CFR 600.

### **How will this change my work processes?**

If your office currently has a standard set of IP provisions for each type of recipient and type of financial assistance award, there will be no change in your work processes except that you will use the applicable DOE-wide set of IP provisions. If your office does not have standard IP provisions, this guidance should simplify the award processes because it provides standard IP provisions for grant and cooperative agreement awards. Contracting Officers will continue to negotiate special patent and data provisions if it is necessary to satisfy the unique mission requirements of a particular program.

### **When is this FAL effective?**

This FAL is effective 10 days after the date of issuance.

### **When does this FAL expire?**

This FAL remains in effect until superseded or canceled.

### **Who is the Point of Contact?**

Contact Trudy Wood of the Office of Procurement and Assistance Policy by telephone at (202) 586-5625 or by email at [trudy.wood@hq.doe.gov](mailto:trudy.wood@hq.doe.gov).

**What is the background?**

For several years DOE has been actively engaged in the Government-wide effort to streamline and simplify Federal financial assistance programs as required by the Federal Financial Assistance Management Improvement Act of 1999, Public Law 106-107. As part of this process, DOE's Assistant General Counsel for Technology Transfer and Intellectual Property (GC-62) worked with the Office of Procurement and Assistance Policy to clarify and streamline the patent and data requirements for awards to for-profit organizations. The revised IP requirements were tailored specifically for these awards and published in the Federal Register on August 21, 2003 [68 FR 50646]. Some of the revised IP provisions are also applicable to nonprofit organizations (e.g., Patent Rights (Small Business Firms and Nonprofit Organizations)). In order to promote more uniformity in financial assistance patent and data rights requirements, GC-62 and field Patent Counsels have developed sets of IP provisions for the various types of financial assistance awards. These IP provisions are located at [www.gc.doe.gov/gcmain.html](http://www.gc.doe.gov/gcmain.html).

The DOE-wide announcement template (See FAL 2003-03) on DOE's Industry Interactive Procurement System (IIPS) provides a link to the GC web site where the IP provisions are maintained. Thus, awarding offices are no longer required to include the various patent and data rights provisions in announcements of funding opportunities. Applicants are able to access the IP requirements by clicking the link in the announcement.

**Guidance Included in this Financial Assistance Letter**



- I. What are the responsibilities of the Contracting Officer?**
- II. What are the roles of other DOE/NNSA offices?**
- III. Where are the standard IP provisions located?**
- IV. Are IP provisions required in non-RD&D awards?**
- V. What are the invention reporting requirements?**

**Attachment: Standard Intellectual Property (IP) Provisions for Financial Assistance Awards**

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## **I. What are the responsibilities of the Contracting Officer?**

The Contracting Officer must:

- A.** Ensure that appropriate patent and data provisions are included in an award.
- B.** Consult with Patent Counsel if the applicable standard set of IP provisions is not appropriate or if there are unique mission requirements. If there are unique mission requirements (e.g., open source software), consult with Patent Counsel before the announcement is issued to ensure that appropriate IP requirements are included in the announcement of funding opportunity.
- C.** Negotiate, in consultation with Patent Counsel and the DOE/NNSA Project Director, special patent and data clauses if it is necessary to satisfy the mission requirements of a particular program.
- D.** Ensure that the Final Invention and Patent Report, if required, is identified on the Federal Assistance Reporting Checklist in the award and is submitted to DOE.

## **II. What are the roles of other DOE/NNSA offices?**

### **A. Patent Counsel:**

- 1. Consults with the Contracting Officer regarding appropriate patent and data clauses and/or modifications to the standard provisions.
- 2. Reviews and approves requests for patent waivers in accordance with 10 CFR part 784.
- 3. Responds to recipient's questions regarding intellectual property issues.
- 4. Receives invention disclosures and interacts with recipients.
- 5. Reviews and approves final summary reports of inventions.

### **B. Project Officer:**

- 1. Identifies mission critical requirements that could affect the patent and data requirements in an award, for example, if software is a deliverable under the award, or if it is necessary to provide heightened assurance of commercialization of a technology by obtaining limited rights to a recipient's background technology.
- 2. Reviews the final technical report and identifies to the Patent Counsel possibly patentable technologies that may have arisen under the award.

### **III. Where are the standard IP provisions located?**

The attached matrix identifies the various sets of IP provisions. The matrix and sets of IP provisions are maintained on the GC web site at [http://www.gc.doe.gov/techtrans/sipp\\_matrix.html](http://www.gc.doe.gov/techtrans/sipp_matrix.html). Click on the Set Number to access a particular set of provisions. The DOE Professionals Homepage also provides a link to these provisions.

### **IV. Are IP provisions required in non-RD&D awards?**

Patent provisions are normally included only in RD&D awards. Data provisions are included in RD&D awards and in any other award if technical data are expected to be first produced or specified to be delivered under the award. The Contracting Officer should consult with Patent Counsel if a non-RD&D award specifies the delivery of technical data.

### **V. What are the invention reporting requirements?**

If the award includes a patent clause, the Contracting Officer must ensure that the Final Invention and Patent Report block on the Federal Assistance Reporting Checklist (DOE F 4600.2) is checked and that the report is submitted to DOE/NNSA.

**ATTACHMENT****Standard Intellectual Property (IP) Provisions for Financial Assistance Awards**

Type of Award	Type of Project	Special Data Statute (e.g., EPACT)	Type of Recipient	Set Number (PDF)
Cooperative Agreement	Research, Development, or Demonstration (RD&D)	No	Domestic Small Business	<a href="#">CSB-1003</a>
Cooperative Agreement	RD&D	Yes	Domestic Small Business	<a href="#">CDSB-1003</a>
Cooperative Agreement	RD&D	No	Large Business, State or Local Government, and Foreign Entity	<a href="#">CLB-1003</a>
Cooperative Agreement	RD&D	Yes	Large Business, State or Local Government, and Foreign Entity	<a href="#">CDLB-1003</a>
Grant	RD&D	No	Domestic Small Business	<a href="#">GSB-1003</a>
Grant	RD&D	Yes	Domestic Small Business	<a href="#">GDSB-1003</a>
Grant	RD&D	No	Large Business, State or Local Government, and Foreign Entity	<a href="#">GLB-1003</a>
Grant	RD&D	Yes	Large Business, State or Local Government, and Foreign Entity	<a href="#">GDLB-1003</a>
Grant and Cooperative Agreement	RD&D	No	Nonprofit Organization	<a href="#">GNP-1003</a>
Grant and Cooperative Agreement	Non RD&D	N/A	All types of recipients	<a href="#">NRD-1003</a>

Click here to access Allimates I and II to Rights in Data - General (OCT 2003) and Rights in Data-Programs Covered Under Special Data Statutes (OCT 2003).

**NOTE:** The contracting officer, in consultation with DOE Patent Counsel and the DOE Project Director, may negotiate special patent and data clauses, when it is necessary to satisfy the mission requirements of a particular program.

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