

APPENDIX 2

OPT OUT DOCUMENT

[Suggested Template] Determination to Not Require the U.S. Competitiveness Provision Authorized by the Science and Energy Technologies DEC

All text in blue should be replaced with the appropriate information and removed before the document is finalized.

Requirement

DOE Science and Energy Programs, i.e., S4 programs and the Advanced Research Projects Agency-Energy (ARPA-E), are directed to include the U.S. Competitiveness provision authorized by the Department of Energy (DOE) Determination of Exceptional Circumstances under the Bayh-Dole Act to Further Promote Domestic Manufacture of DOE Science and Energy Technologies (“S&E DEC”), signed on June 7, 2021, [available here](#), in funding opportunity announcements (FOA) and funding agreements directed in whole or in part to research and development (R&D) activities with nonprofit organizations and small businesses for fiscal year (FY) 2022 and later. The U.S. Competitiveness provision requires DOE-funded inventions to be substantially manufactured in the U.S. This form may be used for FOAs and direct Lab funding.

However, programs may opt out of this requirement using this form or similar documentation, e.g., decision memo. No opt-out is required for non-R&D activities which are not subject to this requirement.

FOA or Lab Work Description

Provide a brief description and the programmatic objectives for the FOA or authorized Lab work -- typically the FOA or Lab work proposal includes language that can be added here.

Justification

The opt-out determination must demonstrate to the satisfaction of DOE program that it would further the purposes of this FOA or specific work authorized under a Lab contract and is otherwise in the economic or national security interests of the U.S. to not require the U.S. Competitiveness provision authorized by the S&E DEC.

Please select one or more of the following factors to support this opt-out determination and briefly explain.

The proposed opt-out of the U.S. Competitiveness provision for the work described herein is justified because it:

☐ supports the missions and objectives of the DOE program;
Explain:

☐ supports U.S. economic interests such as job creation or attracts other investments in the U.S. economy;
Explain:

☐ is directed to a technology such as certain basic science technologies with minimal potential impact on U.S. economic competitiveness;

Explain:

☐ is directed to a technology that is sufficiently commercialized and available in the U.S. by U.S. industry and labor; and/or

Explain:

☐ is necessary to avoid harm to U.S. economic or national security interests or DOE interests;

Explain:

Other Considerations: *Add any other issues, considerations, or sensitivities (if known), not addressed in the sections above, or insert "N/A."*

Determination

For the reasons stated above, it is determined that not requiring the U.S. Competitiveness provision would further the purposes of this FOA or solicitation and is otherwise in the economic interests of the United States, and that the above described opt-out may be granted for [FOA/Lab name/Applicant/Recipient]. This determination is supported by the information shown above.

CONCURRENCE:

[NAME]

DATE

[TECHNOLOGY OFFICE DIRECTOR OR OTHER APPROPRIATE MEMBER OF PROGRAM LEADERSHIP]

[NAME]

COGNIZANT DOE PATENT COUNSEL

DATE

APPROVAL:

[NAME]

CONTRACTING OFFICER

DATE

Attachments

[INSERT]