



**Department of Energy
Acquisition Regulation**

**No. AL 2015-03
Date 02/12/15**

**Department of Energy
Financial Assistance Regulations**

**No. FAL 2015-02
Date 02/12/15**

ACQUISITION/FINANCIAL ASSISTANCE LETTER

This Acquisition/Financial Assistance Letter is issued under the authority of the DOE and NNSA Senior Procurement Executives.

Subject: Congressional Notifications and Quarterly Reporting to the Appropriations Committees in Accordance with the Energy and Water Development and Related Agencies Appropriations Act, 2015, Division D, Title III, Section 301 for Contract, Financial Assistance, or Other Transaction Agreement Actions to Include Related Congressional Notifications for Prior Fiscal Years' Appropriations Acts.

References:

Division D, Energy and Water Development and Related Agencies Appropriations Act, 2015, Pub. L. No. 113-235, Title III, section 301(b), (c), (d), (g)

Division D, Energy and Water Development and Related Agencies Appropriations Act, 2014, Pub. L. No. 113-76, Title III, section 301(b), (c), (d), (g)

Division F, Consolidated and Further Continuing Appropriations Act, Fiscal Year 2013, Pub. L. No. 113-6, Title I

Division B, Consolidated Appropriations Act, Fiscal Year 2012, Pub. L. No. 112-74, Title III – General Provisions, section 311 and section 301(b)

Division B, Full-Year Continuing Appropriations Act, 2011, Pub. L. No. 112-10, Title I – General Provisions, section 1101(a)(2)

Energy and Water Development and Related Agencies Appropriations Act, 2010 Pub. L. No. 111-85, Title III, section 311

Acquisition Guide, Chapter 1.2, Head of Contracting Activity (HCA) Authority, Functions, and Responsibilities

When is this Acquisition Letter (AL)/Financial Assistance Letter (FAL) Effective?

This AL/FAL is effective December 16, 2014. The statutory provisions addressed in this AL/FAL are continuations of the section 311 provisions effective as of the date of the

enactment of the Energy and Water Development and Related Agencies Appropriations Act, 2010 (October 28, 2009) and the section 301(b) provisions effective as of the date of the enactment of the Division D of the the Energy and Water Development and Related Agencies Appropriations Act, 2014 (January 17, 2014) .

When does the AL/FAL expire?

The AL/FAL remains in effect until superseded or canceled. This AL/FAL supersedes AL 2014-05 and FAL 2014-02

Who are the Points of Contact?

For Department of Energy (DOE) acquisition questions, contact Jason Taylor at (202) 287-1560 or Jason.Taylor@hq.doe.gov.

For DOE financial assistance questions, contact Richard Bonnell at (202) 287-1747 or Richard.bonnell@hq.doe.gov.

For National Nuclear Security Administration (NNSA) acquisition and financial assistance questions, contact NNSA at (505) 845-4337.

For additional information on Acquisition Letters and other issues, visit our website at <http://energy.gov/management/acquisition-letters>.

What is the purpose of this AL/FAL?

The purpose of this AL/FAL is to provide information and guidance on statutory requirements for Congressional notification and quarterly reporting to the Appropriations Committees.

(a) The following actions require advanced Congressional notification to the Appropriations Committees (see the last page for decision chart):

(1) All multiyear contract, financial assistance or other transaction agreement awards using “Department of Energy – Energy Programs” budget authority (see definitions for list of programs) regardless of dollar amount:

(i) For Fiscal Year (FY) 2015 and 2014 DOE funds,¹ at least 3 full business days. (Note the requirement that the award condition the Government’s obligation on the availability of future year budget authority.)

(ii) For FYs 2012 and 2013 DOE funds², at least 14 calendar days.

¹ Pub. L. 113-235, Section 301(c) and Pub. L. No. 113-76 Section 301(c)

² Pub. L. No 113-6 Section 301(b) and Pub. L. No. 112-74 Section 301(b)

- (2) Pending award of a contract action totaling \$1 million or more³;
- (3) Announcement of selected applications for negotiation of financial assistance or other transaction agreement awards totaling \$1 million or more⁴; and
- (4) Award of a financial assistance or other transaction agreement action totaling \$1 million or more⁵.

(b) For FY 2015 and 2014, post-award financial assistance actions less than \$1 million require quarterly Congressional reporting to the Appropriations Committees within 15 calendar days after the end of each quarter.⁶ This report shall include Science's multiyear financial assistance actions of \$1 million or less. The Office of the Chief Financial Officer will prepare and submit the quarterly report.

What is the background?

This AL/FAL implements—

- FY 2015 – Section 301(b) and (c) of Division D of Pub. L. No. 113-235;
- FY 2014 - Section 301(b) and (c) of Division D of Pub. L. No. 113-76;
- FY 2013 - Section 301(b) and Section 306 of Title III – General Provisions of Pub. L. No. 113-6;
- FY 2012 - Section 301(b) and Section 311 of Title III - General Provisions of Pub. L. No. 112-74;
- FY 2011 - Section 1101(a)(2) Title I – General Provisions of Pub. L. No. 112-10; and
- FY 2010 - Section 311 of Title III of Pub. L. No. 111-85.

For Fiscal Years 2015 and 2014—

Section 301(b) of Pub. L. No. 113-235 and Pub. L. No. 113-76 require the Department to provide Congressional notice for actions totaling a \$1 million or more; or to provide a quarterly report for actions totaling less than \$1 million.

Section 301(c) of Pub. L. No. 113-235 and Pub. L. No. 113-76 apply to Department of Energy – Energy Programs (see definitions for programs). They require the Department to provide Congressional notice for multiyear actions which are not fully funded, regardless of dollar amount.

For Fiscal Years 2013 and 2012—

³ Pub. L. No. 113-235 Section 301(b)(1) and Pub. L. No. 113-76 Section 301(b)(1)

⁴ Ibid.

⁵ Ibid.

⁶ Pub. L. No. 113-235 Section 301(b)(2) and Pub. L. No. 113-76 Section 301(b)(2)

Multiyear actions - Section 301(b) of Pub. L. No. 113-6 and Pub. L. No. 112-74 apply to Department of Energy – Energy Programs (see definitions for list of programs). It requires the Department to provide Congressional notice for multiyear actions which are not fully funded, regardless of dollar amount.

Action totaling \$1 million or more - Section 311 of the Pub. L. No. 111-85, as continued in Pub. L. No. 112-10, Pub. L. No. 112-74, and Pub. L. No. 113-6 requires the Department to provide Congressional notice for actions in excess of \$1 million. (Note: To align with FY 2015 and 2014 threshold, the DOE policy will be to give notice on actions totaling \$1 million or more for prior FY funds).

Excerpt of Public Laws:

For FY 2015 and 2014, the following is the text of Section 301(b) through (g):

SEC. 301.

(b)(1) Unless the Secretary of Energy notifies the Committees on Appropriations of the House of Representatives and the Senate at least 3 full business days in advance, none of the funds made available in this title may be used to—

(A) make a grant allocation or discretionary grant award totaling \$1,000,000 or more;

(B) make a discretionary contract award or Other Transaction Agreement totaling \$1,000,000 or more, including a contract covered by the Federal Acquisition Regulation;

(C) issue a letter of intent to make an allocation, award, or Agreement in excess of the limits in subparagraph (A) or (B); or

(D) announce publicly the intention to make an allocation, award, or Agreement in excess of the limits in subparagraph (A) or (B).

(2) The Secretary of Energy shall submit to the Committees on Appropriations of the House of Representatives and the Senate within 15 days of the conclusion of each quarter a report detailing each grant allocation or discretionary grant award totaling less than \$1,000,000 provided during the previous quarter.

(3) The notification required by paragraph (1) and the report required by paragraph (2) shall include the recipient of the award, the amount of the award, the fiscal year for which the funds for the award were appropriated, the account and program, project, or activity from which the funds are being drawn, the title of the award, and a brief description of the activity for which the award is made.

(c) The Department of Energy may not, with respect to any program, project, or activity that uses budget authority made available in this title under the heading “Department of Energy—Energy Programs”, enter into a multiyear contract, award a multiyear grant, or enter into a multiyear cooperative agreement unless—

(1) the contract, grant, or cooperative agreement is funded for the full period of performance as anticipated at the time of award; or

(2) the contract, grant, or cooperative agreement includes a clause conditioning the Federal Government’s obligation on the availability of future year budget authority and the Secretary notifies the Committees on Appropriations of the House of Representatives and the Senate at least 3 days in advance.

(d) Except as provided in subsections (e), (f), and (g), the amounts made available by this title shall be expended as authorized by law for the programs, projects, and activities specified in the “Final Bill” column in the “Department of Energy” table included under the heading “Title III—Department of Energy” in the explanatory statement described in section 4 (in the matter preceding division A of this consolidated Act).

(e) The amounts made available by this title may be reprogrammed for any program, project, or activity, and the Department shall notify the Committees on Appropriations of the House of Representatives and the Senate at least 30 days prior to the use of any proposed reprogramming which would cause any program, project, or activity funding level to increase or decrease by more than \$5,000,000 or 10 percent, whichever is less, during the time period covered by this Act.

(f) None of the funds provided in this title shall be available for obligation or expenditure through a reprogramming of funds that—

(1) creates, initiates, or eliminates a program, project, or activity;

(2) increases funds or personnel for any program, project, or activity for which funds are denied or restricted by this Act; or

(3) reduces funds that are directed to be used for a specific program, project, or activity by this Act.

(g)(1) The Secretary of Energy may waive any requirement or restriction in this section that applies to the use of funds made available for the Department of Energy if compliance with such requirement or restriction would pose a substantial risk to human health, the environment, welfare, or national security.

(2) The Secretary of Energy shall notify the Committees on Appropriations of the House of Representatives and the Senate of any waiver under paragraph (1) as soon as practicable, but not later than 3 days after the date of the activity to which a

requirement or restriction would otherwise have applied. Such notice shall include an explanation of the substantial risk under paragraph (1) that permitted such waiver.

For prior FYs, the following is the text of Section 301(b) and (f) for multiyear reporting, regardless of dollar amount, and Section 311 for actions in excess of \$1 million:

SEC. 301(b) and (f).

(b) - The Department of Energy may not, with respect to any program, project, or activity that uses budget authority made available in title III of this Act under the heading “Department of Energy—Energy Programs,” enter into a multi-year contract award, a multi-year grant, or enter into a multi-year cooperative agreement unless the contract, grant, or cooperative agreement includes a clause conditioning the Federal Government’s obligation on the availability of future-year budget authority and the Secretary notifies the Committees on Appropriations of the House of Representatives and the Senate at least 14 days in advance.

(f) - (1) The Secretary of Energy may waive any requirement or restriction in this section that applies to the use of funds made available for the Department of Energy if compliance with such requirement or restriction would pose a substantial risk to human health, the environment, welfare, or national security.

(2) The Secretary of Energy shall notify the Committees on Appropriations of any waiver under paragraph (1) as soon as practicable, but not later than 3 days after the date of the activity to which a requirement or restriction would otherwise have applied. Such notice shall include an explanation of the substantial risk under paragraph (1) that permitted such waiver.

SEC. 311.

None of the funds made available by this Act may be used to make a grant allocation, discretionary grant award, discretionary contract award, Other Transaction Agreement, or to issue a letter of intent totaling in excess of \$1,000,000, or to announce publicly the intention to make such an award, including a contract covered by the Federal Acquisition Regulation, unless the Secretary of Energy notifies the Committees on Appropriations of the Senate and the House of Representatives at least 3 full business days in advance of making such an award or issuing such a letter: Provided, That if the Secretary of the Department of Energy determines that compliance with this section would pose a substantial risk to human life, health, or safety, an award may be made without notification and the Committees on Appropriations of the Senate and the House of Representatives shall be notified not later than 5 full business days after such an award is made or letter issued: Provided further, That the notification shall include the recipient of the award, the amount of the award, the fiscal year for which the funds for award were appropriated, and the account and program from which the funds are being drawn, the title of the award and a brief description of the activity for which the award is made.

What are the instructions/guidance of this Acquisition and Financial Assistance Letter?

- A. Applicability
- B. Terms and Definitions
- C. Contract – Pre-award Congressional Notice
- D. Financial Assistance and Other Transaction Agreement – Pre-selection/Pre-award Congressional Notice
- E. Contracting Activity Procedures for Submission of Section 301(b) and Section 301(c)(2) Congressional Notice
- F. Secretarial Determinations of Substantial Risk to Human Life, Health, or Safety
- G. OAPM Responsibilities for Congressional Notices

A. Applicability

The Section 301 statutory notifications or quarterly reporting, to include prior FY requirements, apply only to actions described in this AL/FAL. The Contracting Activity will prepare and submit the Congressional notices. The Office of the Chief Financial Officer will prepare and submit the quarterly report, which applies only to FY 2015 and 2014 funds. The Section 301 notices are in addition to the Congressional notices described in Acquisition Guide Chapter 5.1 and Financial Assistance Chapter 2, Section 2.6.1 which are submitted on the DOE form 4220.10 and DOE form 541.

B. Terms and Definitions

“Account and program,” as used in this AL/FAL, means the program office name and program name required to further identify which funds for selection or award were appropriated, and the account and program from which the funds are being drawn. This information may come from the budget justification documents that the program office provides to Congress as part of the annual budget request. For example – Program Office Name: Office of Science – Program Name: Basic Energy Sciences.

“Announce publicly,” as used in this AL/FAL, means the sharing of information in any form of communication with a non-DOE party. This information includes press releases, award notices posted to FedBizOpps, apparently successful notices in small business set-asides, and successful/unsuccessful offeror notification letters. For block or formula grant programs, public announcement means the posting of the Annual Program Notice. Prospective awardees or applicants who have been selected for contract award or for negotiation of financial assistance awards must not be notified in advance to the completion of the Section 301 notification requirements as described in this AL/FAL.

“Department of Energy – Energy Programs,” as used in this AL/FAL, means the Energy Programs listed in the corresponding Appropriations Act. These programs are: Energy Efficiency and Renewable Energy, Electricity Delivery and Energy Reliability, Nuclear Energy, Fossil Energy Research and Development, Naval Petroleum and Oil Shale

Reserves, Strategic Petroleum Reserves, Northeast Home Heating Oil Reserve, Energy Information Administration, Non-Defense Environmental Cleanup, Uranium Enrichment Decontamination and Decommissioning Fund, Science, Advanced Research Projects Agency-Energy, Title 17 Innovative Technology Loan Guarantee Program, Advanced Technology Vehicles Manufacturing Loan Program, Departmental Administration, and the Office of the Inspector General.

“Discretionary contract award,” as used in this AL/FAL, means all types of commitments that obligate the Government to an expenditure of funds that are made available under the corresponding appropriations act, including but not limited to, contract awards; purchase orders; task and delivery orders under multiple award contracts to include Government-wide acquisition contracts, indefinite delivery contracts, and Federal Supply Schedule contracts; orders/calls under basic order agreements and blanket purchase agreements; and letter contracts. For Power Marketing Administrations, except for Bonneville Power Marketing Administration, this includes purchase power and wheeling transactions.

“Discretionary grant award,” as used in this AL/FAL, is an award of financial assistance, other than a grant allocation.

“Fourteen calendar days,” as used in this AL/FAL, means fourteen calendar days, beginning at 8:30 a.m. eastern time on the first calendar day and ending at 5:30 p.m. eastern time on the fourteenth calendar day. Example – If a notice is sent to Congress on April 3rd by 5:30 p.m. eastern time, then award can be made on April 17th, the 15th calendar day.

“Grant allocation,” as used in this AL/FAL, means a block or formula grant.

“Multiyear contract” or “Multi-year contract”, as defined at FAR 17.103, means a contract for the purchase of supplies or services for more than 1, but not more than 5, program years. A multiyear contract may provide that performance under the contract during the second and subsequent years of the contract is contingent upon the appropriation of funds, and (if it does so provide) may provide for a cancellation payment to be made to the contractor if appropriations are not made. The key distinguishing difference between multiyear contracts and multiple year contracts is that multiyear contracts, defined in the statutes cited at FAR 17.101, buy more than 1 year’s requirement of a product or service without establishing and having to exercise an option for each program year after the first.

“Multiyear grant or multiyear cooperative agreement award” or “Multi-year grant or multi-year cooperative agreement award” means a new or renewal award with a project period greater than 12 months, excluding continuation amendments.

“Other Transaction Agreement,” as used in this AL/FAL, means “Technology Investment Agreement” codified in Federal regulation at 10 C.F.R. Part 603, pursuant to DOE’s Other Transaction Authority of 42 U.S.C. § 7256.

“Procurement Director,” as used in this AL/FAL, means for DOE the Field Contracting Office Procurement Director. For Power Marketing Administrations, except for Bonneville Power Marketing Administration, the definition includes the Field Office Power Marketing or Energy Marketing and Management Director/Manager for other than FAR-based contract actions.

“Supplemental award,” as used in this AL/FAL, means a modification to a previously awarded grant or cooperative agreement of 1 year or less that, as a result of the modification, an increase in the performance effort of the recipient requires the project period or current budget period to be modified to make the award a multi-year award. For example, a cooperative agreement is awarded with a project period less than or equal to 12 months. If a modification is contemplated to extend the total project period greater than 12 month then a 3 full business day notification is required prior to executing the modification.

“Three full business days,” as used in this AL/FAL, means three consecutive days, excluding Saturdays, Sundays, and holidays, beginning at 8:30 a.m. eastern time on the first business day and ending at 5:30 p.m. eastern time on the third business day. Example – If a notice is sent to Congress on Monday by 5:30 p.m. eastern time, then award can be made on Friday.

“Totaling less than \$1,000,000,” as used in this AL/FAL, applies to competitive and non-competitive financial assistance awards, Other Transaction Agreements, (e.g., Technology Investment Agreements), and Office of Science’s annual notices means per award the total Government share, excluding other agency’s funds, for the current project period. Total Government share does not include cost share.

“Totaling \$1,000,000 or more,” as used in this ALFAL, applies to contract actions, competitive and non-competitive financial assistance awards, Other Transaction Agreements, (e.g., Technology Investment Agreements), and Office of Science’s annual notices means per contract or financial assistance award the total Government share, excluding other agency’s funds, for the current project period. Total Government share does not include cost share.

“Treasury account number,” as used in this AL/FAL, (herein referred to as program office name and program name) refer to “Account and Program” for definition.

Note: DOE does not commonly use "letters of intent." In some instances, this term has been used to mean a letter contract. At other times Departments (such as Transportation) have received specific statutory direction to use “letters of intent” to announce an intention to obligate an amount from future available budget authority specified in law, with certain limitations, for defined major capital projects. DOE has not received similar statutory direction regarding “letters of intent” and it is not anticipated that a contracting officer would have need for one. Should circumstances arise where a contracting officer believes it would need to use a letter of intent, please

contact the appropriate person under the points of contact section of this AL/FAL prior to use.

C. Contract -- Pre-award Congressional Notice

1 - Multi-year Contract

a. *General.* As required by the FAR, when a new multi-year contract is contemplated, as defined at 17.103 (see definitions section of AL/FAL), the contracting officer shall insert the clauses FAR 52.217-2, *Cancellation Under Multi-year Contracts*, and FAR 52.232-19, *Availability of Funds for the Next Fiscal Year*, or similar language conditioning the obligation on the availability of future-year budget authority, in affected solicitations and contracts.

This applies to all contracts that exceed one year but no more than five years. It does not apply to indefinite delivery/ indefinite quantity (IDIQ) contracts as an IDIQ is a multiple year contract, not a multiyear contract. Nor, does it apply to construction contracts with a performance period covering two or more years that is incrementally funded.

b. *Congressional notice.* For a "Department of Energy – Energy Program" multi-year contract award with a condition that Government obligation is subject to availability of future year budget authority, the contracting officer, or designee, shall prepare a Congressional notice in accordance with section E of this AL/FAL. This notice requirement only applies to Department of Energy – Energy Programs, see definition for list. If there is uncertainty as to applicability of the notice requirement, consult with local Counsel.

i. For FY 2015 and 2014, in accordance with Section 301(c)(2), there is a Congressional notice requirement of at least 3 full business days prior to award of a multi-year contract, regardless of dollar amount.

ii. For FYs 2013 or 2012, in accordance with Section 301(b) of Pub. L. No. 113-6 or 112-74, there is a Congressional notice requirement of at least 14 calendar days prior to award of a multi-year contract, regardless of dollar amount.

c. *FY 2015 and 2014 Fully funded Department of Energy – Energy Program.* In accordance with Section 301(c)(1), when a multi-year contract is funded for the full period of performance anticipated at the time of award, no multi-year congressional notice is required. However, if the contract action totals \$1 million or more, see section C.3 for pre-award Congressional notice requirements.

d. *FY 2013 or FY 2012 Fully funded Department of Energy – Energy Program.* In accordance with Section 301(b) of FY 2013 and FY 2012 appropriations, regardless of dollar amount, there is a Congressional notice requirement of at least 14 calendar days prior to award of a multi-year contract, follow the procedures in section C.3 for pre-award Congressional notice requirements.

2 – Contract Award Totaling \$1 Million or More

A contract award totaling \$1 million or more with a total value, including all options, funded with FY 2015 or prior year DOE appropriated funds requires Congressional notification of at least 3 full business days prior to award. Follow the procedures in section C.3 for pre-award Congressional notice requirements. The contracting officer, or designee, shall prepare a Congressional notice in accordance with section E of this AL/FAL.

3 – Notice Requirements

a. *Prior to award.* Congressional notification is required for discretionary contract awards (see definition in Section B of this AL/FAL) for the following:

i. *Department of Energy – Energy Program Funds* - Multi-year contract award for FY 2013 and FY 2012 with Department of Energy – Energy Program appropriated funds, regardless of dollar amount. For FY 2015 and 2014, Department of Energy – Energy Program appropriated funds, multi-year contract awards not fully funded. If the notice will address FY 2015 and previous year funding, consolidate all the information into one notice. The FY 2013 and FY2012 notice requirement of at least 14 calendar days will take precedence over the FY 2015 and FY2014 requirement of at least 3 full business days.

ii. Contract award totaling \$1 million or more with a total value, including all options, funded with FY 2015 or prior year DOE appropriated funds.

b. Each notice requires the FY of the DOE appropriated funds, the treasury account number (herein referred to as program office name and program name) and the dollar amount of each program name from the funds being awarded. If the award uses multiple FY funds or multiple program offices and/or program names, then the notice will need to provide this information and the dollar amount per program name. Purchase power and wheeling transactions will use a modified instruction for preparation and submission of notices. The modified instruction will be issued separately from this AL/FAL to the Power Marketing Administrations.

There has been confusion on how to present multiple year contracts, multiple fiscal years and multiple funding for program names. For multiple fiscal year and/or multiple funding, the contracting activity shall use a table, similar to the one below. See the account and program definition in section B of this AL/FAL to understand what type of information the program office must provide for the notice. When there are multiple fiscal years funding, multiple program offices, and/or program names, create a table, similar to the following, to be inserted into the letter under the first bullet of the letter. If the table will be long, then it may need to be referenced as an enclosure. If a table is used, subsequent in-scope contract actions in which the funding matches the estimates contained in the table may meet the exemption listed below in section C.3.e.i. The

contracting officer should review the original notice and this AL/FAL or superseded version, to determine if another notice is needed. Be sure to document the contract file. See example below for table:

Fiscal year	Program Office	Program	Estimated DOE \$
2015		Program 1	\$500,000
2015		Program 2	\$1,500,000
Total 2015			\$2,000,000
2016		Program 1	\$500,000
2016		Program 2	\$1,500,000
Total 2016			\$2,000,000

c. Congressional notification is also required for a non-competitive extension of a contract that requires a Justification for Other Than Full and Open Competition (JOFOC), or other action that requires a JOFOC (e.g., new scope modification) pursuant to Federal Acquisition Regulation (FAR) Part 6, under either an existing contract or a new contract, when the value of the action is expected to total \$1 million or more. When a synopsis must be issued prior to award, the contracting officer should first consider responses to the synopsis prior to sending the required Congressional notification.

d. For small business programs, the pre-award notices to unsuccessful offerors required by FAR 15.503(a)(2), should not be provided until after the Congressional notification is made and the required three full business days have elapsed.

e. The notification requirement **does not apply** to the following:

- i. If all of the funding information provided in the initial notice is the same, modifications that are within the scope and subject to the terms and conditions of an existing contract, including modifications that are issued pursuant to the Changes clause of the contract, and administrative modifications (e.g., funding modification).
- ii. If all of the funding information provided in the initial notice is the same, the exercise of existing options that are contained in the contract.
- iii. If all of the funding information provided in the initial notice is the same, the issuance of a task and delivery order awarded under a DOE single award indefinite delivery contract.
- iv. Contract actions, including orders, which are awarded using another agency's funds.

f. The appropriate Congressional notification shall be provided in accordance with the procedures prescribed in Section E of this AL/FAL.

D. Financial Assistance and Other Transaction Agreement – Pre-selection/pre-award Congressional Notice

1 - Multi-year Actions

a. *Department of Energy – Energy Program Funds.* For a Department of Energy – Energy Program multi-year grant, cooperative agreement, or other transaction using DOE funds appropriations, regardless of dollar amount, the grant, cooperative agreement, or other transaction that is a new, renewal or supplemental award with a project period greater than 12 months, the Contracting Officer shall—

i. Condition the Department’s obligation for awards and future budget periods on the availability of funds appropriated by Congress for the purpose of the program and future year budget authority. To condition Federal Obligations insert the statements—

(1) **“Funding for all awards and future budget periods are contingent upon the availability of funds appropriated by Congress for the purpose of this program and the availability of future-year budget authority”** into Section II (B) “Estimated Funding”, Section IV “Funding Restrictions”, and Section VIII under the title “Availability of Funds” of affected solicitations or FOAs that contemplate awards of financial assistance or other transaction agreement; and

(2) **“Funding for future budget periods is contingent on the availability of funds appropriated by Congress for the purpose of this program and future year budget authority”** into the appropriate standard incremental funding and funding terms of grant, cooperative agreement, or other transaction agreement awards; and

ii. Ensure Congressional notices are submitted timely, as described in section E of this AL/FAL. For FY 2015 and FY 2014 multiyear actions, provide at least 3 full business days notice. For FY 2013 or FY 2012 multiyear actions, provide at least 14 calendar days notice. In the event the notice has funding from both FY 2013 or FY 2012 and FY 2015 or FY 2014, the longer notice requirement of at least 14 calendar days will take precedence. A notice is required for the following—

(1) Competitive Discretionary Financial Assistance Awards to include other transaction agreements: prior to the program’s announcement or notification to the applicants on selection of their applications for negotiation of financial assistance awards from a Funding Opportunity Announcement;

(2) Grant Allocations (block and formula grants): prior to announcing publicly (releasing or posting of) the funding opportunity announcement and the annual program notice;

(3) Office of Science’s Annual Funding Opportunity Notices: after the program selects and notifies applicants for negotiation of award but prior to awarding the grant or cooperative agreement to the recipient;

(4) Non-Competitive Discretionary Financial Assistance: prior to award of a non-competitive, discretionary, grant or cooperative agreement; or

(5) Renewal and Supplemental Awards: prior to award for all actions in additional estimated total projects costs and project period of performance.

iii. If there is uncertainty as to applicability of the notice requirement, consult with local Counsel.

b. *FY 2015 or FY 2014 Fully funded Department of Energy – Energy Program.* In accordance with Section 301(c)(1), when a multi-year grant, cooperative agreement, or other transaction agreement action is funded for the full period of performance anticipated at the time of award, no multi-year congressional notice is required. However, if the action totals \$1 million or more, see section D.2 for Congressional notice requirements.

c. *FY 2013 or FY 2012 Actions Funded With Department of Energy – Energy Program.* In accordance with Section 301(b) of FY 2013 and FY 2012 appropriations, regardless of dollar amount, there is a Congressional notice requirement of at least 14 calendar days prior to award of a multiyear action, follow the procedures in section D.3 for Congressional notice requirements.

2 – Actions Totaling \$1 Million or More

An action totaling \$1 million or more with a total value, including all options, funded with FY 2015 or prior year DOE appropriated funds requires Congressional notification of at least 3 full business days prior to public announcement, selection or award. Follow the procedures in section D.3 for pre-award Congressional notice requirements. The contracting officer, or designee, shall prepare a Congressional notice in accordance with section E of this AL/FAL.

3 – Notice Requirements

a. *Prior to public announcement, selection or award.* Congressional notification is required for an individual grant, cooperative agreement or other transaction agreement action for the following:

i. *Department of Energy – Energy Programs - Multiyear actions for FY 2013 or FY 2012 with Department of Energy – Energy Program appropriated funds, regardless of dollar amount.* For FY 2015 or FY 2014, Department of Energy – Energy

Program appropriated funds, multi-year awards not fully funded. For reporting the DOE action, include DOE appropriated funds.

- ii. Totaling \$1 million or more for FY 2015 DOE appropriated funds (see definition in Section B for totaling \$1 million or more) or prior year DOE appropriated funds. For reporting the DOE action, include DOE appropriated funds only when determining whether an award totals \$1 million or more.

b. Congressional notice shall be provided in accordance with the procedures prescribed in Section E of this AL/FAL for the following actions:

- i. Competitive Discretionary Grant Award or Other Transaction Agreement: Congressional notification is required prior to announcement of a selection of applications for negotiation of financial assistance award or other transaction agreement from a Funding Opportunity Announcement. Each notice requires the FY of the DOE appropriated funds, the program office name and program name and the dollar amount of each program name from the funds being awarded. If the award uses multiple FY funds or multiple program offices and/or program names, then the notice will need to provide this information and the dollar amount per program name.* If all of the funding information provided in the initial notice is the same, then Congressional notification is not required for subsequent award(s) made pursuant to the selection for which Congressional notification has already been provided.
- ii. Grant Allocations (block and formula grants): Congressional notification shall be provided in advance of announcing publicly the funding opportunity announcement and the annual program notice. Each notice requires the FY of the DOE appropriated funds, the program office name and program name and the dollar amount of each program name from the funds being awarded. If the award uses multiple FY funds or multiple program offices and/or program names, then the notice will need to provide this information and the dollar amount per program name.* If all of the funding information provided in the initial notice is the same, then Congressional notification is not required for subsequent award(s) made pursuant to the selection for which Congressional notification has already been provided.
- iii. Office of Science's Annual Funding Opportunity Notices: Congressional notification shall be provided on those awards. Each notice requires the FY of the DOE appropriated funds, the program office name and program name and the dollar amount of each program name from the funds being awarded. If the award uses multiple FY funds or multiple program offices and/or program names, then the notice will need to provide this information and the dollar amount per program name.*
- iv. Non-competitive Discretionary Financial Assistance: Congressional notification is required prior to award of a non-competitive, discretionary, grant, or cooperative agreement. Each notice requires the FY of the DOE appropriated funds, the program office name and program name and the dollar amount of each program name from the

funds being awarded. If the award uses multiple FY funds or multiple program offices and/or program names, then the notice will need to provide this information and the dollar amount per program name.* If all of the funding information provided in the initial notice is the same, then Congressional notification is not required for subsequent award(s) made pursuant to the selection for which Congressional notification has already been provided. This includes all awards of DOE appropriated funds for congressionally directed projects.

v. Renewals and Supplemental Awards: Congressional notification shall be provided in advance of award. Each notice requires the FY of the DOE appropriated funds, the program office name and program name and the dollar amount of each program name from the funds being awarded. If the award uses multiple FY funds or multiple program offices and/or program names, then the notice will need to provide this information and the dollar amount per program name.* If all of the funding information provided in the initial notice is the same, then continuation awards do not require notices.

***Note:** There has been confusion on how to present multiple year actions, multiple fiscal years and multiple funding for program names. For multiple fiscal years and/or multiple funding, the notice shall show a table, similar to the one below. See the account and program definition in section B of this AL/FAL to understand what type of information the program office must provide for the notice. When there are multiple fiscal years funding, multiple program offices, and/or program names, create a table, similar to the following, to be inserted into the letter under the first bullet of the letter. If the table will be long, then it may need to be referenced as an enclosure. If a table is used, subsequent in-scope actions in which the funding matches the estimates contained in the table may meet the notice requirement described above in this section. The contracting officer should review original notice and this AL/FAL, or superseded version, to determine if another notice is needed. Be sure to document the contract file. See example below for table:

Fiscal year	Program Office	Program	Estimated DOE \$
2015		Program 1	\$500,000
2015		Program 2	\$1,500,000
Total 2015			\$2,000,000
2016		Program 1	\$500,000
2016		Program 2	\$1,500,000
Total 2016			\$2,000,000

E. Contracting Activity Procedures for Submission of Congressional Notice

1. In accordance with sections C and D above, the Head of the Contracting Activity (HCA) shall prepare, sign, and transmit the required notice using the appropriate form

letter on DOE letterhead. The HCA can delegate this responsibility in writing no lower than the Procurement Director.

a. Based on the FY funds being used, the following notice time periods apply:

i. For FY 2015 or FY 2014 multi-year actions, not fully funded, regardless of dollar amount and/or for actions totaling \$1 million or more and obligate FY 2015 DOE appropriations under Pub. L. No. 113-235, or prior FY DOE appropriations, at least three (3) full business days prior to making public announcement, selection or award (see E.2.(a) for details).

ii. For FY 2013 or FY 2012 multi-year actions, regardless of dollar amount, at least fourteen (14) calendar days prior to making public announcement, selection or award (see E.2.(a) for details). For FY 2013 or FY 2012 actions that are not multi-year, but total \$1 million or more see E.1.a.i. above.

b. The Field Contracting Office shall prepare the appropriate form letter in draft for the HCA signature. It is very important to select the correct version based on FY funding. See the last page for a decision chart. The notice timelines will be either at least 14 calendar days notice for FY 2013 and/or FY 2012 multi-year actions notices or at least 3 full business days notice for all other notices. **It is important to spell out all abbreviations and acronyms.** The model form letters are as follows:

- Attachment 1 version A form letter, Subject: Congressional Notification of Pending Contract Action (applies to DOE appropriated funds or future years' acts requiring at least 3 full business days notice)
- Attachment 1 version B form letter, Subject: Congressional Notification of Pending Contract Action (applies to FY 2013 and/or FY 2012 multi-year DOE appropriated funds or future years' acts requiring at least 14 calendar days notice)
- Attachment 2 version A1 form letter, Subject: Congressional Notification of Pending Public Announcement of Selection of Applications for Negotiation of Financial Assistance or Other Transaction Agreement Award (applies to DOE appropriated funds or future years' acts requiring at least 3 full business days notice)
- Attachment 2 version A2 form letter, Subject: Congressional Notification of Pending Public Announcement of Selection of Applications for Negotiation of Financial Assistance or Other Transaction Agreement Award (applies to FY 2013 and/or FY 2012 multi-year DOE appropriated funds or future years' acts requiring at least 14 calendar days notice)
- Attachment 2 version B1 form letter, Subject: Congressional Notification to Make a Non-competitive Financial Assistance Award (applies to DOE appropriated funds or future years' acts requiring at least 3 full business days notice)
- Attachment 2 version B2 form letter, Subject: Congressional Notification to Make a Non-competitive Financial Assistance Award (applies to FY 2013 and/or

FY 2012 multi-year DOE appropriated funds or future years' acts requiring at least 14 calendar days notice)

2. Head of the Contracting Activity (HCA) Responsibilities. The HCA is responsible for ensuring the accountability, accuracy, and timeliness of the notification process. The responsibilities include:

a. Management of the notification process.

- i. Implementation of procedures to ensure compliance with this AL/FAL.
- ii. Establishing, if necessary, or continuing to use the dedicated e-mail box and e-mail address (311notice/Program or site Office@doe.gov, for example 311noticeNETL@netl.doe.gov) to electronically transmit the signed notice(s) to designated Congressional staff with delivery receipt and blindcopy the 311notice@hq.doe.gov mailbox along with other identified Headquarters' staff, at least three (3) full business days prior to award.
- iii. Managing the accurate, effective and timely transmission of all notices for the fiscal year.

(1) For FY 2013 and / or FY 2012 multi-year end of fiscal year actions that require at least 14 calendar days, to ensure an award or selection by September 30, 2015, the notice shall be sent no later than 5:30 p.m. eastern time September 15th. This is the last day and time for sending and showing receipt of FY2014 notices. (Note: Do not send any FY2016 notices prior to October 1st.)

(2) For end of fiscal year actions that require at least 3 full business days, to ensure an award or selection by September 30, 2015, the notice shall be sent no later than 5:30 p.m. eastern time September 24th. This is the last day and time for sending and showing receipt of FY2014 notices. (Note: Do not send any FY2016 notices prior to October 1st.)

- iv. Retention of electronic copies of all Congressional notification submissions for the official transaction file to include e-mail delivery receipt notices of the specific notice to all designated Congressional staff.
- v. Conducting periodic pre- and post-submission quality assurance to ensure that all required notices are or have been submitted.

b. When the action is ready for award or public announcement.

- i. Completion of all reviews, concurrences and approvals before sending the notice.

- ii. Using the instructions provided in E.3. below, complete, date and sign the current version of the appropriate notice on DOE letterhead, and convert/scan dated and signed notice to Adobe pdf file.
- iii. At least fourteen (14) calendar days or three (3) full business days (see B. for definitions and E.1.a. for details) in advance of the identified date of selection/award, submit valid Congressional notifications electronically, by e-mail, to designated Congressional Appropriations Committee staff. Send a courtesy blindcopy e-mail to 311Notice@hq.doe.gov and other designated DOE officials.
- iv. Ensuring the Selection Official is fully cognizant that no public announcement of selection or award may be made prior to confirmation that the required notice has been sent to Congress and that the requisite timeframe has elapsed.
- v. Ensuring the Contracting Officer is fully cognizant that prospective awardees or applicants, who have been selected for contract award or for negotiation of financial assistance awards or other transaction agreement awards, shall not be notified in advance to the completion of the Section 301 notice requirements and that the requisite timeframe has elapsed.

3. Instructions.

- a. **Notification content:** The notification shall provide information prescribed in the attached model form letters including, as applicable:
 - i. For contract/order actions:
 - If it is a multi-year action not fully funded, insert “multi-year” before “action.” See definitions for applicable DOE- Energy Programs.
 - Provide the name of the DOE Program Office and Site Office, if applicable, (e.g., Office of Science, Oak Ridge Office) that the action supports, contract/order number, contract title, contractor name with city and state, the DOE appropriated funds dollar value of award to include options, the fiscal year for which the funds for the award were appropriated, the program office name and program name, the dollar amount of each program name from the funds being awarded, and short description of the contract or order if the title is insufficient to provide a clear understanding of what is being procured.
 - If the award uses multiple FY funds or multiple program offices and/or program names, then the notice will need to provide this information and the dollar amount per program name in a table. If possible, keep the table on one page. If necessary the table could be a separate page to notice.

- If it is a multi-year action not fully funded, complete the final bullet in the letter to provide a brief explanation justifying future funds. If it is not a multi-year action, then delete the bullet.
 - Use attachment 1A or 1B. Where there is italic text in the letter, tailor the notice to insert the information in these areas and turn-off italic font. If all of the funding information provided in the initial notice is the same, then see section C of this AL for details.
- ii. For competitive financial assistance action or Other Transaction Agreement (OTA) action:
- If it is a multi-year action not fully funded, insert “multi-year before “action.” See definitions for applicable DOE- Energy Programs.
 - Provide the name of the DOE Office that the action supports, identify number(s), e.g. DE-FOA-xxxxx or award number with a short description of financial assistance or OTA agreement effort, the grant or OTA number, the selectee name(s) with city and state, include published estimated dollar value available for the award, the fiscal year for which the funds for the award were appropriated, the program office name and program name, the dollar amount of each program name from the funds being awarded.
 - If the award uses multiple FY funds or multiple program offices and/or program names, then the notice will need to provide this information and the dollar amount per program name in a table. If possible, keep the table on one page. If necessary the table could be a separate page to notice. *(If there are more than a few selectees to list, then the list can be an enclosure to the letter. For an Office of Science 10 CFR 605 award, edit the letter to show it is for financial assistance awards instead of selection of applicants.)*
 - When it is a financial assistance selection to a contractor through an existing Management and Operating (M&O) contract, use the M&O contract number and the word “Modification” in the notice. If necessary the Project Officer, may need to provide the M&O contract number to the Contracting Officer.
 - If it is a multi-year action not fully funded, complete the final bullet in the letter to provide a brief explanation justifying future funds. If it is not a multi-year action, then delete the bullet.
 - Use attachment 2A1 or 2A2 for competitive financial assistance or OTA action. Where there is italic text in the letter, tailor the notice to insert the information in these areas and turn-off italic font.

iii. For non-competitive financial assistance action:

- If it is a multi-year action not fully funded, insert “multi-year” before “action.” See definitions for applicable DOE- Energy Programs.
- Provide the name of the DOE Office that this action supports, identify number(s), e.g. DE-FOA-xxxxx or award number with a short description of financial assistance effort, the grant number, the selectee name with city and state, include estimated dollar value of the award to include cost share if applicable, the fiscal year for which the funds for the award were appropriated, the program office name and program name, the dollar amount of each program name from the funds being awarded.
- If the award uses multiple FY funds or multiple program offices and/or program names, then the notice will need to provide this information and the dollar amount per program name in a table. If possible, keep the table on one page. If necessary the table, could be a separate page to notice.
- If it is a multi-year action not fully funded, complete the final bullet in the letter to provide a brief explanation justifying future funds. If it is not a multi-year action, then delete the bullet.
- Use attachment 2B1 or 2B2. Where there is italic text in the letter, tailor the notice to insert the information in these areas and turn-off italic font.

iv. If the e-mail will be sent before 5:30 p.m. eastern time, then date the notice for the business day the e-mail will be sent to Congress. If the e-mail will be sent after 5:30 p.m. eastern time on that business day, then date the notice for the next business day.

v. Assign the notice file name a specific title to include contracting office name. Do not include the name of the contractor, selectee, or awardee in the file name or the subject line of the e-mail.

b. Transmitting notice, e-mail information, e-mail addresses, and waiting period.

- i. Prior to e-mailing the notice, review the notice for proper format, content, date, signature on DOE letterhead, and file name.
- ii. The subject line of the e-mail transmitting the notice to Congress shall provide the following: (1) a Contracting Activity specific sequential notice number along with identifying that it is DOE, for example, an action from NETL would state (NETL/DOE # xxx); (2) (Official Use Only); (3) Section 301 notice; (4) whether it is a contract, financial assistance, or other transaction agreement action; (5) the contracting office name; and (6) the title of the contract or Funding Opportunity Announcement identified in the letter.

(Example of e-mail subject line follows: “Subject: (NETL/DOE #xxx) (Official Use Only) Congressional Notice – Contract Action – NETL – title”).

- iii. In addition to providing subject line information and attaching the Section notice as a pdf, the following disclosures shall be included in the body of the e-mail:

- (1) For a contract action, state the following:

“The attachment is a Section 301 notice.

This information is source selection information related to the conduct of a Federal agency procurement. Disclosure of this information is restricted by section 27 of the Procurement Integrity Act, 41 U.S.C. § 423. This information is market sensitive, predecisional and not public at this time. Accordingly, we request that you do not further disseminate this information. If you are considering disseminating this predecisional information, we respectfully request that you consult with the Department prior to making such a decision.

XXX (insert the contracting activity name)
U.S. Department of Energy,
(insert the City, State)”

- (2) For a financial assistance action, state the following:

“The attachment is a Section 301 notice.

This information is market sensitive, predecisional and not public at this time. Accordingly, we request that you do not further disseminate this information. If you are considering disseminating this predecisional information, we respectfully request that you consult with the Department prior to making such a decision.

XXX (insert the contracting activity name)
U.S. Department of Energy,
(insert the City, State)”

- iv. **E-mail addresses.** Unless otherwise notified by Office of Acquisition and Project Management (OAPM), the following is the list of e-mail addresses:

- (1) E-mail “to” four Congressional Staff --
tyler_owens@appro.senate.gov
doug_clapp@appro.senate.gov
Donna.Shahbaz@mail.house.gov
Taunja.Berquam@mail.house.gov

(2) E-mail blindcopy (bcc) to Headquarters DOE –
 311notice@hq.doe.gov
 Joseph.Levin@hq.doe.gov
 Ingrid.Kolb@hq.doe.gov
 Jonathan.Levy@hq.doe.gov

v. **Waiting period.** No public announcement of a selection (per Section D of this AL/FAL), or award (per Sections C and D of this AL/FAL) shall be made prior to the passage of fourteen (14) calendar days or three (3) full business days (see E.1.a. for specifics) after the date in which e-mail delivery receipt confirmation is received by the HCA, that the required notice has been submitted to Congress. See Section B for definitions of fourteen calendar days and three full business days to include examples. The notice must be received by the Congressional addresses prior to 5:30 p.m. eastern time on that business day. If a notice is sent after 5:30 p.m. eastern time, then it should be dated for the next business day. If the notice is received by the Congressional staff before 5:30 p.m. eastern time, then the fourteen calendar days or three full business days (see E.1.a. for specifics) would start the next business day.

F. Secretarial Determinations of Substantial Risk to Human Health, the Environment, Welfare, or National Security

1. When compliance with the three (3) full business day advance notice requirements of Section 301(b)(1) or (c) would pose a substantial risk to human health, the environment, welfare, or national security or safety, an action may be taken without such advance notification to the Committees on Appropriations of the Senate and the House of Representatives if the Secretary determines in advance to the action that any one of these conditions exists.
2. If an action must be taken pursuant to this authority, the HCA, in coordination with the cognizant program official(s) and legal counsel, shall develop a written recommendation supporting the action for approval by the Secretary.
3. The HCA shall coordinate with the Head of the Program Element through the appropriate Senior Procurement Executive for obtaining necessary approval by the Secretary.
4. An action subject to the requirements of Section 301(b)(1) or (c) shall not be made in advance of the Secretary's determination.
5. Upon approval by the Secretary, notification of the action to the Committees on Appropriations of the Senate and the House of Representatives shall be made not later than three (3) full business days after taking an action that would have otherwise required notification under this AL/FAL. Follow the procedures at Section E. for preparation and submission of Section 3011 Notice. Maintain a copy of the signed

Secretary's determination for the official record and send a copy of the signed determination to the 311notice@hq.doe.gov mailbox.

6. It should be noted that the standard for unusual and compelling urgency, as prescribed at FAR 6.302-2, is distinct from the Section 301 standard for waiving advanced notification.

Note: If the Secretary delegates the authority to make these determinations, any such delegation will be issued separately from this AL/FAL.

G. Office of Acquisition and Project Management (OAPM) Responsibilities for Congressional Notices

OAPM will:

1. Serve as the Department's central point to maintain a copy of all required notices e-mailed from each HCA. Note: HCAs will maintain the official transmittal and delivery receipt notices to the Congressional staff.
2. Conduct periodic review of notices transmitted for accuracy and compliance.
3. Implement or supplement, as appropriate, existing procurement and financial assistance management oversight and control processes (e.g., Procurement Management Review and Business Clearance Programs) to ensure proper implementation of and compliance with the requirements of this AL/FAL.
4. Update DOE guidance on legislation pertaining to Section 301 Notice or quarterly reporting requirements, or similar requirements, for subsequent fiscal years.

AL 2015-XX/FAL 2015-XX Congressional Notice Requirements

VERY IMPORTANT TO READ AL/FAL CLOSELY FOR DETAILS

