



FINANCIAL ASSISTANCE LETTER

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

Subject: Determining Appropriate Award Instrument

References:

31 U.S.C. 6301-08 Federal Grant and Cooperative Agreement Act of 1977
10 CFR 600.5 Selection of award instrument

When is this Financial Assistance Letter (FAL) Effective?

This FAL is effective 10 business days from 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This FAL remains in effect until superseded or canceled.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 at
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Visit our website at www.pr.doe.gov for information on Financial Assistance Letters and other policy issues.

What is the Purpose of this FAL?

This FAL provides guidance for determining whether to use a grant, cooperative agreement, or procurement contract when making an award and supplements the requirements in 10 CFR 600.5, Selection of award instrument.

What is the Background?

Congress enacted the Federal Grant and Cooperative Agreement Act of 1977 (FGCA) to, among other things, distinguish Federal procurement relationships from Federal assistance relationships and to standardize usage and clarify the meaning of the terms “contract”, “grant”, and “cooperative agreement” and the relationships they reflect. In accordance with the FGCA, the decision to use a contract or a financial assistance instrument is based on the primary purpose of the award, including its intended primary beneficiary.

Who is Responsible for Selecting the Appropriate Award Instrument?

The contracting officer, based on input from the program official pertaining to the purpose of the award, is responsible for selecting the appropriate award instrument. This decision is significant because the laws and policies governing procurement generally differ from those governing financial assistance.

What is the Difference Between a Contract and a Financial Assistance Instrument?

The decision whether to use a contract or a financial assistance agreement must be based on the principal purpose of the award, including its intended primary beneficiary. The type of recipient (e.g., university, non-profit, or for-profit organization) is not a factor in determining the appropriate award instrument.

1. Contract. The DOE contracting officer should use a procurement contract whenever the principal purpose of a transaction is the acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government. If DOE provides specifications for the project, is having the project completed based on its own identified needs, or will directly use the report or results of the project to support its mission objectives, then, in most cases, the principal purpose is to acquire property or services for the direct benefit or use of DOE and the award instrument should be a contract.

2. Financial Assistance Instrument (i.e., grant or cooperative agreement). The DOE contracting officer should use a grant or cooperative agreement whenever the principal purpose of a transaction is the transfer of money, property, services, or anything of value to a recipient to accomplish a public purpose of support or stimulation authorized by a law of the United States. The primary beneficiary under a grant or cooperative agreement is the general public, as opposed to the Federal Government. However, there may be situations where DOE expects to derive some use or benefit from the project activities. If the project will produce a benefit or use to DOE that is only indirect or incidental in nature, a grant or cooperative agreement may be used.
3. Decision Process. To ensure that the appropriate instrument is selected, the contracting officer should ask the following questions:
 - A. Is the primary purpose of the award to acquire goods or services that will directly benefit or be used by DOE to further a specific DOE mission or requirement? If the answer to this question is “yes,” then the award instrument should be a contract. If the answer is “no,” then the Contracting Officer should use a grant or cooperative agreement.
 - B. Is the work to be performed by the recipient primarily for its own purposes in the furtherance of the public good, and DOE is merely supporting this effort with financial or other assistance? If the answer to this question is “yes,” then the award instrument should be a grant or cooperative agreement. If the answer is “no,” then the award instrument should be a contract.

What is the Difference Between a Grant and a Cooperative Agreement?

1. Differences. The primary distinguishing feature between a grant and cooperative agreement is that under a cooperative agreement substantial involvement is anticipated between the DOE program office and the recipient during performance of the funded activity. As a general rule, a cooperative agreement has the same characteristics as a grant. But cooperative agreements also involve the following features that are not typical of a grant:
 - A. Substantial DOE involvement in and contribution to the technical aspects of the effort are necessary for its accomplishment. This involvement may include collaboration, participation, or intervention in the activity.
 - B. The nature of the collaboration is clearly defined and specified in a special award condition entitled “Statement of Substantial Involvement”.

2. Decision Process. The Contracting Officer's determination to use a cooperative agreement, as opposed to a grant, should be based primarily on "programmatic" considerations as differentiated from management considerations. A cooperative agreement should not be used solely as a means of exercising greater control over a recipient or the project than would be the case under a grant. Substantial involvement does not include the exercise of normal Federal stewardship responsibilities such as site visits, review of performance and financial reports, or review of performance to insure that the objectives, terms, and conditions of the award are accomplished. Rather, the proposed Federal involvement must provide programmatic benefits that the recipient would not otherwise have available to it in carrying out the project.
3. Award Condition. A cooperative agreement must include a "Statement of Substantial Involvement" that describes the nature of the Federal involvement and defines the responsibilities of each party. Merely stating that "DOE will be substantially involved in the project" is not sufficient. Attachment 1 provides a sample "Statement of Substantial Involvement." Program officials must prepare their own "Statement of Substantial Involvement" or may tailor the attached statement to the specific circumstances of the award.

The contracting officer is responsible for ensuring that the "Statement of Substantial Involvement" clearly describes the nature of DOE's involvement, the responsibilities of the parties, and that the proposed involvement is not being used primarily as a management tool to control the recipient or the project activities.

How does Statutory Language Affect Instrument Selection?

A statute authorizing or providing appropriations for a program or activity occasionally may specify the use of a particular award instrument, notwithstanding the fact that, under the guidance provided in the FGCA, the purpose of the award would necessitate the use of a different type of instrument. In these situations, the agency will attempt to harmonize the language of the two statutes. Unless the authorization or appropriation act provides that a particular award instrument will be utilized notwithstanding the provisions of the FGCA, the principles articulated in the FGCA (and the guidance in this FAL) generally will be applied to determine the appropriate award instrument. When confronted with conflicting statutory language, the contracting officer should consult with legal counsel to determine the appropriate course of action.

What are Some Examples of Ambiguous Circumstances?

1. Conferences. The appropriate instrument for funding conferences should be determined based on the FGCA criteria (i.e., the principal purpose of the conference, including the intended primary beneficiary). For example, a conference whose primary

purpose is to exchange and disseminate information to the public should be funded using a grant. While the awarding office may benefit from information exchanged at the conference, the principal intent of the award is to stimulate dissemination of knowledge to benefit the public. If, however, a conference is being conducted to benefit a Federal agency, funding should be provided under a contract. For example, a conference to provide specialized training to grantees that would otherwise be provided by Federal agency personnel should be funded by a contract. In this example although the recipients of the training benefit from the conference, the principal purpose of the award is for the government to procure training services in lieu of conducting its own training program, thus meeting the FGCA contract standard of directly benefiting the Federal agency.

2. **Evaluations or studies** are other activities that, depending on the circumstances, can be appropriately awarded as either a financial assistance instrument or a contract. For example, a study to assess the benefits of solar energy for State and local communities should be funded using a grant if the primary beneficiaries are the State and local communities. However, if the study is being conducted to assist DOE in planning and forecasting its solar energy budget requirements or to prepare a mandated report for Congress, then a contract should be used. While the Federal Government might benefit from the information obtained from the study in the first scenario, the primary beneficiaries are the State and local communities. In the second scenario, the study is for the direct use of DOE, even though it may be disseminated to the general public and may be used by other organizations and governments in their own solar energy efforts.

ATTACHMENT

SAMPLE

STATEMENT OF SUBSTANTIAL INVOLVEMENT

- A. DOE anticipates having substantial involvement during the project period, through technical assistance, advice, intervention, integration with other awardees performing related activities, and technology transfer activities. The recipient's responsibilities are listed in paragraph B and DOE's responsibilities are listed in paragraph C.
- B. RECIPIENT'S RESPONSIBILITIES. The recipient is responsible for:
- (1) Performing the activities supported by this award, including providing the required personnel, facilities, equipment, supplies and services;
 - (2) Defining approaches and plans, submitting the plans to DOE for review, and incorporating DOE comments;
 - (3) Managing and conducting the project activities, including coordinating with a DOE M&O contractor on activities performed under the M&O contract that are related to the project;
 - (4) Attending semi-annual program review meetings and reporting project status;
 - (5) Submitting technical reports to the DOE Project Officer and incorporating DOE comments; and
 - (6) Presenting the project results at appropriate technical conferences or meetings as directed by the DOE Project Officer (number of conferences/meetings will not exceed XX).
- C. DOE RESPONSIBILITIES. DOE is responsible for:
- (1) Reviewing in a timely manner project plans, including technology transfer plans, and redirecting the work effort if the plans do not address critical programmatic issues;
 - (2) Conducting semi-annual program review meetings to ensure adequate progress and that the work accomplishes the program and project objectives. Redirecting work or shifting work emphasis, if needed;
 - (3) Promoting and facilitating technology transfer activities, including disseminating program results through presentations and publications; and
 - (4) Serving as scientific/technical liaison between awardees and other program or industry staff.