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Department of Energy
Acquisition Regulation and Financial Assistance Regulation

No. AL-2006-02
FAL-2006-01
Date 12/02/05

ACQUISITION LETTER/ FINANCIAL ASSISTANCE LETTER

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

Subject: Section 988 of the Energy Policy Act of 2005 (EPAct 05), Cost Sharing

References:	Pub. L. 109-58	Energy Policy Act of 2005
	10 CFR Part 600	Financial Assistance Rules
	FAR Part 35	Research and Development Contracting

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

This joint AL/FAL is effective immediately for all research, development, demonstration or commercial application programs or activities.

When does this AL/FAL Expire?

This AL/FAL remains in effect until superceded or cancelled.

This AL/FAL cancels FAL 96-01. (Note: In addition to cost-sharing requirements, FAL 96-01 also included guidance on the application of the Stevenson-Wydler Technology Innovation Act of 1980 for research, development, demonstration or commercial application programs or activities under the Energy Policy Act of 1992, 42 U.S.C. 13542. This requirement was not cancelled by EPAct 05. Contracting Officers should, after consultation with DOE Patent Counsel as provided at 10 CFR 600.325(e), continue to include the protections of Section 12(c)(7) of the Stevenson-Wydler Technology Innovation Act of 1980 as applicable.)

Who is the Point of Contact?

Contact Jacqueline Kniskern of the Office of Procurement and Assistance Policy by telephone at 202-287-1342 or by email at Jacqueline.kniskern@hq.doe.gov.

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AL 2006-02 /FAL 2006-01 (12/02/05)

What is the Purpose of this AL/FAL?

The purpose of this AL/FAL is to provide implementing guidance on the cost sharing requirements of Section 988 of EPAct 05.

What is the Background?

Section 988, Cost Sharing, establishes Department-wide cost sharing requirements for most research, development, demonstration, and commercial application activities initiated after the date of enactment of EPAct 05 (August 8, 2005). Some programs authorized in other sections of EPAct 05 may have specific cost sharing requirements. The requirements of Section 988 will take the place of the current patchwork of cost sharing requirements that have been contained in previous authorization and appropriations laws. Section 988 also provides guidance, in addition to the applicable cost principles, for determining allowable costs. Furthermore, under this Section, repayment of the Federal share of a cost-shared activity shall not be required as a condition of making an award.

What Guidance is provided in this AL/FAL?

The cost sharing requirements generally require a 20 percent cost share for research and development, with an exemption for basic or fundamental research and development, and a 50 percent cost share for demonstration and commercial application activities. The Secretary has been granted the authority to reduce or eliminate cost sharing requirements for applied research and development as necessary and appropriate. The Secretary may reduce cost sharing requirements for demonstration and commercial application activities as necessary and appropriate, taking into consideration any technological risk relating to the activity.

1. Applicability

Section 988 applies to awards of grants and cooperative agreements; agreements under the Other Transactions Authority (OTA) of Section 1007 of EPAct 05; and contracts and task orders. (Note: OTA agreements may not be used until training is completed and the contracting officer's warrant has been updated to include the authority to issue OTA agreements.) This requirement also applies to renewal awards for grants and cooperative agreements, but not to continuation awards for on-going grants and cooperative agreements.

Section 988 does not apply to (1) a cooperative research and development agreement under the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.); (2) a fee charged for the use of a Department facility; or (3) an award under the small business innovation research program or the small business technology transfer program.

Section 988 is also not applicable to M&O contracts.

2. Contracting Officer Responsibilities

a. Solicitations and Award Agreements

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Contracting officers shall include the requisite cost sharing requirement and information in any solicitation, request for proposal (RFP), or funding opportunity announcement (FOA) for research and development, demonstration, and commercial application programs and activities.

The following is suggested language:

1) The cost share must be at least 20% of the total allowable costs for research and development projects and must come from non-Federal sources.

2) The cost share must be at least 50% of the total allowable costs for demonstration and commercial application and must come from non-Federal sources.

3) The cost share must be at least 20% of the total allowable costs for research and development projects and 50% of the total allowable costs for demonstration and commercial application projects and must come from non-Federal sources.

Contracting Officers should incorporate the cost sharing requirement and the agreed upon cost share amount (dollar or percentage) in all contracts, grants and cooperative agreements for research and development, demonstration, and commercial application programs and activities.

b. Calculation of Amount

In accordance with section 988 (d), Calculation of Amount, when calculating the amount of the non-Federal contribution, the Contracting Officer:

i) may include the following costs as allowable in accordance with the applicable cost principles:

(a) cash;
(b) personnel costs;
(c) the value of a service, other resource, or third party in-kind contribution determined in accordance with the applicable circular of the Office of Management and Budget;
(d) indirect costs or facilities and administrative costs; or
(e) any funds received under the power program of the Tennessee Valley Authority (except to the extent that such funds are made available under an annual appropriation Act); and

ii) shall not include--

(a) revenues or royalties from the prospective operation of an activity beyond the time considered in the award;
(b) proceeds from the prospective sale of an asset of an activity; or
(c) other appropriated Federal funds.

The terms and conditions of the contract, grant, or other agreement should include appropriate provisions on cost allowability.

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3. Royalties and Repayment

The Federal share of a cost shared activity under section 988 shall not be required to be repayed as a condition of award. Royalties should not be used to repay or recover the Federal share, but may be used as a reward for technology transfer activities.

4. Reduction and Exclusion

Section 988 generally requires a cost share of not less than 20 percent for research and development and not less than 50 percent for demonstration and commercial application activities. The percentage of cost share may be reduced or eliminated according to the following standards:

Research or Development Activities of a Basic or Fundamental Nature – If an appropriate officer of the Department (as designated by the Secretary) determines that a research or development activity is of a basic or fundamental nature, than the activity is excluded from the cost sharing requirement.

Research or Development Activities of an Applied Nature - The Secretary or his/her designee may reduce or eliminate non-Federal cost sharing if he/she determines that the reduction is necessary and appropriate.

Demonstration and Commercial Application – The Secretary or his/her designee may reduce non-Federal cost sharing if he/she determines the reduction to be necessary and appropriate, taking into consideration any technological risk relating to the activity.

(Note: A Secretarial Delegation of the authority to exclude, reduce, or eliminate the section 988 cost share requirement is currently being drafted.)