



ACQUISITION/FINANCIAL ASSISTANCE/OTHER TRANSACTION LETTER

This Acquisition/Financial Assistance/Other Transaction 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, 2024, 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.

References¹:

Division D, Energy and Water Development and Related Agencies Appropriations Act, 2024, Pub. L. No. 118-42, Title III, Section 301 (b), (c), (d), (g)

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

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

This AL/FAL/OTL is effective upon issuance. The statutory provisions addressed in this AL/FAL/OTL 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 Energy and Water Development and Related Agencies Appropriations Act, 2014 (January 17, 2014).

When does the AL/FAL/OTL expire?

The AL/FAL/OTL remains in effect until superseded or canceled for actions funded with FY 2014 - FY 2024 funds. Contracting Officers (COs) should continue to refer to AL 2016-02 and FAL 2016-02 for any actions funded with FY 2012 or FY 2013 funds.

¹ Statutory authorities requiring similar congressional notifications and quarterly reporting to the Appropriations Committees affecting prior year appropriations are set forth in Section H and in archived AL/FALs.

Who are the Points of Contact?

For Department of Energy (DOE) acquisition, financial assistance, and other transactions questions, contact the Office of Acquisition Management at [DOE OAPMPolicy@hq.doe.gov](mailto:DOE_OAPMPolicy@hq.doe.gov).

For National Nuclear Security Administration (NNSA) acquisition and financial assistance questions, contact NNSA at (505) 845-5639.

For additional information on Acquisition Letters (ALs), Financial Assistance Letters (FALs), Other Transaction Letters (OTLs), and other issues, visit our website at:

- <https://www.energy.gov/management/acquisition-letters>
- <https://www.energy.gov/management/financial-assistance-letters>
- <https://www.energy.gov/management/other-transaction-authority>

What is the purpose of this AL/FAL/OTL?

The purpose of this AL/FAL/OTL is to provide information and guidance on the statutory requirements for Congressional notification (301 notification or the notification) and quarterly Section 301 reporting to the Committees on Appropriations of both Houses of Congress (Appropriation Committees).

(a) The following actions require advanced Congressional notification to the Appropriations Committees in accordance with the guidance provided in this AL/FAL/OTL:

- (1) All multi-year contract, financial assistance or other transaction (OT) agreements and actions (including any modifications where funds are allocated for new programs, projects, or activities not covered by a previous notification) using the budget authority made available in an appropriations act under the heading “Department of Energy – Energy Programs” (see definitions for list of programs) that are not fully funded at time of award regardless of dollar amount;
- (2) Pending award of a contract action totaling \$1 million or more;
- (3) Provision of nonoperational funding with competition restricted only to Department of Energy National Laboratories (Laboratory calls) totaling \$1 million or more;
- (4) Provision of nonoperational funding directly to a Department of Energy National Laboratory totaling \$25 million or more;
- (5) Announcement of selected applicants for negotiation of competitive financial assistance or other transaction awards totaling \$1 million or more;
- (6) Award of a competitive financial assistance or OT award totaling \$1 million or more;

- (7) Announcement, release, or posting of the funding opportunity announcement, notice of funding opportunity, and/or the annual program notice for formula or block grant programs;
- (8) Community Project Funding/Congressionally Directed Spending (CPF/CDS) awards totaling \$1 million or more; and
- (9) Financial assistance awards (new, renewal or supplemental) and OT agreements totaling \$1 million or more made non-competitively (awarded through the execution of a Determination of Non-Competitive Financial Assistance (DNFA)).

(b) Financial assistance and OT agreements totaling less than \$1 million require quarterly Congressional reporting to the Appropriations Committees within 15 calendar days after the end of each quarter. The Office of the Chief Financial Officer will prepare and submit the quarterly Congressional report.

What is the background?

This AL/FAL/OTL implements Section 301(b) and (c) of Division D of Pub. L. No. 118-42 and previous FY Section 301(b) requirements as listed in Section H.

Section 301(b) of Pub. L. No. 118-42 continues to require the Department to provide Congressional advanced notification for actions totaling \$1 million or more and to provide a quarterly report to Congress documenting financial assistance actions totaling less than \$1 million during the previous quarter. In addition, the FY24 appropriation bill adds a requirement to provide advanced notification for lab calls in excess of \$1 million and nonoperational funding modifications to national laboratory contracts in excess of \$25 million.

Section 301(c) of Pub. L. No. 118-42 applies to the use of accounts in the “Department of Energy – Energy Programs” heading (see definitions for programs). Multi-year actions that are not fully funded must include clauses conditioning the obligation of funds on the availability of future year budget authority and be accompanied by advance congressional notification.

See Section H for additional Public Law citations and relevant excerpts.

What are the instructions/guidance?

Sections

- A. Applicability
- B. Terms and Definitions
- C. Contract – Pre-award Congressional Notification
- D. Financial Assistance and Other Transaction Agreement – Pre-selection/Pre-award Congressional Notification
- E. Contracting Activity Procedures for Submission of Pre-award Congressional Notifications
- F. Secretarial Determinations of Substantial Risk to Human Life, Health, or Safety

- G. DOE Office of Acquisition Management (OAM) Responsibilities for Congressional Notifications
- H. Public Law Citations and Excerpts

A. Applicability

The Section 301 Congressional notifications or quarterly reporting, to include prior FY requirements, apply only to actions described in this AL/FAL/OTL. The Contracting Activity will prepare and submit the required Congressional notifications. The Office of the Chief Financial Officer will prepare and submit the required Congressional quarterly report.

The Section 301 notifications are in addition to the Congressional notifications described in Acquisition Guide Chapter 5.403 and Financial Assistance Chapter 2, Section 2.6 which are submitted on the DOE form 4220.10 and DOE form 541.

B. Definitions

Account and program, as used in this AL/FAL/OTL, means the following:

Account: The appropriation name (e.g., “Fossil Energy and Carbon Management”, “Defense Environmental Cleanup”, “Weapons Activities”, etc.)

Program/Program Office: The congressional funding line from which the funds are drawn (e.g., Basic Energy Sciences, Central Plateau Remediation, etc.)

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

Community Project Funding/Congressionally Directed Spending (CPF/CDS) means a discretionary grant award identified in a statutory provision or report language included primarily at the request of a Senator or a Member, Delegate or Resident Commissioner of the House of Representatives providing, authorizing, or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality, or Congressional district, other than through a statutory or administrative formula-driven or competitive award process. Historically referred to as “Earmarks”.

Congressional control points are the account lines found in congressional appropriations laws, bills and reports citing either the recommended or enacted amounts the relevant House and/or

Senate appropriations subcommittee(s) provide to an Executive Branch agency per fiscal year(s) to implement programs, projects, and activities.

Department of Energy – Energy Programs, as used in this AL/FAL/OTL, means the accounts listed in the corresponding Appropriations Act. These accounts are: Energy Efficiency and Renewable Energy, Cybersecurity, Energy Security, and Emergency Response, Electricity, Grid Deployment, Nuclear Energy, Fossil Energy and Carbon Management, Energy Projects, Naval Petroleum and Oil Shale Reserves, Strategic Petroleum Reserve, SPR Petroleum Account, Northeast Home Heating Oil Reserve, Energy Information Administration, Non-Defense Environmental Cleanup, Uranium Enrichment Decontamination and Decommissioning Fund, Science, Nuclear Waste Disposal, Technology Transitions, Clean Energy Demonstrations, Advanced Research Projects Agency-Energy, Title 17 Innovative Technology Loan Guarantee Program, Advanced Technology Vehicles Manufacturing Loan Program, Tribal Energy Loan Guarantee Program, Indian Energy Policy and Programs, Departmental Administration, and the Office of the Inspector General.

Discretionary contract award, as used in this AL/FAL/OTL, 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 ordering 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/OTL, is a new grant or cooperative agreement award (or a renewal or supplemental award to an existing award), other than a block or formula award, that obligates the Government to an expenditure of funds that are made available under the corresponding Appropriations Act, including Community Project Funding/Congressionally Directed Spending awards.

Total Award Value or *Total Dollar Value*, as used in this AL/FAL/OTL, means the total value of the initial contract, financial assistance award, other transactions agreement, renewal or supplemental award, inclusive of all options or budget period and awardee cost share. All dollar values in 301 notification or quarterly reporting shall be rounded the nearest whole dollar with no decimal. Future FY estimated dollar values shall be the best estimate of the DOE or NNSA program office based on the history of award for the award and/or projected budgets.

Fully funded financial assistance award means an award in which the Total DOE (Government) Share of the period of performance or all budget periods is obligated and available for use by the awardee at execution of the action. An award is not fully funded if less than the Total DOE (Government) Share is obligated at award and incremental funding is required throughout the period of performance or budget periods to meet the Total DOE (Government) Share of the award.

Grant allocation, as used in this AL/FAL/OTL, 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. The key

distinguishing difference between multi-year contracts and multiple year contracts is that multi-year 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. For the purpose of this AL/FAL/OTL, contract includes task and delivery orders placed.

Multi-year grant or multi-year cooperative agreement award or Multi-year grant or multi-year cooperative agreement award means a new or renewal grant or cooperative agreement award with a project period greater than 12 months, **excluding continuation awards**.

Non-competitive award means an award or action that is not competed or awarded as a result of a public solicitation, announcement, or notice. Non-competitive awards require justification and approval prior to executing the award action. For contract actions this is the execution of a Justification for Other Than Full and Open Competition (JOFOC) as required by the FAR. For financial assistance (new, renewal, and supplemental awards) this is the execution of a Determination of Non-Competitive Financial Assistance (DNFA) as required by the DOE Guide to Financial assistance and 2 CFR Part 910.126.

Nonoperational funding, as used in this AL/FAL/OTL, means any funding beyond that which is necessary for the continued normal operation and maintenance (including construction) of the national laboratory.

Other Transaction Agreement (OT agreement), as used in this AL/FAL/OTL, means a binding agreement between DOE and a non-Federal entity (including for-profit entities) to fund activities not funded under FAR-based contracts and financial assistance agreements and includes Technology Investment Agreements (TIAs), awarded under 10 CFR Part 603, or successor regulatory body, if amended, and Partnership Intermediary Agreements (PIAs) pursuant to DOE's Other Transaction Authority of 42 U.S.C. §7256.

Procurement Director, as used in this AL/FAL/OTL, means for DOE the Field Contracting Office Procurement Director. For NNSA, this means Directors reporting to the cognizant HCA. 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.

Renewal award, as used in this AL/FAL/OTL, means a modification that provides additional budget periods and extends the period of performance under the existing scope of a previously awarded grant or cooperative agreement. As a result of the renewal award modification there is an increase in the initial award's period of performance, total award value, and funding amount.

Supplemental award, as used in this AL/FAL/OTL, means a modification that provides additional scope to a previously awarded grant or cooperative agreement that, as a result of the modification, an increase in the performance effort of the recipient requires the total award value and total project period to be modified. For example, a cooperative agreement is awarded with a total project period less than or equal to 12 months. If a modification is contemplated that revises the terms and conditions of the award and it results in a total project period greater than 12 months, then a 3 full business day notification is required prior to executing the modification.

Three (3) full business days, as used in this AL/FAL/OTL, 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 3-day notification is sent to Congress on Monday by 5:30 p.m. eastern time, then award can be made on Friday.

Thirty (30) full business days, as used in this AL/FAL/OTL, means thirty 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 thirtieth business day. Example – If a 30-day notification is sent to Congress on Monday, April 1 by 5:30 p.m. eastern time, then award can be made on Tuesday, May 14.

Total DOE (Government) Share, as used in this AL/FAL/OTL or spreadsheet, means the portion of estimated costs paid by DOE funds for the contract, financial assistance, other transaction agreement, renewal, or supplemental award. Total DOE (Government) Share does not include cost share. All dollar values in 301 notifications or quarterly reporting shall be rounded the nearest whole dollar with no decimal.

Totaling less than \$1,000,000, as used in this AL/FAL/OTL, means per financial assistance or OT award, the Total DOE (Government) share, excluding other agency's funds and any applicable cost share, for the period of performance.

Totaling \$1,000,000 or more, as used in this AL/FAL/OTL, means per contract, financial assistance, or OT award the Total DOE (Government) share, excluding other agency's funds and applicable cost share, for the period of performance.

C. Contract -- Pre-award Congressional Notification

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/OTL), 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 multi-year requirement does not apply to indefinite delivery/ indefinite quantity (IDIQ) contracts as they are multiple year contracts, not multi-year contracts (unless otherwise defined in statute or regulation).

b. *Notification Requirements*. For a "Department of Energy – Energy Programs" 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 notification in accordance with section E of this AL/FAL/OTL. This notification requirement only applies to funding derived from accounts in "Department of Energy – Energy Programs", see definition for list. If there is uncertainty as to applicability of the notification requirement, consult with cognizant Counsel.

- In accordance with Section 301(c)(2), there is a Congressional notification requirement of at least 3 full business days prior to award of a multi-year contract that is not fully funded, regardless of dollar amount.
- In accordance with Section 301(c)(1), when a multi-year contract is fully funded for the period of performance anticipated at the time of award, no multi-year Congressional notification is required. However, if the contract action totals \$1 million or more, see section C.2 for pre-award Congressional notification requirements.

2 - Contract Award Totaling \$1 Million or More

A discretionary contract award totaling \$1 million or more in total value (including all options), funded with FY 2024 or prior year DOE appropriated funds requires Congressional notification of at least 3 full business days prior to award. This includes task and delivery orders issued under indefinite delivery contracts and orders/calls under basic ordering agreements and blanket purchase agreements. The contracting officer, or designee, shall prepare a Congressional notification in accordance with section E of this AL/FAL/OTL.

- a. 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.
- b. For awards to small business concerns, 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.
- c. The notification requirement **does not apply** to the following:
 - i. If all of the estimated funding information provided in the initial notification is reasonably 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 estimated funding information provided in the initial notification is reasonably the same, the exercise of existing options that are contained in the contract.
 - iii. Contract actions, including orders, which are awarded using another agency's funds.
- d. The appropriate Congressional notification shall be provided in accordance with the procedures prescribed in Section E of this AL/FAL/OTL.

3 – Laboratory Calls Totaling \$1 Million or More

Modifications to national laboratory contracts that provide nonoperational funding in the amount of \$1 million or more through competition restricted only to Department of Energy National Laboratories require congressional notification of at least 3 full business days prior to award.

4 – Nonoperational Funding Modifications to National Laboratory Contracts Totaling \$25 Million or More

Modifications to national laboratory contracts that provide nonoperational funding in the amount of \$25 million or more require congressional notification of at least 3 full business days prior to award.

D. Financial Assistance and Other Transaction Agreements – Pre-Selection and Pre-Award Congressional Notification

1 – Multi-year Actions

a. *Incrementally funded “Department of Energy – Energy Programs” multi-year grants, cooperative agreements, and OT agreements.* When a multi-year grant, cooperative agreement or OT agreement is funded using the budget authority made available in an appropriations act under the heading “Department of Energy—Energy Programs” (see definitions for a list of applicable programs) for less than the full period of performance anticipated at the time of award, regardless of the award value, 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 DOE’s obligations insert the following 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 OT agreements; 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 the grant, cooperative agreement, or other transaction agreement awards; **and**

ii. Ensure Congressional notifications are prepared and submitted timely, as described in the procedures found in section E of this AL/FAL/OTL. The required Congressional notification must identify the action as multi-year and provide a brief explanation justifying the use of future funds.

iii. Consult with cognizant General Counsel if there is uncertainty as to applicability of the notification requirement.

b. *Fully funded “Department of Energy – Energy Programs” multi-year grants, cooperative agreement, and OT agreements.* When a multi-year grant, cooperative agreement, or OT agreement is funded using the budget authority made available in an appropriations act under the heading “Department of Energy – Energy Programs” (See definitions for a list of applicable programs) for the full period of performance anticipated at the time of award, no multi-year Congressional notification is required. However, if the Total DOE (Government) Share of the fully funded action totals \$1 million or more, a Congressional notification is required, see section D.2 below.

2 – Actions Totaling \$1 Million or More

a. *Competitive financial assistance and OT agreements.* Competitive financial assistance and OT agreements with a Total DOE (Government) Share, including all budget periods, totaling \$1 million or more funded using the budget authority made available in an appropriations act requires Congressional notification of at least 3 full business days prior to public announcement, selection, or award of the competitive action.

b. *Non-competitive financial assistance and OT agreements.* Financial assistance awarded through the execution of a Determination of Non-Competitive Financial Assistance (DNFA) and OT agreements made non-competitively with a Total DOE (Government) Share, including all budget periods, totaling \$1 million or more funded using the budget authority made available in an appropriations act requires, as a matter of DOE policy, Congressional notification of at least 30 full business days prior to award of the non-competitive action.

Follow the procedures in section D.3 for pre-award Congressional notification requirements. The contracting officer, or designee, shall prepare a Congressional notification in accordance with section E of this AL/FAL/OTL.

3 – Notification Requirements

a. Congressional notification is required for an individual grant, cooperative agreement, or OT agreement for the following conditions:

- i. *Incrementally funded “Department of Energy – Energy Programs” multi-year grants, cooperative agreements, and OT agreements.* Multi-year actions for FY 2014 through FY 2024 funded using the budget authority made available in an appropriations act under the heading “Department of Energy – Energy Programs” for less than the full period of performance anticipated at the time of award, **regardless of Total DOE (Government) Share.** (All multi-year awards not fully funded, see D.1.a. above.)
- ii. *Fully funded “Department of Energy – Energy Programs” multi-year grants, cooperative agreements, and OT agreements.* Multi-year actions for FY 2014 through FY 2024 funded using the budget authority made available in an appropriations act under the heading “Department of Energy – Energy Programs” for the full period of performance anticipated at the time of award, **when the Total DOE (Government) Share of the fully funded action totals \$1 million or more.** (Multi-year, fully funded awards totaling \$1million or more, see D.1.b. above)

iii. *Actions totaling \$1 million or more.* All competitive and non-competitive financial assistance and OT actions with a Total DOE (Government) Share, including all budget periods, totaling \$1 million or more funded with FY 2014 through FY 2024 appropriated funds.

b. Congressional notification shall be provided using the procedures prescribed in Section E of this AL/FAL/OTL when the conditions in section D.3.a. are met for the following actions:

i. Competitive Discretionary Grant Awards and Other Transaction Agreements:

Congressional notification is required **at least three (3) full business days** prior to the program's public announcement or notification to the applicants on selection of their new, renewal* or supplemental* applications for negotiation of a financial assistance awards or OTA from a Funding Opportunity Announcement (FOA) or other competitive solicitation.

ii. Grant Allocations (block and formula grants): Congressional notification is required **at least three (3) full business days** prior to publicly announcing, releasing, or posting the FOA and/or the annual program notice.

iii. Office of Science's Annual Funding Opportunity Notices: Congressional notification shall be provided on those awards after the program selects and notifies applicants for negotiation of award but **at least three (3) full business days prior** to awarding the grant or cooperative agreement to the recipient.

iv. Community Project Funding/Congressionally Directed Spending (CPF/CDS) Awards: Congressional notification is required **at least three (3) full business days** prior to awarding the CPF/CDS award to the recipient.

v. Non-Competitive Discretionary Grant Awards and OT agreements: Congressional notification is required **at least thirty (30) full business days** prior to awarding a new non-competitive discretionary grant, cooperative agreement or OT agreement, or issuing a renewal* or supplemental* modification to an existing award.

* Renewals and Supplemental Awards: Congressional notification is required prior to the modification to the existing award as follows:

- **At least three (3) full business days** when the renewal or supplemental award is the result of a competitive action; or
- **At least thirty (30) full business days** when the renewal or supplemental award is the result of a non-competitive action (for FA that means the execution of a Determination of Non-Competitive Financial Assistance (DNFA)).

E. Contracting Activity Procedures for Submission of Congressional Notification

1 - Preparation and Transmission of Congressional Notifications. In accordance with sections C and D above, the Head of the Contracting Activity (HCA) shall prepare, sign, and transmit the required notification using the appropriate model notification on DOE letterhead, and enter the required information in the supplementary spreadsheet. Funds expected to be

obligated in option years should be entered in the appropriate “FY Dollars Required” column in the supplementary spreadsheet. The DOE HCA can delegate this responsibility in writing no lower than the Procurement Director. For NNSA, the HCA can delegate this responsibility in writing to an NA-PAS Director.

a. Multi-year actions not fully funded, regardless of Total Award Value or Total DOE (Government) Share, and/or for actions totaling \$1 million or more and obligating FY 2024 DOE appropriations under Pub. L. No. 118-42 or prior FY DOE appropriations, require notification at least three (3) full business days prior to making public announcement, selection or award (see E.2.(a) for details).

b. The DOE Field Contracting Office and NNSA COs shall prepare the appropriate notification and supplementary spreadsheet in draft for the HCA or delegate’s review and signature. **It is important to spell out all abbreviations and acronyms. Edits shall only be made to italicized text in the model notification.** The model notifications are as follows:

- Attachment 1 version A notification, 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 2 version A1 notification, 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 B1 notification, Subject: Congressional Notification for a Non-competitive Action (applies to actions that require execution of a DNFA and use DOE appropriated funds or future years’ acts **requiring at least 30 full business days notice**)
- Attachment 2 version C1 notification, Subject: Congressional Notification for a Community Project Funding/Congressionally Directed Spending (CPF/CDS) Award (applies to CPF/CDS awards using DOE appropriated funds or future years’ acts requiring at least 3 full business days notice).
- Attachment 3 Supplementary Spreadsheet

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/OTL.
- 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 notification(s) and Supplemental Spreadsheet to the designated Congressional staff with delivery receipt and blind copy the 311notice@hq.doe.gov mailbox along with other identified Headquarters staff, at least three (3) full business days (or thirty (30) full business days for non-competitive financial assistance or other transaction agreement actions) prior to award.

iii. Managing the accurate, effective and timely transmission of all notifications for the fiscal year.

- **For end of fiscal year actions that require at least 3 full business days, to ensure an award or selection by Monday, September 30, 2024, the notification 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 FY2024 3-day notifications. (Note: Do not send any FY2025 notifications prior to October 1st.)**
- **For end of fiscal year actions that require at least 30 full business days, to ensure an award by Monday, September 30, 2024, the notification shall be sent no later than 5:30 p.m. eastern time August 15th. This is the last day and time for sending and showing receipt of FY2024 30-day notifications. (Note: Do not send any FY2025 notifications prior to October 1st.)**

- iv. Retention of electronic copies by the cognizant Contracting Officer of all Congressional notification submissions for the official transaction file to include e-mail delivery receipts of the specific notification to all designated Congressional staff.
- v. Conducting random pre-submission quality assurance and post-submission reviews to ensure that all required notifications are or have been drafted and submitted in accordance with this AL/FAL/OTL.

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

- i. Completion of all reviews, concurrences and approvals before sending the notification.
- ii. Using the Instructions provided in E.3. below, complete, date and sign the current version of the appropriate notification on DOE letterhead and convert/scan the dated and signed notification to Adobe pdf file, if not signed electronically. Complete the Supplemental Spreadsheet with the requested information.
- iii. At least three (3) full business days (or thirty (30) full business days for non-competitive financial assistance or OT agreement; see B. for definitions and E.1.a. for details) in advance of the identified date of selection/award, submit the valid Congressional notifications and Supplemental Spreadsheet electronically, by e-mail, to designated Congressional Appropriations Committee staff. Send a courtesy blind copy 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 notification 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 of the completion of the Section 301 notification requirements and that the requisite timeframe has elapsed.

3. Instructions.

a. **Notification content:** The notification shall provide information prescribed in the attached model notifications including, as applicable:

i. For contract/order actions:

- If it is a multi-year action not fully funded, insert “multi-year” before “contract, task order, deliver order.” See definitions for applicable DOE- Energy Programs.
- Provide the name of the DOE or NNSA Program Office and Site Office, if applicable, (e.g., Office of Science, Oak Ridge Office) that the action supports, contract/call/order number only ², contract title, contractor name with city and state (abbreviated as two characters), 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. Round all dollar amounts to whole dollars without a decimal.
- Use attachment 1A and attachment 3. Where there is italic text in the letter, tailor the model notification to insert the information in these areas and turn-off italic font. If all of the funding information provided in the initial notification is the same, see section C of this AL for details.
- For modifications to National Laboratory contracts in accordance with Sections C (3) and (4), use attachment 1B and attachment 3.

ii. For competitive financial assistance or OT:

- If it is a multi-year action (new, renewal or supplemental award) not fully funded, using the budget authority made available in an appropriations act under the heading “Department of Energy – Energy Programs” (see definitions in section B for a list of applicable programs) insert “multi-year” before the type of award (financial assistance or OT).
- Provide the name of the DOE or NNSA Office that the action supports, identify number(s), e.g. DE-FOA-xxxxx or award number with a short description of financial assistance or OT agreement effort, the grant or OT agreement 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. Round all dollar amounts to whole dollars without a decimal.

² The GSA award, basic IDIQ, BPA, or BOA number is not used unless the notification is reporting that primary award. Use only the DOE award number unique to the award being reported.

- When an existing Management and Operating (M&O) contractor is eligible to submit an application as a prime under a FOA and is selected, use the M&O contract number and the word “Modification” for the award number in the Supplemental Spreadsheet.
- 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 by congressional control point. If it is not a multi-year action, delete the bullet.
- Use attachment 2A1 and attachment 3 for competitive financial assistance or OTA action. Where there is italic text in the letter, tailor the notification to insert the information in these areas and turn-off italic font.

iii. For non-competitive financial assistance action or Other Transaction Agreement:

- If it is a multi-year action (new, renewal or supplemental award) not fully funded, using the budget authority made available in an appropriations act under the heading “Department of Energy – Energy Programs” (see definitions in section B for a list of applicable programs) insert “multi-year” before the type of award (financial assistance or other transaction agreement).
- 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 by congressional control point. If it is not a multi-year action, delete the bullet.
- Use attachment 2B1 and attachment 3. Where there is italic text in the letter, tailor the notification to insert the information in these areas and turn-off italic font.

iv. For Community Project Funding/Congressionally Directed Spending (CPF/CDS) awards:

- Use attachment 2C1 and attachment 3. Where there is italic text in the letter, tailor the notification to insert the information in these areas and turn-off italic font.

- v. If the e-mail will be sent before 5:30 p.m. eastern time, date the notification 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, date the notification for the next business day.
- vi. Assign the notification and Supplemental Spreadsheet files with a unique file name 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. For example, two file names for a single action from NETL would be “NETL-23-XX Congressional Notification Award/FOA Number.pdf” and “NETL-23-XX Congressional Summary Award/FOA Number.xlsx”.

b. **Transmitting the notification: e-mail information, e-mail addresses, and waiting period.**

- i. Prior to e-mailing the notification, review the document 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) (Controlled Unclassified Information);
 - (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: “Subject: (NETL/DOE #xxx) (Controlled Unclassified Information) Congressional Notification – Contract Action – NETL – title”).
- iii. In addition to providing subject line information and attaching the notification as a pdf, the following disclosures shall be included in the body of the e-mail:

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

“CUI//SP-CONTRACT/SSEL

The attachment is a Section 301 notification.

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 or Other Transaction Agreement (OTA) action, state the following:

“CUI//SP-CONTRACT/SSEL

The attachment is a Section 301 notification.

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 Management (OAM), the following is the list of e-mail addresses:

- (1) E-mail “to” Congressional Staff --

Doug.Clapp@appro.senate.gov
Angie.Giancarlo@mail.house.gov
Scott.Mckee@mail.house.gov
Aaron.Goldner@appro.senate.gov
Anna.Newton@appro.senate.gov
Perry.Yates@mail.house.gov
Angelina.Casimates@mail.house.gov
Adam.Wilson@mail.house.gov
Lindsay.Garcia@appro.senate.gov
Rachel.Littleton@appro.senate.gov
Laura.Cylke@mail.house.gov
Amanda.Wyma-bradley@appro.senate.gov

- (2) E-mail blind copy (bcc) to Headquarters DOE –

311notice@hq.doe.gov
CFOExternalCoordination@hq.doe.gov
Ingrid.Kolb@hq.doe.gov

v. Waiting period. No public announcement of a selection (per Section D of this AL/FAL/OTL), or award (per Sections C and D of this AL/FAL/OTL) shall be made prior to the passage of three (3) full business days (or thirty (30) full business days for non-competitive actions; see E.1.a. for specifics) after the date in which e-mail delivery receipt confirmation is received by the HCA, that the required notification has been submitted to Congress. See Section B for the definition of three full business days to include examples. The notification must be received by the Congressional addresses prior to 5:30 p.m. eastern time on that business day. If a notification is sent after 5:30 p.m. eastern time, date it for the next business day. If the notification is received by the Congressional staff before 5:30 p.m. eastern time, 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) or thirty (30) full business day advance notification 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/OTL. Follow the procedures at Section E. for preparation and submission of Section 301 Notification. 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/OTL.

G. DOE Office of Acquisition Management (OAM) Responsibilities for Congressional Notifications

OAM will:

1. Serve as the Department's central point of contact to maintain a copy of all required notifications e-mailed from each HCA. COs will maintain the official transmittal and delivery receipt notifications to the Congressional staff.
2. Conduct periodic review of notifications 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/OTL.
4. Update DOE guidance on legislation pertaining to Section 301 Notification or quarterly reporting requirements, or similar requirements, for subsequent fiscal years.

H. Public Law Citations:

1. For FY 2024, 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) provide nonoperational funding through a competition restricted only to Department of Energy National Laboratories totaling \$1,000,000 or more;

(D) provide nonoperational funding directly to a Department of Energy National Laboratory totaling \$25,000,000 or more;

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

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

(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.

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 multi-year contract, award a multi-year grant, or enter into a multi-year 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 notification shall include an explanation of the substantial risk under paragraph (1) that permitted such waiver.

2. Prior FY Public Law Citations:

FY 2023 – Section 301(b) and (c) of Division D of Pub. L. No. 117-328;
FY 2022 – Section 301(b) and (c) of Division D of Pub. L. No. 117-103;
FY 2021 – Section 301(b) and (c) of Division D of Pub. L. No. 116-260;
FY 2020 – Section 301(b) and (c) of Division C of Pub. L. No. 116-94;
FY 2019 – Section 301(b) and (c) of Division A of Pub. L. No. 115-244;
FY 2018 – Section 301(b) and (c) of Division D of Pub. L. No. 115-141;
FY 2017 – Section 301(b) and (c) of Division D of Pub. L. No. 115-31;
FY 2016 – Section 301(b) and (c) of Division D of Pub. L. No. 114-113;
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;

3. For FY 2023, 2022, 2021, 2020, 2019, 2018, 2017, 2016, 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.

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 multi-year contract, award a multi-year grant, or enter into a multi-year 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 notification shall include an explanation of the substantial risk under paragraph (1) that permitted such waiver.

For prior FYs, see AL/FAL 2016-02.