U.S. DEPARTMENT OF ENERGY | Office of NUCLEAR ENERGY

Clean. Reliable. Nuclear.

Advanced Reactor Demonstration

Funding Opportunity Announcement

DE-FOA-0002271

Submissions, Review/Selection Award

Eliot Dye, Contracting Officer

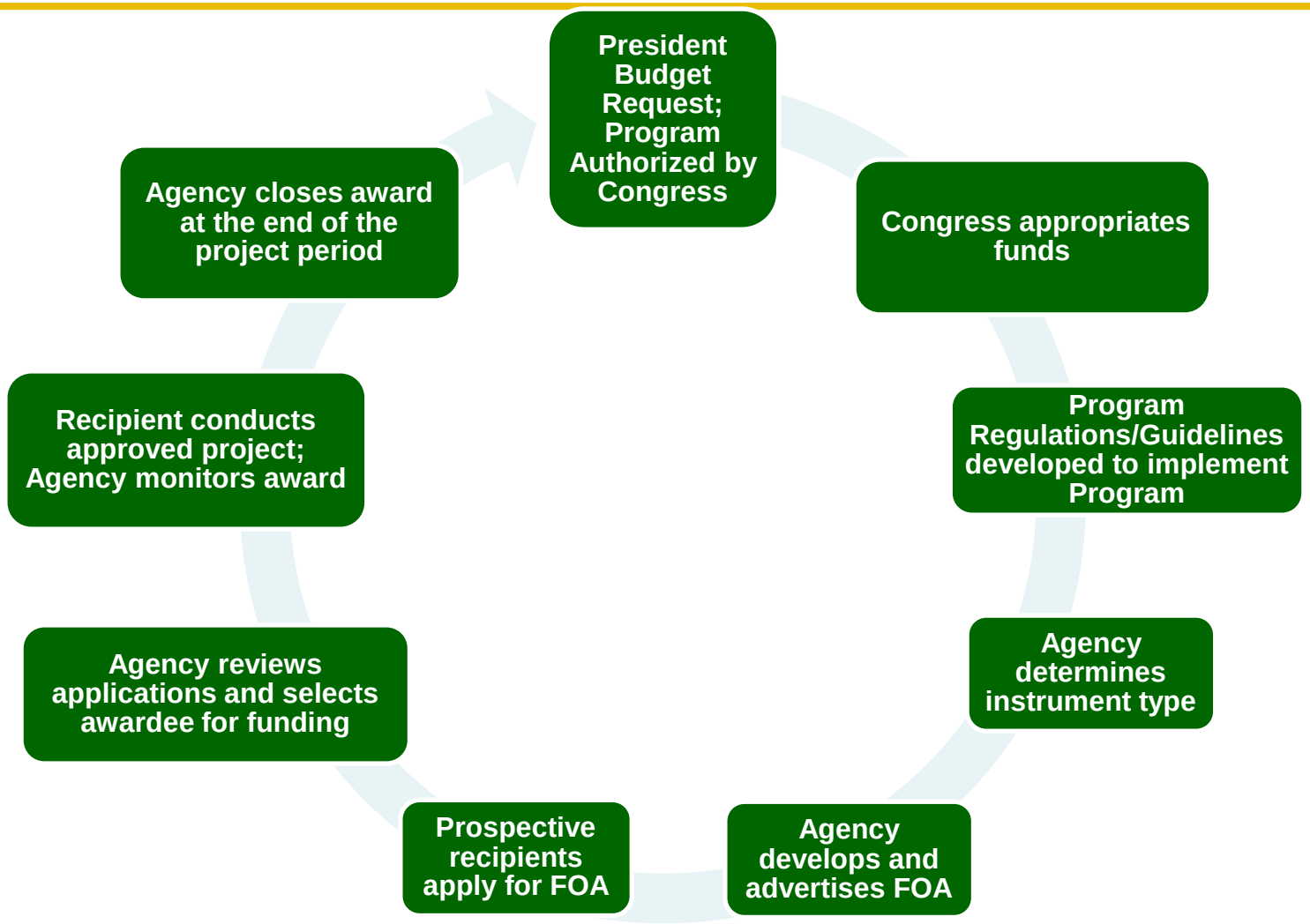
Submissions, Review/Selection and Award

- FOA Process
- FOA Website
- Application Submission
- Application Review
- Selection Process
- Post-Selection Negotiation Process
- Award

U.S. DEPARTMENT OF ENERGY

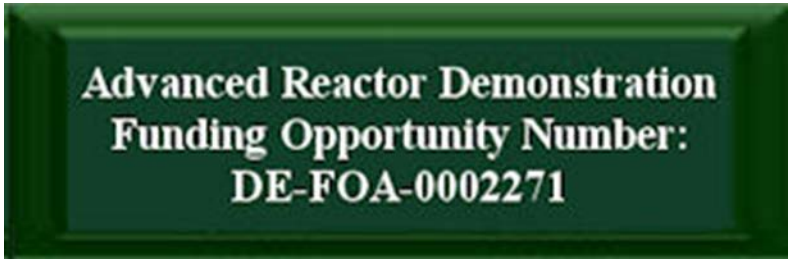
Nuclear Energy

Financial Assistance Process – *At a Glance*



Overview of FOA Web Site

- https://www.id.energy.gov/NEWS/ARDFO/ARDFOOpportunities/ARDFO.htm
- FOA documents, including conformed FOA with all amendments that may be issued
- Submit Letter of Intent
- Submit Application
- Document Library; application documents required for each pathway



Overview of FOA Web Site

- Press Release, Fact Sheet
- Collaboration Hub tool
- Industry Day info
- Natl Lab Capabilities webinar registration
- Q&As posted; can submit questions
- Links: NRIC, GAIN, Grants.gov
- Informational and historical information

Letter of Intent

- REQUIRED for all applicants

- FOA specifies specific information to include
  - POC info – prime and team
  - Pathway to apply
  - Brief project/technology description
  - Eligibility info

- **Due: <u>June 11, 2020</u>**

How to Submit an Application

- Create New Account or Log In
- Electronic submission of applications
- Applicants must:
  - obtain Dun and Bradstreet Data Universal Numbering System (DUNS) number
  - register with System for Award Management (beta.SAM.gov)
  - register with Grants.gov
  - register with FedConnect
  - disclose foreign government ownership interests

dun & bradstreet

SAM beta GOV

Application Documents

- ✓ SF 424 Application
- ✓ Project Summary/Abstract
- ✓ Project Narrative File
  - Project management Plan
  - Risk Management Plan
  - Data Management Plan
  - Business Plan
  - Merit Review Discussion
- ✓ Resume
- ✓ Budget and Justification – Prime, Subs, FFRDC/NL
- ✓ Conflict of Interest Acknowledgement

Application Documents

- ✓ Commitment Letters from Third Parties Contribution to Cost Sharing
- ✓ Current and Pending Support
- ✓ Letter of Authorization from Cognizant Contracting Officer
- ✓ Project/Performance Site Location
- ✓ SF-LLL Disclosure of Lobbying Activities
- ✓ Certifications and Assurances
- ✓ Waiver Requests
- ✓ Past Performance
- ✓ Foreign Government Ownership Disclosure

Review Process

- Initial Review
- Merit Review
  - thorough, consistent, objective examination of applications
  - based on pre-established criteria by persons independent of those submitting applications
  - knowledgeable in the field of endeavor

Subject Matter Experts (SME) Review

- Outside (non-Government) SMEs assist with Merit Review
- SMEs thoroughly vetted for
  - Expertise
  - Conflict of interest; required to sign and strictly adhere to COI/Non-Disclosure Agreement
  - Properly handle, use and safeguard application submission info
- Follow pre-determined process
  - Individually review, evaluate, score applications
  - FOA merit review criteria
- Information provided to DOE Selection Official

Federal Merit Review Panel

- Federal experts; NRC representation not included to preserve NRC's independent regulatory status
- Same process as non-Government SMEs, only Federal panel meets as group and arrives at consensus ratings
- To help ensure consistency, DOE plans to use same team to evaluate both Demos and Risk Reduction applications, to extent feasible
- For more information, see FOA Section 6, and *Merit Review Guide for Financial Assistance*

Selection of Applications

The Selection Official (SO) will consider:

- Technical Merit
  - Non-Government SME evaluations
  - Merit Review Board recommendation
- Program Policy Factors; and
- Amount of Funds Available

Award Process

Selection Announcement

- Internal coordination
- Congressional Notifications
- Press Release
- Notifications to applications
  - Not selected – brief rationale
  - Selected – require additional information
    - Environmental Checklist
    - Other budget information
    - Other

Getting From….
Announcement to Award

DOE Negotiation and Award Process

- Negotiations
- Budget/Technical Review
- General Questions for Reviews and Analyses
- Financial Management Assessment
- Responsibility Determination

Award

Negotiations

- **DOE may enter into negotiations with selected applicant for any reason deemed necessary, including but not limited to:**
  - Budget not appropriate or reasonable
  - Only portion of application selected for award
  - DOE needs additional information to determine capability of complying with financial assistance rules
  - Special terms and conditions required
  - Additional or clarifying information for any reason deemed necessary

- **Failure to resolve satisfactorily issues identified by DOE will preclude award**

Award Negotiations – Technical Review

- SF 424 Application
- Project Summary/Abstract
- Project Narrative File
- Resume – Technical Expertise and Qualifications

Award Negotiations – Technical Review

- **Comparison between budget and project narrative**
  - Looks at “Reasonableness”
  - Each player (Contractors, Subawardees, etc.)
  - Estimates
  - Scope
  - Labor Resources: Skill Mix, # Hours
  - Travel - # trips, # travelers, destinations, purpose
  - Equipment/Supplies- what / how much
  - Other Direct Costs
  - In-kind Contributions/Cost-Share

Award Negotiations – Technical Review

- Capabilities
- Project/Performance Site Location
- Past Performance
- Foreign Government Ownership Disclosure

Award Negotiations – Contract Specialist

- Conflict of Interest Acknowledgement
- Coordination and Management
- Letter of Authorization from Cognizant CO for DOE/NNSA FFRDC/NL, if applicable
- SF-LLL Disclosure of Lobbying Activities, if applicable
- Certifications and Assurances
- Waiver Requests: Performance of work in U.S.A.
- Foreign Disclosure

Award Negotiations – Contract Specialist

- Subawardee vs Subcontractor determinations
- 3rd party cost sharing ccommitment letters
- Verify registration in beta.SAM.gov
- Not currently suspended/debarred
- No derogatory information within the Federal Awardee Performance and Integrity Information System (FAPIIS)
- Prior/current FA performance

Responsibility Determination

- Contracting Officer must make affirmative determination
  - Extent of screening depends on if DOE has prior experience
  - Review of financial management and business systems, audits, activities under previous awards (e.g., reporting), capabilities, resources
  - Considers if applicant has administrative and programmatic capabilities to perform
  - Includes a review of applicant's and subapplicant's
    - Business management systems & procedures (i.e., accounting, financial, procurement, property, travel)
    - Internal controls
    - Financial statements/financial condition
    - Concurrent and prior performance

Business Management Systems and Procedures

Reference documents will be placed the FOA website

- DCAA Information on Rates
- Indirect Rate system examples
- Procurement Standards Review Checklist
- Travel Policy Checklist
- Characteristics of Compliant Property System
- Accounting System Checklist
- Environmental Checklist

Award Negotiations – Contract Specialist

- Financial Management Assessment
  - Evaluates applicant's
    - Ability to manage the financial aspects of award
    - Plans to accomplish project activities with reasonable economy and efficiency

Standards for acceptable financial management systems; see 2 CFR 200.302

Award Negotiations - Contract Specialist

Budget Review:

- Prime and Sub Budgets (Total Fed + Non-Fed)
- SF424A, Budget Information
- Budget for DOE National Laboratory Contractor or FFRDC/NL
- Budget Justification

Budget Review

- **Reviews financial plan for proposed project**
- **Determines if proposed activities supported by adequate resources in plan**
- **Extent of budget review based on:**
  - Amount of funds requested
  - Recent past experience
  - Size, nature and complexity of project
  - Information provided by technical reviewers
  - Other known factors that may affect organization's financial capabilities
- **Responsibility of CO; relies heavily on technical and cost input provided by program office**

Budget Review

Verifies cost data, evaluates specific elements of budget, examines data

- Allowability, allocability and reasonableness
- Determine proposed costs consistently treated IAW generally accepted accounting principles and applicable cost principles
- Cost sharing: review source and amount of proposed contribution; assess likelihood of applicant being able to provide required cost sharing
- Indirect cost rate
- No profit or fee is included
- Plans for subawards
- Back-up documentation
- FFRDC

Award

- **Contents**
  - Cover Page
    - Statement of Project Objectives
    - Application as approved by DOE
  - Budget Summary
  - Federal Assistance Reporting Checklist
  - Special Terms and Conditions
  - IP provisions
  - Statement of Substantial Involvement
  - National Policy Assurances Incorporated As Award Terms
- **Preparation / Review**
- **Special Notifications**
- **Signature**

Questions?

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Advanced Reactor Demonstration Program

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BACKUP SLIDES

Application Requirements

- **SF 424 Application for Federal Assistance**
- **Project/Performance Site Locations**
- **Attachments**
  - Project Narrative File
  - Project Summary/Abstract File
  - Resume File
  - SF 424 A – Budget Information – Non-Construction Programs and Justification
  - Subaward and FFRDC Budgets
  - Project Management Plan
  - Multiple Project Managers
  - Current and Pending Support
  - Conflict of Interest Statement
  - Export Control Statement
  - Compliance Matrix
- **Disclosure of Lobbying Activities**

Bayh-Dole

- "**subject invention**" means any invention of the contractor **conceived *or first actually reduced to practice*** in the performance of work under a funding agreement

- ***"Invention"*** means any invention or discovery which **is *or may be patentable . . .***

- Contractor must disclose subject inventions to the relevant Federal agency

Bayh-Dole Rights

- Contractor may elect to retain the entire right, title, and interest throughout the world to each **subject invention subject to certain reporting/election requirements and reserved USG rights**.

- Federal Government retains certain rights
  - Government license
  - March-in rights
  - U.S. Preference

Bayh-Dole Rights

- **Government may obtain title where:**
  - ***contractor fails to disclose or elect title within the times specified, or elects not to retain title;***
  - in those countries in which the Contractor fails to file patent applications in a timely fashion, or discontinues a patent or patent application etc.

- Contractor retains a revocable nonexclusive royalty-free license throughout the world, **except where contractor fails to report in timely fashion!!**

Bayh-Dole

March-in rights – Government can require the contractor, assignee, or exclusive licensee to grant license where:

- Contractor or assignee has not taken, or is not expected to achieve practical application of the subject invention
- Necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor . . .
- Necessary to meet certain requirements for public use . . .
- Non-compliance with U.S. Preference clause

Practice Note: While March-in rights look scary they are almost never invoked.

U.S. Preference

U.S. Preference: no small business firm or nonprofit organization which receives title to any subject invention and no assignee of any such small business firm or nonprofit organization . . .

- shall grant to any person the exclusive right to use or sell any subject invention in the United States unless
- such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States.
- In individual cases, the requirement for such an agreement may be waived by the Federal agency . . .

U.S. Manufacturing

- Take time to understand your obligations to domestically manufacture subject inventions
  - Are there any additional U.S. Manufacturing obligations (e.g. U.S. Competitiveness, U.S. Manufacturing Plans attached to the agreement?
  - Understand the relationship between the U.S. Manufacturing provisions and IP rights in your agreements, they are almost always tied together!

Rights to Inventions developed by LBs with funds from title taking Agencies

- **DOE** - Atomic Energy Act (42 U.S.C. § 2182) and Federal Nonnuclear Energy Research And Development Act of 1974 (42 U.S.C. § 5908) require that title vest with the Government

Where Bayh-Dole Does Not Provide Right to Elect

- DOE funding agreements with large businesses where title vests with the Government, and the contractor retains a revocable, non-exclusive royalty-free license
  - (“-13” clause (DOE)
  - However, DOE usually waive title.

- “**Exceptional Circumstances**”

Civilian Agency Data Policy

- Civilian science agencies, e.g. DOE, NASA, NIH, NSF, have a different mission than DOD

- Dissemination - make the benefits of the data widely available
  - DOE – Atomic Energy Act, 42 U.S.C. § 2051; 1977 Department of Energy Organization Act, 42 U.S.C. § 7112

Data v. Technical Data

- **“Data”** means recorded information, regardless of form or the media on which it may be recorded.
  - The term ***includes*** technical data **and** computer software . . .

- **“Technical data”** means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation).
  - *This term does **not** include computer software . . .*

Focus of Data Provisions

- What you bring into the arrangement that has been developed at private expense (e.g. “limited rights data” or “background data”)
- What is first produced under the arrangement (e.g. “generated data”)
- The right to assert copyright in generated data and/or protect it

48 CFR 52.227-14

- ***Unlimited rights*** means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

48 CFR 52.227-14

The Government has **unlimited rights** in—

- Data *first produced* in the performance of the contract
- All other data *delivered* under this contract unless provided otherwise for limited rights data or restricted computer software
- Proper marking is extremely important
- *Omitted or incorrect markings*. Data delivered to the Government without any restrictive markings **shall be deemed to have been furnished with unlimited rights**.

The Data Protection Spectrum

Unlimited Rights Data	SBIR/STTR Data	Protected Data	Limited Rights Data, Restricted Computer Software, Proprietary Data
Most data generated under federally funded agreements	Data generated under federally funded SBIR/STTR awards	Data generated under government agreements having authorized data protection	Limited to data generated using private funds
Broad government rights to use data.	Gov./Contractor agrees to protect data for 4 years* after delivery of the last technical deliverable	Gov./Contractor agrees to protect data for a defined duration (e.g. 5 years)	Contractor/Sponsor owns the data. The Gov. usually has very limited rights.
Examples: ▪Most data developed with government funds ▪Data not developed under EPACT/SBIR/STTR	Examples: ▪ SBIR/STTR Data	Examples: ▪ CRADA Protected Info ▪ EPACT Data ▪ NASA SpaceAct	Examples: ▪Proprietary Data ▪Non-Federal WFO/SPP data
▪ No marking requirement	▪ Must be properly marked	▪ Must be properly marked	▪Limited rights data are best protected through withholding ▪Must be properly marked

NIST ROI Initiative

- **Software Copyright:** Establish copyright for software products of Federal Government R&D
- **Trade Secrets:** Expand authority to protect trade secrets
- **Strengthen Technology Transfer at Federal Laboratories:** Streamline Federal Laboratory technology transfer policies and practices
- **Presumption of Government Rights to Employee Inventions.** Provide for a present assignment of invention rights and streamline rights determination processes
- **New/Expanded Partnership Mechanisms:** Authorize new and expanded mechanisms to establish partnership agreements and nonprofit foundations
- **Clarifying Tech Transfer Authorities**
- **Technology Entrepreneurship Programs:** Establish technology entrepreneurship programs at Federal R&D agencies government-wide
- **Managing Conflicts of Interest:** Implement government-wide requirements to better manage conflicts of interest to promote entrepreneurship
- **Benchmarking and Metrics:** Establish metrics to better capture, assess, and improve Federal R&D outcomes, impacts, and operational processes