



POLICY FLASH 2008-20

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DATE: January 31, 2008

TO: Procurement Directors

FROM: Office of Procurement and Assistance Policy, MA-61
Office of Procurement and Assistance Management

SUBJECT: Model Language for Project Agreements Between DOE National Laboratories and Recipient Russian Institutes

SUMMARY: The following three Acquisition Letters (AL) related to the subject program are hereby cancelled. The sample model agreement language contained within each of the cancelled AL's has been moved to the STRIPES Library for use by DOE and NNSA Contracting Officers (until STRIPES is fully operational, the sample model agreements will also remain on the MA-60 Policy website):

1. AL 95-14, "Subcontracts Under the New Independent States Program," dated November 17, 1995.
2. AL 99-06, "DOE Authorized Subcontract for Use by DOE M&O Contractors with New Independent States Scientific Institutes Through the International Science & Technology Center," dated August 27, 1999.
3. AL 2000-05, "DOE Authorized Subcontract for Use by DOE Management and Operating (M&O) Contractors with New Independent States' Scientific Institutes through Science and Technology in Ukraine," dated May 17, 2000.

Additionally, the NNSA Assistant Deputy Administrator for Nonproliferation and International Security, NA-24, has issued the attached memorandum as updated guidance for use in conjunction with the sample model clause sets now located in the STRIPES library.

This Flash 2008-20 will be available online within two days at the following website:

http://www.management.energy.gov/policy_guidance/policy_flashes.htm .

Questions regarding this Flash may be directed to Kevin M. Smith at (202) 287-1614, or kevin.m.smith@hq.doe.gov. Questions regarding the model agreement language and the attached updated guidance may be directed to Peter Green at (202) 586-6439, or peter.green@hq.doe.gov.

Attachment

A handwritten signature in blue ink, reading "Michael P. Fischetti". The signature is written in a cursive style with a long, sweeping flourish at the end.

Michael P. Fischetti, Director
Office of Procurement
and Assistance Policy



Department of Energy
National Nuclear Security Administration
Washington, DC 20585



January 30, 2008

MEMORANDUM FOR DISTRIBUTION

FROM: ADAM M. SCHEINMAN ^{AS}
ASSISTANT DEPUTY ADMINISTRATOR
FOR NONPROLIFERATION AND
INTERNATIONAL SECURITY

SUBJECT: Global Initiatives for Proliferation Prevention (GIPP) --
Revised Guidance for Agreements Between Department of
Energy National Laboratories and Recipient Organizations
in the Former Soviet Union

This memorandum issues a management process update to modify the language used in GIPP-funded agreements between the Department of Energy/National Nuclear Security Administration (DOE/NNSA) national laboratories and organizations in Russia and other countries in the former Soviet Union. In compliance with Section 3136 of the National Defense Authorization Act for FY 2000, many of these agreements proceed as tax-free grants under the U.S. Civilian Research and Development Foundation's (CRDF's) Grant Assistance Program. CRDF serves as the financial management service support contractor for two-thirds of GIPP's projects in Russia and other countries in the former Soviet Union and, in this capacity, makes tax-free project payments on behalf of the program.

Recently, these agreements' eligibility for tax exemption has come under increased scrutiny by the Russian Technical Assistance Commission (TAC), the body that grants tax exemptions to CRDF on specific GIPP projects. Although TAC has indicated that the nature of the GIPP program and the overall terms of these agreements meet applicable technical assistance requirements, the use of agreement language that appears commercial in nature has resulted in problems in the perception and treatment of GIPP projects by TAC.

TAC has also rejected projects calling for export from Russia of samples or other physical items. TAC views these as "purchases," which are not permissible using tax-exempt funds.

To address these concerns, and in consultation with CRDF, this office has developed the attached, "Revised Guidance for Global Initiatives for Proliferation Prevention (GIPP) Agreements Between DOE/NNSA National Laboratories and Recipient Organizations in the Former Soviet Union." These guidelines would modify existing model subcontract clauses set forth in AL 95-14 (November 17, 1995). To receive tax-free treatment as required by U.S. statute and to avoid these issues with TAC,



I recommend that DOE/NNSA national laboratories in charge of GIPP projects implement the language and procedures contained in the attached guidance.

In addition, I recommend that DOE/NNSA laboratories use this new language for agreements with organizations in other former Soviet Union countries such as Ukraine to avoid similar issues in those countries.

Attachment

Revised Guidance for Global Initiatives for Proliferation Prevention (GIPP)
Agreements Between Department of Energy/National Nuclear Security
Administration (DOE/NNSA) National Laboratories and Recipient Organizations in
the Former Soviet Union

Background:

In 1995, the Department of Energy issued Acquisition Letter (AL) 95-14, to inform DOE Procurement Directors about the use of a model clause set in subcontracts between DOE national laboratories and scientific organizations in the New Independent States (NIS) in the former Soviet Union under the then-Industrial Partnering Program. DOE Procurement Directors were required to provide the model clause set to the management of DOE national laboratories placing subcontracts with these organizations.

Since 2000, in compliance with U.S. law, the Global Initiatives for Proliferation Prevention program (a successor to the Industrial Partnering Program) has utilized, *inter alia*, the U.S. Civilian Research and Development Foundation (CRDF) as a financial management service support contractor to make tax-free project payments to Russian and Ukrainian organizations under DOE and NNSA national laboratory subcontracts. CRDF registers GIPP laboratory subcontracts with the Russian Technical Assistance Commission (TAC) and its counterpart in Ukraine to allow CRDF to make those tax-free payments.

Recently, increased scrutiny by TAC of GIPP subcontracts to be registered for tax-free treatment has resulted in the rejection of GIPP-funded projects for registration. The apparent two bases for rejection of tax-free status have been: (1) certain terms in the subcontracts; and (2) the export of samples or other physical items from Russia to the DOE/NNSA national laboratory involved in the project. Although the nature of the GIPP program and the overall terms of the subcontracts apparently meet TAC's applicable technical assistance requirements, the use of certain terms in the subcontracts appear to have led TAC to assert erroneously that they are commercial agreements involving buyer-seller relationships and therefore ineligible for tax-free treatment.

Based on discussions with CDRF officials, below are suggestions for alternative language for apparently problematic terms in the model subcontracts. It is anticipated that use of this alternate language by DOE and NNSA national laboratories will result in payments to Russian organization subcontractors continuing to receive tax-free treatment as required by U.S. law (National Defense Authorization Act for FY 2000, Section 3136).

DOE/NNSA laboratories also should consider using this new language for other former Soviet Union countries such as Ukraine to avoid similar issues with those countries.

1. Language

Problematic Terms	Suggested Alternative Terms
Contract/Subcontract	Project Agreement; Research and Development Agreement
Company (NB: The TAC is increasingly skeptical of for-profit sponsored projects. GIPP is a U.S. Government-funded program; it is important that this be clearly stated in any agreement.)	Sponsor Organization/Sponsor Organization/National Laboratory/[Full Name of National Laboratory or Sponsor Organization]
Contractor	Recipient FSU Organization; Organization; [Name of Organization]
Task	Milestone
Seller	Recipient FSU Organization/Organization/[Name of Organization]
Deliverable	Milestone
Products/Services furnished	Work performed under the project. (Results should not imply buyer-seller relationship.)
Vendor (when referring to Recipient Organization)	Recipient FSU Organization/Organization/[Name of Organization]
Service	Objective as outlined in the Project Plan
Statement of Work	Project Plan/Research Plan
Firm fixed price	Total funds provided in support of the project
“complete and deliver...the product required”	“oversee the technical work performed and ensure compliance”

2. Export of Samples/Prototypes

In addition to subcontract terminology considerations, TAC has rejected projects that provide for the export of samples or other physical items from Russia to U.S. sponsor/national laboratories or to a third party identified in the subcontract. Under TAC technical assistance guidelines, tax-exempt funds cannot be used for “purchase.” The exchange of such materials may be critical to project success. There appear to be two options to enable continuation of such exports:

Option 1: The specific milestone specifying the export must include the following:

- a. A clear description of the item to be sent abroad;
- b. A statement that the item –
 - i. is for temporary export for testing and evaluation;
 - ii. will be returned to the recipient FSU organization; and
 - iii. remains the property of the recipient FSU organization.

NOTE: If the item is for permanent export (such as samples that cannot be returned) this must be explicitly stated as well. Any application containing a provision for such an export should be submitted to CRDF in advance for review prior to the execution of the agreement between a DOE or NNSA national laboratory and the recipient organization.

Option 2: Conclude a separate agreement between a DOE or NNSA national laboratory and the recipient organization after the conclusion of the project. CRDF has an existing model agreement and is working on new models with Russian legal experts that could be used for this purpose.

It is critical that DOE and NNSA national laboratories contact CRDF prior to project commencement if the project is to involve exported material.

NOTE: All Modifications and Extensions to Existing Subcontracts Must be Submitted to CRDF Prior to Execution

DOE and NNSA national laboratories should submit any proposed modification to an existing subcontract to CRDF prior to execution. Modifications involving changes in funding require additional reviews and approval. Failure to submit proposed modifications to CRDF in a timely manner may result in denial of tax-exemption approvals for additional funding or other project delays.