

APPENDIX F, Amendment 000002

**WAIVER REQUESTS: PERFORMANCE OF WORK IN THE UNITED STATES
(applicable to *Demos*, *Risk Reduction* and *ARC-20*)**

As set forth in the FOA, all work (at all tiers) under DOE funding agreements must be performed in the United States (U.S.), unless otherwise waived by DOE. Specifically, work performed (i.e., purchases and labor) under awards must be performed in the U.S., unless otherwise approved as part of the original application, or during performance, by DOE in accordance with the thresholds set forth in this clause.

- Below \$1M: This requirement does not apply to the foreign purchase of supplies and equipment or for foreign labor (cumulative) performed below \$1M; however, the Awardee should make reasonable efforts to perform labor and/or purchase supplies and equipment within the U.S. below this threshold.
- At \$1M or above, up to \$5M, the awardee must notify DOE at least 30 days prior to foreign purchase of supplies and equipment or for foreign labor (cumulative) performed, using the Special Status report specified in the award's Reporting Requirements checklist.
- Over \$5M, the awardee must obtain prior written DOE approval using the Waiver Request for Non-US Work at Appendix F, at least 30 days prior to the foreign purchase of supplies and equipment or for foreign labor (cumulative) performed.

In adherence to the above thresholds, applications proposing foreign purchase of supplies and equipment or for foreign labor performed must clearly specify what work is to be done, by which entity, where the work is to be performed, the estimated time period for the work, the estimated dollar value of the work and the rationale for doing the work outside the U.S.

The Awardee must flow down these requirement to its subrecipients.

After award, for any work outside of the U.S. not already proposed by the Applicant during the FOA process and by DOE on any subsequent award, DOE Contracting Officer prior written approval must be given for work conducted outside the U.S. DOE may deny cost reimbursement for the work conducted outside the U.S. and such costs may not be recognized as allowable recipient cost share, if prior approval is not obtained. The Awardee is responsible should any work under this Award be performed outside the U.S., absent a waiver, regardless if the work is performed by the Awardee, subrecipients, contractors or other project partners. There may be limited circumstances where it is in the interest of the project to perform a portion of the work outside the U.S.

This requirement does not apply at or below \$250,000 to the purchase of supplies, equipment or services; however, the Awardee should make reasonable efforts to purchase supplies and equipment and obtain services within the U.S.

There may be limited circumstances where it is in the interest of the project to perform a portion of the work outside the U.S. To seek a waiver of the Performance of Work in the U.S.

requirement, the applicant must submit an explicit waiver request in the Application; the same applies after award, if the awardee discovers it is necessary to obtain foreign support that was not already specified as part of the original FOA application.

A separate waiver request must be submitted for each entity proposing performance of work outside of the U.S.

Overall, a waiver request must demonstrate to the satisfaction of DOE that it would further the purposes of this FOA and is otherwise in the economic interests of the U.S. to perform work outside of the U.S., or to acquire foreign produced supplies or equipment at a unit price ~~of over~~ the dollar thresholds indicated above \$250,000. A request to waive the *Performance of Work in the U.S.* requirement must include the following:

- The rationale for performing the work outside the U.S. (“foreign work”) or purchasing supplies or equipment ~~with a unit price of over \$250,000~~;
- A description of the work proposed to be performed outside the U.S., or the supplies or equipment to be purchased;
- An explanation as to how the foreign work or equipment is essential to the project;
- A description of the anticipated benefits to be realized by the proposed foreign work or equipment and the anticipated contributions to the U.S. economy;
- The associated benefits to be realized and the contribution to the project from the foreign work or equipment;
- How the foreign work or equipment will benefit U.S. research, development, and manufacturing, including contributions to employment in the U.S., U.S. manufacturing or supply chains, and/or growth in new markets and jobs in the U.S.;
- How the foreign work or equipment will promote domestic American manufacturing of products and/or services;
- A description of the likelihood of Intellectual Property (IP) being created from the foreign work or equipment purchases and the treatment of any such IP;
- The total estimated cost (DOE and Recipient cost share) of the proposed foreign work or equipment;
- The countries in which the foreign work is proposed to be performed or equipment is to be purchased from; and
- The name of the entity that would perform the foreign work or produce the foreign equipment.

DOE may require additional information before considering the waiver request.

The applicant has no right to appeal DOE’s decision concerning a waiver request. The decision whether to grant a waiver is entirely at the discretion of the Contracting Officer.