

Property Issues

1. Property Encumbrance

Background: DOE regulations do not allow lien to be put on equipment or real property purchased with grant money without approval of the DOE contracting officer. However, utilities routinely use mortgages that constitute a first lien in favor of bondholder to fund their assets.

Absent relief from DOE, utilities would be required to seek consent of bondholders to exclude the applicable equipment from mortgaged property, and the grant awardees cannot assure that any such consent will be obtainable in every case. In addition, the cost of obtaining this consent would be significant. Some Recipients believe that such costs would be incurred for purposes that do not advance the purposes of the Smart Grid program. Moreover, as regulated public utilities, potential grantees are subject to comprehensive regulatory oversight to ensure that regulated services are rendered to utility customers. Implicit in this regulation is that the equipment purchased in whole or in part through SGIG funds is utilized for its intended purpose. Utilities also need to discuss encumbrance for financing of equipment and real property. Some utilities want DOE to issue a class waiver to 10 C.F.R. §600.321.

Question: Will DOE contracting officer be able to discuss with grant awardees considerations that will be relevant to making these determinations in order to provide grant awardees with some certainty on this issue prior to finalization of contract agreements?

Answer: Yes, consistent with the 10 C.F.R. §§ 600.132(a), 600.134(c), and 600.321(b)(2), a potential recipient of award funds may request that the DOE contracting officer consider approving encumbrance of property purchased in whole or in part with Federal funds under its pending award, including equipment and real property. The contracting officer will be able to discuss conditions requisite for acceptable encumbrance and negotiate terms.

2. Property Tracking Requirements

Background: A utility's transmission and distribution system is comprised of millions of individual low dollar value, long-lived assets dispersed over a large geographic area. It would be nearly impossible and certainly impractical, to maintain separate records for each piece of equipment. Consistent with the Federal Energy Regulatory Commission (FERC) standards, utilities track their assets in groups of similar assets, grouped by characteristics or function. These assets are then depreciated as a group rather than traced and depreciated individually by asset.

Question: Will the DOE consider engaging in discussions with grantees on alternative methods of ensuring that grant-funded assets serve their intended purpose on a practical and cost-effective basis? For one possible example, DOE could require that upon installation of the assets acquired in part with Federal funds, the recipients would specifically identify the capital projects for which the equipment is installed, trace the information to supporting documentation and demonstrate the application of the award to cost of the capital projects.

Questions and Answers for the Smart Grid Investment Grant Program

Answer: Property tracking requirements are encompassed within 10 C.F.R. §§ 600.134(f), 600.232(d), and 600.323. Among other requirements, a physical inventory must be taken and the results reconciled with the property records at least once every two years. See 10 C.F.R. §§ 600.134(f)(3), 600.232(d)(2), and 600.323(c). A recipient may request that the contracting officer consider a deviation from these provisions as described at 10 C.F.R. §600.4.

For purposes of depreciation, 10 C.F.R. §§ 600.134(g), 600.232(e)(1), and 600.321(f) (i) identifies valuation of equipment on a per unit basis. Equipment with a current fair market value of less than \$5000 per unit is not subject to the provisions of these sections. At \$5000 and above, the requirements of 10 C.F.R. Part 600 apply, including those of §§ 600.134(f), 600.232(d), and 600.323.

“Fair Market Value” is an undefined term in the financial assistance regulations. In assessing fair market value, DOE will expect the recipient to make an initial recommendation of fair market value and to present to the Contracting Officer a reasonable basis for that recommendation. There is no prescribed methodology, but recipients may want to consider industry standards for assessing fair market value, recent arms-length transactions for the same equipment, depreciation schedules, etc.

3. Property Ownership/Disposition Upon Conclusion of Project

Background: The SGIG program contemplates that a substantial investment in new technologies will be placed in service on the grid. Those smart grid and smart meter investments are expected to have useful lives of 10-30 years, depending on the equipment. It is unlikely that grantees will remove such long-lived equipment at the end of the 3-year SGIG project. Likewise, it seems counter to the purpose of the SGIG program to require recipients to repay ARRA funds to the Federal Government for smart grid and smart meter equipment that remains in service as intended under the program.

Question: In the SGIG award, is it DOE’s intention to unconditionally vest title in the recipient to property acquired with SGIG matching funds subject to reasonable terms and conditions (i.e. that it be used for its full useful life or replaced with equivalent equipment at the utilities’ expense).

Question: In connection with state regulatory approvals, certain of the grant awardees may wish to pay 100% of the purchase price of certain assets without utilizing grant funds, while other assets would be purchased 100% with government funds. Would DOE consider such an approach, which also could simplify certain reporting requirements and potentially obviate the need to grant any lien (as described above) on the assets purchased 100% with government funds?

Answer: Title to equipment vests in the recipient subject to the conditions of 10 C.F.R. §§ 600.134, 600.232, and 600.321. DOE intends that the recipient continue to use the equipment for the authorized purposes of the project until the property is no longer needed for the purposes of the project. DOE does not intend to subject a recipient to the disposition procedures at the end of the 3-year funding period if the recipient has complied with the terms and conditions of its award and 10 C.F.R. Part 600, and will continue to use the property for project-like purposes. As to the purchase of assets by for-profit recipients without the use of grant funds, Part 600 would apply if the recipient intends to use the value of the assets toward its portion of the cost share requirements. See 10 C.F.R. §600.321(c) that provides:

A recipient may offer the full value of real property or equipment that is purchased with recipient’s funds or that is donated by a third party to meet a portion of any required cost sharing or matching, subject to the

Questions and Answers for the Smart Grid Investment Grant Program

requirements of §600.313. If a resulting award includes such property as a portion of the recipients cost share, *the Government has a financial interest in the property, (i.e., a share of the property value equal to the Federal participation in the project). The property is considered as if it had been acquired in part with Federal funds, and is subject to the provisions of paragraphs (b)(1), (b)(2) and (b)(3) of this section and to the provisions of §600.323.*

(Emphasis added in italics).