

Intergovernmental Agreement

between

The Department of Energy (DOE) and the States

as represented by

The National Association of State Energy Officials (NASEO)

and

The Association of State Energy Research and Technology Transfer
Institutions (ASERTTI)



November 2002

INTERGOVERNMENTAL AGREEMENT

among
the

**UNITED STATES DEPARTMENT OF ENERGY,
the
NATIONAL ASSOCIATION OF STATE ENERGY OFFICIALS
and the
ASSOCIATION OF STATE ENERGY RESEARCH AND TECHNOLOGY
TRANSFER INSTITUTIONS**

for the establishment of a

COLLABORATIVE RDD&D PILOT PROGRAM

This INTERGOVERNMENTAL AGREEMENT ("Agreement") is entered into as of ~~September 14~~ ¹⁴, 2002, among the United States Department of Energy ("DOE"), acting through its Assistant Secretary for Energy Efficiency and Renewable Energy and its Assistant Secretary for Fossil Energy ("the Department"), the National Association of State Energy Officials ("NASEO") and the Association of State Energy Research and Technology Transfer Institutions ("ASERTTI"), representing the States for the purpose of committing the parties to establish a five year collaborative pilot program to jointly support the research, development, demonstration, and deployment ("RDD&D") of technologies where common Federal and State energy efficiency and renewable energy and fossil energy activities exist and crosscut DOE's Office of Energy Efficiency and Renewable Energy ("EERE") and Office of Fossil Energy ("FE") programs.

Whereas, the Department and the States desire to support, through joint funding, the RDD&D of technologies where common Federal and State energy efficiency and renewable energy and fossil energy activities exist and crosscut DOE's EERE and FE programs, to better leverage their funds for these purposes, and to reduce redundancies in Federal and State funding.

Whereas, it is recognized by the parties that NASEO and ASERTTI are authorized to jointly represent the States' interests in working with the Department on establishing a collaborative RDD&D pilot program for the joint funding of RDD&D of technologies where common Federal and State energy efficiency and renewable energy and fossil energy activities exist.

Whereas, the parties have mutually agreed on a Program Description of a collaborative RDD&D pilot program ("Pilot Program") to accomplish the objectives of this Agreement, attached hereto and incorporated by reference.

Whereas, for purposes of this Agreement, and in the operation of the Pilot

Program, NASEO and ASERTTI will jointly represent the interests of the States, and will work collaboratively with one voice in working with the Department in the conduct of the Pilot Program.

Whereas, the Department and NASEO intend to enter into a federal Cooperative Agreement under which the Department will provide NASEO with 50 percent cost share monies to jointly fund the Pilot Program.

Whereas, it is the intent of Congress, as set out in the Conference Report to the FY 2003 Interior and Related Agencies Appropriations Act [cite] to have the Department and the States, through NASEO and ASERTTI, work together to effectuate this Agreement.

Now Therefore, the Department, NASEO and ASERTTI hereby agree to the following:

1. **Establishment of the Pilot Program**

(a) The Department, NASEO and ASERTTI hereby agree to establish a pilot program to jointly select and fund projects that involve the RDD&D of technologies where common Federal and State energy efficiency and renewable energy and fossil energy activities exist and crosscut DOE's EERE and FE programs.

(b) The term of the Pilot Program is five years from the date of this Agreement.

(c) The pilot program description is set out in the attachment, State/Federal Collaborative Pilot Program Description, and incorporated herein by reference.

(d) The Department's participation in the Pilot Program and cooperative agreement is subject to the availability of appropriations as provided in yearly appropriation legislation.

(e) NASEO, ASERTTI and the Department agree to work cooperatively to mutually resolve any unforeseen problems that may arise under the operation of the Pilot Program.

2. **Pilot Program Executive Committee**

(a) The Department shall appoint one EERE official and one FE official to the Pilot Program Executive Committee to assist in carrying out the Pilot Program as set out in the attachment. It is agreed that the Department's representatives shall collectively have the authority to reject the award of joint funding for any project submitted to the Executive Committee for funding.

(b) NASEO shall appoint two officials to the Pilot Program Executive Committee to assist in carrying out the Pilot Program as set out in the attachment. It is agreed that NASEO's representatives shall collectively have the authority to reject the award of joint funding for any project submitted to the Executive Committee for funding.

(c) ASERTTI shall appoint two officials to the Pilot Program Executive Committee to assist in carrying out the Pilot Program as set out in the attachment. It is agreed that ASERTTI's representatives shall collectively have the authority to reject the award of joint funding for any project submitted to the Executive Committee for funding.

3. **NASEO and ASERTTI.**

(a) NASEO shall enter into an agreement with ASERTTI, a copy of which will be provided to the Department, under which both organizations commit resources to provide support to the Pilot Program and the Pilot Program Executive Committee. They will also share all other organizational documents of the Executive Committee with the Department.

(b) In order to avoid the appearance of conflicts of interest in funding or choosing projects under this Pilot Program, NASEO and ASERTTI shall not be eligible for project funding, and shall assure the Department that all states shall be treated fairly under the Pilot Program. Notwithstanding the foregoing, NASEO shall be authorized to utilize funding to administer and operate the Pilot Program, consistent with Section 4(a) herein.

4. **The Department's Cooperative Agreement.**

(a) The Department and NASEO agree that they will enter into a Cooperative Agreement which will serve as the instrument to obligate the federal 50 percent cost share funding for projects in the Pilot Program, and to be used by NASEO in administering and operating the Pilot Program.

(i) The 50 percent federal cost share is subject to the availability of appropriations as provided in annual appropriation acts.

(ii) NASEO shall submit to the Department an application for a Cooperative Agreement setting out the details of the Pilot Program in order to receive federal funds to implement the Pilot Program.

(iii) As the recipient under the Cooperative Agreement, NASEO shall be the responsible party for the disbursement of the federal funds under the Pilot Program pursuant to the terms of the Cooperative Agreement.

(iv) NASEO and ASERTTI shall assure the Department that the remaining 50 percent of cost share shall come from non-federal sources.

States' Collaborative Competition Pilot Agreement

between

The Department of Energy (DOE) and the states

as represented by

The National Association of State Energy Officials (NASEO)

and

**The Association of State Energy Research and Technology Transfer
Institutions (ASERTTI)**

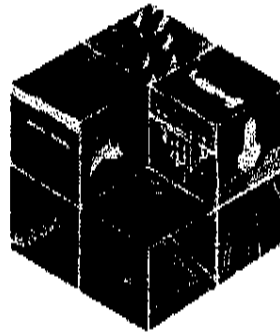


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States/Federal Collaborative Competition Pilot Program Description

1. Purpose

The Department of Energy (DOE), the National Association of State Energy Officials (NASEO) and the Association of State Energy Research and Technology Transfer Institutions (ASERTTI), representing the States, propose establishing a five year collaborative pilot program to jointly support the research, development, demonstration, and deployment (RDD&D) of technologies where common Federal and State energy efficiency and renewable energy and fossil energy activities exist. The purpose of the States/Federal Collaborative Pilot Program (STAC) is to plan, fund and oversee State/Federal RDD&D multi-state projects that are consistent with the strategies, goals and objectives of DOE and the States and thereby better leverage Federal and State funds, expedite funding for RDD&D projects and reduce redundancies.

2. Background

This program will be built on the foundations of prior Federal-State efforts to collaborate on and engage in joint planning for RDD&D. These activities are captured in part in the following support documents:

- (1) Memorandum of Understanding Between DOE and ASERTTI dated May 6, 1999.
- (2) Memorandum of Understanding Between DOE and the New York State Energy Research and Development Authority dated April 21, 1998.
- (3) Memorandum of Understanding Between DOE and the California Energy Commission dated March 18, 1998.
- (4) Procedures for Joint RD&D Planning by DOE and the States dated August 1999.

3. Program Goals

The goals are to:

- (1) ensure more efficient and effective utilization of Federal and State research and development dollars through planned leveraging;
- (2) leverage funding with the States through ASERTTI, NASEO and other third parties;
- (3) ensure that Federal funding used to finance this program is managed consistent with the congressionally mandated purpose;
- (4) create stronger Federal/State relationships that result in selecting the best program investments consistent with DOE and State missions, strategies, goals and objectives;
- (5) create multi-state projects;
- (6) support the research, development, and demonstration of new technologies that contribute to energy security of the States' and the nation;

- (7) develop more effective and efficient mechanisms for facilitating the deployment of energy technologies that:
 - a. create new market choices and opportunities;
 - b. encourage investment in clean energy technologies;
 - c. facilitate stronger ties with U.S. businesses;
 - d. support the nation's infrastructure development;
 - e. quantify market segments and characteristics, recognize market realities, and identify areas for market penetration; and,
 - f. disseminate clean energy information throughout the nation to industry, universities and schools, financial institutions, government, and the general public in a manner that maximizes the impact of the message; and,
- (8) baseline the performance of the program against current procurement cycle times.

4. Scope

Projects to be funded under this program include those activities authorized and appropriated under the Energy Conservation Account that focus on RDD&D projects that crosscut energy efficiency, renewable energy and other energy sector technologies. The scope may include other DOE and State program activities where crosscuts include basic research as well as applied RDD&D projects.

5. STAC Executive Committee

The STAC Executive Committee is responsible for implementing the program. The Committee consists of two members from DOE, one to be appointed by the Assistant Secretary for Energy Efficiency and Renewable Energy and one to be appointed by the Assistant Secretary for Fossil Energy, two each from NASEO and ASERTTI to be appointed by their respective boards, and one outside representative to be selected and appointed jointly by the parties.

The Executive Committee responsibilities include:

- (1) appointing a Program Director;
- (2) implementing effective and efficient joint planning processes designed to identify areas of mutual interest to DOE and the States' that are consistent with their respective missions, strategies, goals and objectives;
- (3) reviewing planning recommendations and approving a defined agenda of programs and projects;
- (4) assuring that cost sharing for all Federal-State awards meets or exceeds statutory requirements;
- (5) assuring a fair and equitable distribution of multi-state projects for a variety of technology and geographical areas;
- (6) assuring that proposed projects are selected under competitive merit procedures;
- (7) establishing policies and procedures that avoid organizational conflict of interest issues or the appearance of organizational conflicts of interest issues;

- (8) promoting clean energy projects that will contribute to improving the nation's energy security;
- (9) selecting projects for funding;
- (10) exercising executive oversight of work to assure that individual projects and the pilot program are well managed; and,
- (11) reporting results of the program and lessons learned upon the completion of the program

6. Program Management

The STAC Program Director is responsible for the planning and administration of the program, as approved by the STAC Executive Committee. The Program Director will use the expertise and resources of NASEO, ASERTTI, DOE and other contract resources as necessary to plan, administer and oversee the RDD&D projects.

Joint Planning:

Planning will be conducted for the purpose of developing a mutually agreed upon collaborative RDD&D agenda. The joint planning process requires that the Office of Energy Efficiency and Renewable Energy (EERE) and the Office of Fossil Energy assign Federal program managers to represent their respective programs in concert with planning representatives from NASEO and ASERTTI.

Multi-Year Collaborative Plan:

The planning teams, under the direction of the Program Director, will develop and recommend approval of a multi-year RDD&D agenda. The various joint planning teams will make formal presentations and recommendations on programs and technologies in the plan. The multi-year plan will provide a context for performance and future planning, and will be reviewed and approved by the STAC Executive Committee.

Among the criteria to be considered in developing areas of interest for RDD&D efforts include:

- (1) the expected values and costs of the technologies within a wide range of buildings, transportation, industrial, distributed energy resources, utility integrated systems applications, etc.;
- (2) markets and market impacts;
- (3) environmental values (e.g., emissions reductions, displaced energy, productivity gains/losses, etc.); and,
- (4) technical capabilities and limitations (e.g., system and component performance, reliability, failure rate, etc.).

Annual Plan:

Draft plans, including proposed programs and projects developed via the joint planning process, are to be presented to the STAC Executive Committee for approval. The product of this review will be an agenda of specific programs/projects with specified project time periods.

7. Competitive Merit-based Selection Process

Using the results of joint Federal/State planning, the Program Director, supported by DOE, NASEO, and ASERTTI staff, will develop, solicit and evaluate proposals for awards that support the joint RDD&D needs established by Federal/State joint planning, and meet or exceed applicable cost-sharing standards of the Energy Policy Act of 1992, Pub.L. No. 102-480 (1992).

Proposals received in response to the requests for proposal will be subject to merit review. The STAC Program Director will assign Independent Evaluation Committees, which are subgroups of the Federal/State Joint Planning Committee, to review the proposals. These committees will, at a minimum, evaluate proposals received in response to a solicitation consistent with the Office of Management and Budget's R&D Investment Criteria, where applicable.

Evaluation procedures and selection procedures will be approved by the STAC Executive Committee prior to issuance of a nation-wide solicitation for joint Federal/State RDD&D projects.

After completion of a merit review, the independent evaluation committees will recommend awards to the STAC Executive Committee. Each organization (DOE, NASEO, and ASERTTI) represented on the Executive Committee shall have the authority to veto the award of any project(s) that are not consistent with its goals and objectives. The STAC Executive Committee will:

- (1) review the recommendations based on the merit review criteria;
- (2) consider other factors such as alignment with EERE, FE and State strategic goals and objectives, but not limited to, DOE, NASEO and ASERTTI goals and objectives, technologies, geographic diversity, degree of multi-state collaboration and the degree of non-federal, public, and private cost sharing for work proposed;
- (3) select and approve appropriate awards;
- (4) assure that veto authority through collective representation on the STAC Executive Committee by the DOE, NASEO, and ASERTTI members of the STAC Executive Committee for purposes of rejecting an award will be respected; however, the seventh member of the committee has no veto power; and,
- (5) consider other factors as appropriate.

8. Project Management

The following functions will be performed:

- (1) provide public notifications of the awards;
- (2) conduct contract negotiations;
- (3) release funds and execute awards as approved by the Executive Committee; and,
- (4) administer the projects.

The Program Director will ensure that a successful applicant has a Project Manager (PM) for each award. The PM will be responsible for monitoring the project, ensuring that goals are achieved and collecting and summarizing performance data. A database will be established that includes such data as:

- (1) validation of technical cost and environmental performance objectives; and,
- (2) discussion of institutional barriers (e.g., technical, industrial, legislative, economic, etc.) that were obstacles to success.

9. Cooperative Agreement

DOE will enter into a cooperative agreement with NASEO for the purposes of accomplishing a public purpose of establishing the Pilot Program. The cooperative agreement will serve as the vehicle for transferring funding to implement the Intergovernmental Agreement between DOE and NASEO and ASERTII, representing the States. These funds shall be used to provide the 50 percent federal cost share monies required to jointly fund the Pilot Program, and to pay for administrative expenses such as the STAC Program Director and staff.

NASEO shall be responsible for providing fiduciary oversight and management of Federal and State funding, and annual reports. NASEO is also responsible to assure that projects and support costs are well managed with respect to technical, financial, legal, and operational performance.

10. Data Collection and Documentation

During the program period, STAC's Executive Committee will utilize the project information including technical, financial, and documentation of lessons learned to summarize and provide assessments of project performance. The performance briefings on the status of the projects will be provided to the STAC Executive Committee by staff at scheduled meetings.

11. Education and Technology Transfer Outreach

The STAC Executive Committee will use the results of these projects to educate Federal, State, educational institutions, industry, non-profit research institutions, and the general public on the value and benefits of the technologies supported by these projects. This includes, but is not limited to, developing, printing and distributing publications, planning and implementing annual

and executive meetings, participation and coordination in targeted media campaigns, and sharing information with members, partner organizations, and the media.

Technology Transfer: The STAC Executive Committee will provide regular updated technical information at annual meetings and other appropriate public forums to elevate the awareness of results of the projects and/or other information. This is intended to provide the information necessary to take advantage of new technologies, markets, and benefits derived from RDD&D.

Outreach: Members of the STAC Executive Committee will use their respective best efforts to develop a wider and deeper understanding of the benefits of the projects and the benefits from energy efficiency and renewable energy among the general public.

Liaison and coordination: STAC will work with partner organizations to assure a timely and accurate flow of information on results, events, and opportunities. The STAC Executive Committee shall develop and disseminate educational materials for the specific use of partner organizations as required.

GENERAL TERMS AND CONDITIONS

1. Effective Date

This agreement shall become effective as of the calendar date on which all parties have executed this agreement.

2. Management

The parties intend to develop and implement such management plans as required to provide prudent oversight of this agreement and its terms and conditions. The purchasers agree to continue the implementation of such plans after the execution date, including periodic update of the plans as needed.

3. Term

This agreement shall remain in effect for a period of five (5) calendar years following execution by all parties. The above termination date may be extended by mutual agreement of the parties. This agreement shall be terminated if, at any time prior to the completion date, the parties to the agreement determine they are not able to meet the terms and conditions of the agreement. Such determination of the parties must be in writing.

4. Dispute Resolution

The parties shall attempt to settle any claim or controversy arising out of this agreement in good faith. The parties may agree to submit any claim or controversy to a mutually-acceptable mediator, the cost of which shall be borne equally by the federal government and the states, as represented through NASEO. The use of such a procedure shall not be construed to adversely affect the rights of either and shall prevent any party from resorting to judicial procedures. Any judicial action shall be filed in the closest federal court having jurisdiction.

5. Amendment

This agreement may be modified only by mutual agreement in writing between the Parties to the agreement. Any modifications must be consistent with applicable state and federal law.

6. Force Majeure

Failure by either the federal government or the states (as represented by NASEO) and ASERTTI, to perform any of the requirements of this agreement brought about by causes beyond their control and without fault or negligence of the parties shall constitute excusable delay. In any instance where excusable delay occurs, the time for completing the work shall be extended by negotiation of the parties.

7. Continuing Support and Assistance

The parties agree to support and assist each other in the mutually satisfactory resolution of any unforeseen problems associated with the implementation of this agreement. The federal government and the states recognize that new issues involving this process may arise both prior to and after execution of this agreement, or that issues considered resolved may need further clarification, implementation or other resolution. The federal government and the states agree that open lines of communication are desirable and required after the date of this agreement. To that end, the federal government and the states each agree to exercise good faith efforts in implementing the terms of this agreement expeditiously.

8. Relationship of Purchasers

The covenant, obligations and liabilities of the parties to this agreement are intended to be several and not joint or collective, and nothing contained herein shall be construed to create an obligation or liability on or with regard to any of the parties to the agreement.

Each party to the agreement shall be individually responsible for its own covenant, obligations and liabilities as provided in this agreement.

No party to the agreement shall, by virtue of this agreement, be under the control of, or be deemed to control, the other party. No party shall be the agent of, or have a right or power to bind the other party without its express written consent, except as may be expressly provided in this agreement, or as may be otherwise provided by existing law.


9. Miscellaneous Provisions


The parties agree, upon request of the other parties, to make, execute and deliver any and all documents reasonably required to implement this agreement. This agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREFORE, the parties have caused this agreement to be executed the day and year written hereafter.

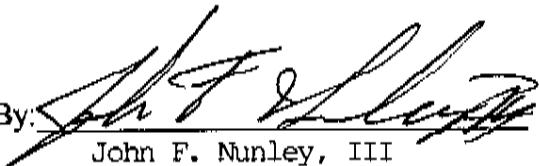
In Witness Hereof, the parties have caused this Agreement to be executed the day and year written hereafter:

THE UNITED STATES DEPARTMENT OF ENERGY

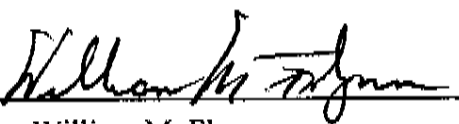
By:  Date: 11/14/02
David Garman
Assistant Secretary
Energy Efficiency and Renewable Energy

By:  Date: 11/5/02
Carl Michael Smith
Assistant Secretary
Fossil Energy

NATIONAL ASSOCIATION OF STATE ENERGY OFFICIALS

By:  Date: 11-17-02
John F. Nunley, III
Chairman
National Association of
State Energy Officials

ASSOCIATION OF STATE ENERGY RESEARCH AND TECHNOLOGY TRANSFER INSTITUTIONS

By:  Date: 11/14/02
William M. Flynn
Chairman
Association of State Energy
Research and Technology Transfer
Institutions