

Date: June 14, 2004

Subject: Status of the SSL Exceptional Circumstances Determination

The Solid State Lighting Portfolio included in its two fiscal year 2004 (FY04) Core Technology Program Solicitations (DE-PS26-04NT42092 and the companion solicitation to the DOE National Laboratories) direction that the program intended to pursue a determination titled "Exceptional Circumstances Determination for Inventions Arising Under the Solid State Lighting Core Technologies Program." The language included in both solicitations is below. Although the SSL Program is still committed to the planned technology development model and specifically the exceptional circumstances determination activity, the program will NOT be including exceptional circumstance language in awards from either of the FY04 Core Technologies Program solicitations.

Solicitation Language:

8.8 EXCEPTIONAL CIRCUMSTANCES (Section 8.8 of NT42092 and Section 10 of the "Lab Call")

Regarding any award made to domestic small businesses, institutions of higher education, or other non-profit organizations under this announcement, the Department of Energy intends to pursue a determination titled "Exceptional Circumstances Determination for Inventions Arising Under the Solid State Lighting Core Technologies Program." This Determination will be based on the Department's belief that circumstances surrounding the Solid State Lighting Core Technologies Program are exceptional and justify modified intellectual property arrangements as allowed by the Bayh-Dole Act (35 U.S.C. 202(a)(ii)). The Determination is currently being prepared by NETL and a draft version will be issued as an Amendment as soon as it is available.

If the Determination is approved, the Department of Energy intends that disposition of rights to subject inventions made by domestic small businesses and non-profit entities under awards resulting from this announcement will be subject to the terms of this Determination. The restriction of patent rights under the Determination will be basically as described in the last paragraph of Article 8.7 above. In developing the Determination, the Department will strive to minimize the licensing rights that the Core Technology Program recipients will have to agree to. In addition, under 35 U.S.C. § 203(2), an awardee adversely affected by this exceptional circumstance determination has a right to appeal the determination to the Department of Energy or to the United States Court of Federal Claims.