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ATP Eligibility Criteria for Foreign-Owned, U.S.-Incorporated or U.S.-Organized Companies: Legislation, Implementation, and Results

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Abstract

The U.S. Advanced Technology Program (ATP) invests directly in the growth of the nation's economy by cost sharing with industry in the development of high-risk enabling technologies that form the basis for new and improved products, manufacturing processes, and services. ATP relies on U.S. companies to conceive and propose technology development projects, carry out and share the costs of the research of awarded projects, help disseminate new knowledge gained, and make further investments in the development of the technology to bring it into the commercial marketplace.

This report addresses the requirements set forth in ATP's authorizing legislation that foreign-owned companies incorporated (or organized) in the United States must meet as a condition of receiving ATP funding. The report provides information and statistics on foreign eligibility and participation as a resource for prospective applicants. Policymakers, government administrators, academicians, private individuals, law firms, think tanks, and others interested in the issue of foreign participation in publicly funded research and development programs may also find the report useful.

Keywords

Advanced Technology Program; foreign eligibility; foreign participation; foreign-owned companies; selection criteria.

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Copies of the Report

Paper copies of this report are available by mailing your request to Economic Assessment Office, Advanced Technology Program, NIST, 100 Bureau Drive, Mail Stop 4710, Gaithersburg, Maryland, 20899-4710, or by sending an email to atp-eao@nist.gov. An electronic copy of the report is available on ATP's website at www.atp.nist.gov/eao/ir-6099/contents.htm.

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Executive Summary

The Advanced Technology Program (ATP) helps U.S. companies accelerate the development and commercialization of highly innovative technologies with strong potential for generating broad-based economic benefits for the nation. ATP multiyear awards are made to individual companies and to joint research and development ventures through a highly competitive, merit-based, peer-reviewed selection process.

U.S.-owned companies are eligible to receive ATP funding. Companies incorporated (or organized) in the United States with a parent company incorporated in another country (i.e., companies that are majority-owned or majority-controlled by individuals who are not citizens of the United States) are also eligible to receive ATP funding, provided additional requirements are met. Foreign-owned companies or organizations that are located abroad are not eligible to receive ATP funding as direct participants, but may receive ATP funding as subcontractors on a case-by-case basis. U.S.-owned companies incorporated outside the United States are generally not eligible to receive ATP funding as direct participants, except on a case-by-case basis.

ATP bases its funding decisions on how well the project proposal addresses the two main selection criteria: (1) scientific and technological merit and (2) potential for broad-based economic benefits to the United States. Regardless of the country of ownership of the participating companies, projects must score high against the two selection criteria to receive ATP funding.

This report addresses the four additional eligibility requirements that foreign-owned companies must meet as a condition of funding. According to ATP's authorizing legislation, for an award to be given to a foreign-owned company, the Secretary of Commerce (or the Secretary's designee) must find that:

- (1) The company's participation in the ATP project is in the economic interest of the United States;

The country of incorporation of the foreign parent provides all of the following:

- (2) Opportunities to U.S.-owned companies comparable to those provided to any other company to participate in government-funded programs similar to ATP;

- (3) Local investment opportunities to U.S.-owned companies comparable to those provided to any other company; and
- (4) Adequate and effective protection of intellectual property rights of U.S.-owned companies.

Program implementation of this statutory requirement is carried out by the Director of ATP, the Secretary of Commerce's designee, who bases the determination of a foreign-owned company's eligibility to receive an award on evidence gathered from a number of sources.

In implementing its legislative mandate, ATP initiates a foreign eligibility finding in situations where a project selected as a semifinalist involves a foreign-owned company, or a foreign-owned company seeks to join as a participant in an existing ATP joint venture project. In addition, a foreign eligibility finding is initiated when a project participant experiences a change in ownership and becomes majority-owned or majority-controlled by non-U.S. citizens and wishes to continue its participation in the project.

Through September 2003, ATP has carried out 106 foreign eligibility findings. Of these, 73 findings were for companies whose projects were selected as finalists for awards. The remaining findings were for companies seeking to join existing projects or to continue participating in ATP projects after experiencing a change in their ownership. To date, only two foreign eligibility findings have been negative.

Of the 709 projects in ATP's portfolio, 64 active and completed projects involve 80 participants that are foreign-owned, U.S.-incorporated or U.S.-organized companies. Foreign-owned companies participate in less than 10% of ATP projects; 49 of the 207 joint venture projects and 15 of the 502 single-company projects. These 80 participants represent 75 foreign-owned companies from 15 different countries. A few of these companies participate in more than one project.

Organization of the Report

Chapter 1 of the report gives an overview of ATP to provide readers with a general understanding of the goals of the program and an awareness of the number of projects and kinds of technologies that have received funding to date.

Chapter 2 discusses the published project selection criteria and process that apply to all participating companies—regardless of country of ownership.

Chapter 3 lays out the additional eligibility requirements that foreign-owned applicants and the countries in which their parent companies are incorporated must meet. How ATP identifies foreign-owned companies and situations that lead to a foreign eligibility finding are discussed.

Chapter 4 describes the procedures for implementing the foreign eligibility finding process and covers how foreign-owned companies are identified, situations that trigger a foreign eligibility finding, who performs the finding, the sources of information used, and rules on what constitutes a positive or negative foreign finding.

Chapter 5 provides data on the participation of foreign-owned companies in ATP-funded projects.

Chapter 6 uses a question and answer format to address common questions ATP has received on foreign eligibility and participation.

Chapter 7 provides contact information for ATP.

1. Overview of the U.S. Advanced Technology Program

Created in 1988 and made operational in 1990,¹ ATP invests directly in the growth of the nation's economy by cost sharing with industry in the development of high-risk enabling technologies. Once developed, these technologies are expected to form the basis for new and improved products, manufacturing processes, and services. The goal of ATP's cost-shared investment is to help U.S. companies accelerate the creation and commercialization of highly innovative technologies with strong potential for generating broad-based economic benefits for the nation. These benefits are expected to extend significantly beyond the direct benefits to companies receiving awards.

ATP multiyear awards are made to individual companies and to joint research and development (R&D) ventures through a highly competitive, merit-based, peer-reviewed selection process.

Project Selection Criteria

ATP relies on U.S. companies to conceive and propose technology development projects, carry out the research of funded projects, and share in the costs. Companies seeking financial assistance from ATP for research projects likely to score well against ATP's published selection criteria are urged to write and submit proposals. The two main selection criteria² are scientific and technological merit, and potential for broad-based economic benefits to the United States.

ATP emphasizes integrated planning across all aspects of a project by encouraging participants to form a team that includes project staff who will carry out the development of the technology and others who will be responsible for

¹Congress created the Advanced Technology Program in the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100-418), codified in Title 15 of the United States Code, Section 278n (15 U.S.C. 278n), and amended in the American Technology Preeminence Act of 1991 (P.L. 102-245). The U.S. Department of Commerce's National Institute of Standards and Technology was charged with administering the program. The ATP Statute, the program's authorizing legislation, is available in Appendix A of this report.

²See the latest *ATP Proposal Preparation Kit* (February 2004) for more details on each of the selection criteria (www.atp.nist.gov).

the eventual commercialization of the proposed technology. Applicants are asked to provide a detailed research plan and a plan for commercialization of developed technologies. Although funding is only provided for research activities, ATP requires a preliminary plan for downstream activities such as marketing, production, and distribution for at least one potential application of each technology proposed to be developed during the project. ATP encourages applicants to work with customers or end-users as early as possible. If companies successfully complete their research projects, they—or their strategic partners or licensees—are expected to undertake subsequent commercialization activities with private sector or other sources of funds and to promote the diffusion of the technologies for broader benefits to the U.S. economy.

Eligibility Rules

Proposals are accepted only in response to competitions announced in the *Federal Register*. Competitions are open to proposals in all areas of technology.

U.S.-owned companies are eligible to receive ATP funding. Companies incorporated (or organized) in the United States with a parent company incorporated in another country (i.e., companies that are majority-owned or majority-controlled by individuals who are not citizens of the United States) are also eligible to receive ATP funding, provided additional requirements are met. Foreign-owned companies or organizations that are located abroad are not eligible to receive ATP funding as direct participants, but may receive ATP funding as subcontractors on a case-by-case basis. U.S.-owned companies incorporated outside the United States are generally not eligible to receive ATP funding as direct participants, except on a case-by-case basis.

Small and medium companies applying as single-company applicants are eligible to receive up to \$2 million in ATP support for direct project costs over three years. They are responsible for covering all of their indirect/overhead costs. Large companies applying as single-company applicants (currently, businesses with revenues greater than \$3.043 billion) must cover a minimum of 60% of the yearly total project costs (direct plus indirect costs) and can receive ATP support over three years for direct project costs up to \$2 million.

Joint venture proposers—comprised of a minimum of two separately owned for-profit companies both performing the research and sharing in the costs of the research, often in combination with other companies, universities, and nonprofit research laboratories as additional partners—can propose projects of any size for

up to five years of funding. They must cover more than 50% of the yearly total project costs (direct plus indirect costs).

Program Statistics

With a congressional appropriation of \$10 million, ATP held its first competition in 1990 and selected 11 projects for awards. Since 1990, ATP has received 6,054 applications submitted to 43 competitions and selected 709 projects for awards; 71% were single company awards (502 out of 709) and 29% were joint venture awards (207 out of 709). ATP has awarded \$2.114 billion in funding, and industry has provided \$1.987 billion in cost-shared funds. There are more than 1,433 participants involved in the 709 projects, including firms of all sizes, universities, and other research organizations—not counting an equal number of subcontractors and informal partners and collaborators.

Nearly two out of three awards have gone to individual small businesses or to joint ventures led by a small business, located across 42 states. Nearly half of all small businesses participating in ATP projects had fewer than 20 employees. Over 160 universities and academic institutions are involved in over half of the ATP projects to date, either as subcontractors to private companies or as members of industry-led joint ventures. Almost 85% of ATP award recipients are engaged in collaborations with other companies, universities, federal laboratories, and nonprofit organizations.

ATP-funded organizations carry out research in many technology areas. Of the 709 projects funded to date:

25% involve electronics/computer hardware/communications;

23% involve information technology;

21% involve advanced materials and chemicals;

20% involve biotechnology; and

11% involve manufacturing (discrete).

Note that these categories are not mutually exclusive. For example, an ATP project might involve manufacturing of advanced materials or chemicals. Also note that these categories only capture broad areas of research; the breadth of technologies covered in advanced materials and chemicals projects, for example, include separations/membranes, materials processing, nanotechnology, material

interfaces, combinatorial methods, metabolic engineering/catalysts, and chemical processing sensors.

2. ATP Project Selection Criteria and Process

This section provides ATP's published criteria—which apply to all participating companies regardless of country of ownership—for selecting proposed technology development projects. This information is intended to serve as background and context for a discussion of additional eligibility requirements that apply only to foreign-owned companies. ATP bases its selection of project proposals on how well each addresses the two main selection criteria established in the ATP Rule.³

Proposals are evaluated against published selection criteria via a gated selection process. ATP selection decisions are based on how well each proposal addresses two main selection criteria⁴:

1. scientific and technological merit (Gate 1), and
2. potential for broad-based economic benefits to the United States (Gate 2).

Scientific and technological merit is determined by assessing innovations in the technical development; technical risk of the project and evidence of scientific feasibility; and the quality of the detailed technical plan.

Potential to deliver broad-based economic benefits to the United States is assessed based on the project's potential to deliver national economic benefits; the need for ATP funding; and the pathway to economic benefits. ATP-funded projects are expected to generate net economic benefits for the United States. Although companies are not forbidden from carrying out research and other activities in other countries, proposals with substantial research conducted in non-U.S. sites will tend to receive low scores and may be judged as noncompetitive in the selection process. This point holds equally for all projects—whether proposed by U.S.-owned companies with foreign subsidiaries

³The ATP Rule guides the agency's implementation of the ATP Statute, its authorizing legislation. See Appendix B.

⁴Additional details on the selection criteria can be found in the *ATP Proposal Preparation Kit* (February 2004) on the ATP website (www.atp.nist.gov); and in the ATP Rule under Sec. 295.6, Criteria for Selection, which can be found in Appendix B of this report. In addition, for each announced competition, ATP holds conferences with prospective applicants around the country to present the selection criteria and application procedures.

or affiliates, or by foreign-owned, U.S.-incorporated or U.S.-organized companies with a parent company incorporated in another country.

Project proposals submitted to ATP are evaluated against these two selection criteria in a gated process. Proposals judged to have sufficient merit with regard to both criteria pass gates 1 and 2, and are designated “semifinalist proposals.” Semifinalists are invited to ATP for an oral review of their proposals ([Gate 3](#)). After the oral review process, proposals determined to have high merit, based on all information received, are considered “finalists” and are recommended to the Selecting Official for funding. From the list of finalists, the Selecting Official selects funding recipients based on availability of funds, adherence to ATP selection criteria, and appropriate distribution of funds among technologies and their applications. Proposals selected by the Selecting Official proceed to [Gate 4](#) for final award processing and issuance of the ATP award.

Regardless of the country of ownership of the participating companies, projects must score high against the two selection criteria to receive an ATP award.

3. Foreign Eligibility Requirements

Companies incorporated or organized in the United States with a parent company incorporated in another country must satisfy not only the project selection criteria outlined in Chapter 2 that apply to all companies, but also four additional eligibility requirements as specified in the ATP Statute and described below.⁵

The Secretary of Commerce (or the Secretary's designee) must find that:

the company's participation is in the economic interest of the United States.

This requirement is partly covered under the potential for broad-based economic benefits to the United States project selection criterion, which is one of two project selection criteria that all funded projects must pass, as described earlier. In the project selection criterion, the emphasis is on the project's potential for providing net broad-based economic benefits to the United States. The emphasis in the foreign eligibility finding is on the effect on project outcomes of the participation of the foreign-owned company. It is possible that a particular foreign-owned company's participation in a joint venture project is *not* in the economic interest of the United States, even if the project scored high on broad-based economic benefits to the United States. In such a case, the joint venture may be given the opportunity to replace the ineligible foreign member and go forward as an award recipient.

The next three eligibility requirements pertain not to the project or the company, but rather to the national policies of the country in which the parent company is incorporated; consequently, these are generally beyond the control of the individual company applicant.

⁵The terms under which foreign-owned companies are eligible to participate in ATP were established by Congress in the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100-418, codified in 15 U.S.C. 278n), as later amended by the American Technology Preeminence Act of 1991 (P.L. 102-245) to add Sec (d) (9) (B) (ii), and are contained in the ATP Statute, the program's authorizing legislation (see Appendix A).

The Secretary of Commerce (or the Secretary's designee) must find that:

the foreign parent's country of incorporation provides U.S.-owned companies opportunities in the foreign parent country comparable to those provided to any other company to participate in programs similar to ATP.

This requirement looks to whether similar programs to ATP exist in the parent country and whether U.S.-owned firms are allowed to participate under the same conditions as domestic firms. Rules on eligibility and participation of U.S. firms are gathered.

The Secretary of Commerce (or the Secretary's designee) must find that:

the foreign parent's country of incorporation provides U.S.-owned companies local investment opportunities in the foreign parent country comparable to those provided to any other company.

This requirement focuses on the opportunities for U.S.-owned companies to make investments in the parent country under the same conditions as domestic firms, including mergers, acquisitions, and other forms of investment in all sectors of the economy. Laws, regulations, and any informal barriers to entry are examined.

The Secretary of Commerce (or the Secretary's designee) must find that:

the foreign parent's country of incorporation provides adequate and effective protection in the foreign parent country of the intellectual property rights of U.S.-owned companies.

This requirement pertains to whether the parent country adequately and effectively protects the intellectual property rights (i.e., patents, trademarks, copyrights) of U.S.-owned companies. Enforcement procedures and process for dispute settlement of infringement cases are considered.

To be clear, for a foreign eligibility finding to be determined positive, each of the four foreign eligibility requirements must be met. If one of the requirements is found to be negative, the finding will be negative. If one requirement falls short, but another requirement is more than adequate, the finding will still be negative. A positive foreign eligibility finding means that the applicant is determined eligible to participate in an ATP project, provided all other ATP criteria—common to all ATP award candidates—are met.

4. Implementation Procedures for a Foreign Eligibility Finding

Identifying Foreign-Owned Companies

When submitting their Gate 1 proposals, applicants are asked to identify if they are foreign-owned on either Form 1262 for single-company proposals or Form 1263 for joint venture proposals.⁶ Proposers are asked to state whether they have a parent company located outside the United States, if they are majority-owned by individuals who are not citizens of the United States, or if they are subject to control by individuals who are not citizens of the United States.

Proposers are also asked to fill out the “Foreign-Owned Company Questionnaire” found in the Exhibits section of the *ATP Proposal Preparation Kit* (February 2004) and submit this form in their Gate 2 proposals.

Situations That Trigger a Foreign Eligibility Finding

The following situations trigger an initiation of a foreign eligibility finding:

- a foreign-owned company incorporated or organized in the United States proposes to lead or participate in a project selected as a semifinalist in an ATP competition;
- a foreign-owned company incorporated or organized in the United States seeks to join an existing ATP project; or
- a U.S.-owned company that is already leading or participating in a project experiences a change in ownership and becomes majority-owned or

⁶These forms can be found in the *ATP Proposal Preparation Kit* and on the ATP website (www.atp.nist.gov). The kit also contains background material, proposal cover sheets, other required forms, and guidance on the preparation of proposals to ATP. The currently available version is dated February 2004 and reflects all changes to the ATP Statute and the ATP Rule through that date. The ATP Statute and ATP Rule are also available in Appendices A and B, respectively, of this report. An electronic version of the kit is available on the ATP website.

majority-controlled by non-U.S. citizens and wishes to continue its participation in the project.⁷

A foreign eligibility finding is initiated under any one of the above situations to ensure that the foreign-owned company meets the four foreign eligibility requirements specified in the ATP Statute, and is carried out at or near to the time of the triggering event.

Who Performs the Foreign Eligibility Finding

Congress provided the Secretary of the Department of Commerce with the authority to determine the eligibility of foreign-owned companies for receiving ATP awards. This authority was subsequently delegated to the Director of NIST, who in turn delegated it to the Director of ATP. The Director of ATP bases the foreign eligibility finding on evidence gathered from a number of sources.

Sources of Information in Preparing a Foreign Eligibility Finding

Note that under each of the situations listed above, the project will already have scored high on the proposal selection criteria covered in Chapter 2. When a foreign eligibility finding is initiated, additional information is collected from a number of sources, as discussed under each eligibility requirement below.

Eligibility Requirement 1: Participation of the Company Is in the Economic Interest of the United States

Whether a project is in the economic interest of the United States is largely based on the project selection criterion, potential for broad-based economic benefits to the United States. To determine if participation of a particular foreign-owned company in the project is in the economic interest of the United States, information provided in the Gate 1 proposal is reviewed. Additional information that addresses the first foreign eligibility requirement should be provided in the Gate 2 proposal (see “Foreign-Owned Company Questionnaire” in the Appendix of the *ATP Proposal Preparation Kit*, February 2004) which will be reviewed and scrutinized to take into account the likely impact of foreign ownership on the project’s potential to deliver benefits to the United States, including evidence of the following:

⁷ A change in ownership must be reported to the NIST Grants Officer within 30 days, as stipulated in the terms and conditions of the cooperative agreement signed between the award recipient and ATP.

the company has a U.S. location(s) for the project's research;

the company is making investments in research, development, and manufacturing in the United States;

the company agrees to promote the manufacture in the United States of any products resulting from the ATP-supported technology;

the company has anticipated positive effects on U.S. employment and on sources of supply; and

other aspects relevant to the project's potential to produce net broad-based benefits to the U.S. economy.

To clarify and/or supplement information in the Gate 1 and Gate 2 proposals, the applicant may be asked to submit additional information to satisfy this requirement. Information is also obtained from other sources, including Dun & Bradstreet and Hoovers.

Eligibility Requirement 2: Comparable Opportunities in the Parent Country for U.S. Firms to Participate in Programs Similar to ATP

Evidence to satisfy eligibility requirement 2—whether the country of incorporation of the foreign parent affords U.S.-owned companies opportunities comparable to those afforded to any other company to participate in programs similar to ATP—is derived primarily from analysis of similar program(s) in the parent country. This information is obtained from program officials, embassies, other official government sources, and public information.

Eligibility Requirement 3: Comparable Local Investment Opportunities in the Parent Country for U.S. Firms

Evidence to satisfy eligibility requirement 3—whether the country of incorporation of the foreign parent affords U.S.-owned companies local investment opportunities—is based primarily on information supplied by the Office of the U.S. Trade Representative through its annual *National Trade Estimate* report, its annual “Special 301” Fact Sheet, and updates from desk officers. Additional information on barriers to investment and trade may also be obtained from other federal agencies.

Eligibility Requirement 4: Adequate and Effective Protection in the Parent Country of Intellectual Property Rights of U.S. Firms

Evidence to satisfy eligibility requirement 4—whether the country of incorporation of the foreign parent provides adequate and effective protection of U.S.-owned intellectual property rights—is based primarily on information supplied by the Office of the U.S. Trade Representative through its annual *National Trade Estimate* report, its annual “Special 301” Fact Sheet, and updates from desk officers. Note that this provision is stated in absolute terms and is not relative to how other companies are treated. Additional information may be sought from other organizations including the U.S. Patent and Trademark Office, the U.S. Department of State, and U.S. embassies abroad.

Positive and Negative Findings

For a foreign eligibility finding to be determined positive, each of the four additional eligibility requirements must be met. A positive foreign eligibility finding means that the applicant is determined eligible to participate in an ATP-supported project, provided all other requirements—common to all ATP award candidates—are met.

National policies affecting opportunities for U.S. companies to participate in similar R&D programs, opportunities for foreign investment in the foreign country, or the adequate and effective protection of intellectual property rights may change over time. Therefore, a negative decision with respect to eligibility requirements 2 through 4 does not preclude a positive finding in the future for the country in question. Similarly, a positive finding would not preclude a negative finding in the future for the country in question. It is ATP’s policy to prepare a foreign eligibility finding at the time of a triggering event. ATP does not determine in advance the countries that meet or do not meet the country-specific foreign eligibility requirements.

5. Foreign-Owned Participants in ATP Projects

From its inception in 1990 through September 2003, ATP has completed 106 foreign eligibility findings. Of these, 73 findings were for companies whose projects were selected as finalists for awards. The remaining findings were for companies seeking to join existing projects or to continue participating in existing ATP projects after experiencing a change in their ownership status.

The total number of findings does not correspond directly to the number of projects in which U.S. subsidiaries of foreign-owned companies sought participation. There are a few instances in which joint venture projects had more than one foreign-owned company seeking involvement, each requiring a separate foreign eligibility finding. Also, for a variety of reasons, the total number of findings does not correspond directly to the number of foreign-owned companies currently participating in projects.

The total number of findings includes findings for foreign-owned, U.S.-incorporated or U.S.-organized companies with parent companies incorporated in another country that (i) had positive findings, officially joined the projects, and are still currently participating in active projects; (ii) had positive findings, officially joined the projects, but have now completed their research; (iii) had positive findings, but for various reasons never participated in the project; (iv) had positive findings, but decided to take an informal role in projects, as a subcontractor, for instance; (v) had positive findings, but were in projects that did not receive an award for other reasons, or that were cancelled before the project started; (vi) had negative findings, and were not allowed to participate; (vii) were determined not to be U.S.-incorporated or U.S.-organized, and/or were determined not to have a parent company in another country, and were therefore ineligible to participate; or (viii) became majority U.S.-owned during the life of the project.

Only 2 of the 106 foreign eligibility findings carried out to date were negative. Both of these findings were for Japanese-owned firms; their failure to pass was due to the national policies of Japan at the time of the findings and not because of (or due to) any shortcomings of the companies.

Of the 709 projects in ATP's portfolio, 64 active and completed projects involve 80 participants that are foreign-owned, U.S.-incorporated (or organized) companies. Foreign-owned companies participate in less than 10% of total ATP-funded projects; 49 out of a total of 207 joint venture projects and 15 of 502 single-company projects. These 80 participants represent 75 foreign-owned

companies from 15 different countries. A few of these companies are participating in more than one project. Specifics are provided in Tables 1 and 2:

Table 1 lists foreign-owned companies participating in active and completed projects by their parent country.

Table 2 lists active and completed projects involving foreign-owned companies by the fiscal year in which ATP issued an award to the project.

Table 1. Foreign-Owned, U.S.-Incorporated (or Organized) Companies in Active and Completed ATP Projects

(By Parent Country, 1990 Through September 2003)

This table shows active and completed ATP projects that involve foreign-owned companies. The names of the companies and their parent companies are at the time of the foreign eligibility finding. Note that foreign-owned participants that have since become U.S. owned or that dropped out of the project before it was completed are not included in the table below. Note that some of the companies listed have participated in more than one project, but they appear only once in this table. Note also that (*) means the subsidiary was owned at different times by different foreign parent companies and therefore two foreign eligibility findings were carried out, and (**) means the subsidiary was owned jointly by two parent companies from different countries at the time of the finding.

Country	U.S. Subsidiary	Parent Company
Austria	Striko Dynard Furnace Corporation	RHI AG
Canada	Alcan Aluminum Corporation	Alcan Aluminum Corporation
	Decoma International of America, Inc.	Magna International, Inc.
	Northern Telecom, Inc.	BCE, Inc.
	SAS Circuits, Inc.	Coretec, Inc.
	Toromont Process Systems, Inc.	Toromont Industries Ltd.
Denmark	* Genencor International, Inc.	Danisco A/S
Finland	* Genencor International, Inc.	Cultor Ltd.
France	Alcatel USA Sourcing LP	Alcatel, Inc.
	Comark Communications, Inc. [now Thomcast Communications, Inc.]	Thomson SA
	Copperweld Corporation	IMETAL SA
	Deneb Robotics, Inc. [now Delmia Corp.]	Dassault Aviation Group
	Elf Atochem North America, Inc.	Societe Nationale Elf Aquitaine
	Medal LP	L'Air Liquide SA
	Norton Diamond Film	Compagnie de Saint-Gobain
	Schneider Automation, Inc.	Group Schneider
	Thomson Consumer Electronics, Inc.	Thomson SA

Country	U.S. Subsidiary	Parent Company
	Thomson Inc.	Thomson SA
Germany	ASE Americas, Inc.	RWE AG
	Cognis Corporation	Henkel KgaA
	Daimler Chrysler Corporation	Daimler Chrysler AG
	Giddings & Lewis, Inc.	ThyssenKrupp AG
	H.C. Starck	Bayer AG GmbH
	Henkel Corporation	Henkel KgaA
	Lion Bioscience, Inc.	Lion Bioscience, AG
	Loctite Corporation	Henkel KgaA
	New Venture Gear, Inc.	Daimler Chrysler AG
	Robert Bosch Corporation	Robert Bosch Stiftung GmbH
	Siemens Westinghouse Power Corporation	Siemens AG
	The Budd Company, Design Center [now ThyssenKrupp Budd]	ThyssenKrupp AG
	The Budd Company, Technical Center [now ThyssenKrupp Budd]	ThyssenKrupp AG
	Volkswagen of America, Inc.	Volkswagen AG
Israel	Cognitens Tecnomatix Technologies, Inc.	Cognitens Ltd. Tecnomatix Technologies, Inc.
Italy	Autodie International	Fiat SPA
	ComauPico	Fiat SPA
	IdraPrince, Inc.	Idra Partecipazioni SPA
	Progressive Tool and Industries Company, Inc.	Fiat SPA
	Union Switch & Signal, Inc.	IRI Istituto Ricostruzione
Japan	Dupont Teijen Films LLP Sumika Electronics Materials, Inc.	Teijen Ltd. Sumitomo Chemical Company Ltd.
Mexico	Seminis Vegetable Seeds, Inc.	Savia SA
Netherlands	Berclain USA Ltd. [now Baan USA] Eagle-Picher Technologies, LLC	Baan Company NV [became part of Invensys PLC, U.K.] Granaria Holdings BV

Country	U.S. Subsidiary	Parent Company
	FEI Company	Royal Philips Electronics NV
	Philips Consumer Electronics North America	Royal Philips Electronics NV
	Philips Laboratories [now Philips Research]	Royal Philips Electronics NV
	Shell Development Company	Royal Dutch Petroleum Company
	Shell International Exploration and Production Technology Company	Royal Dutch Petroleum Company
Norway	Ceramatec, Inc.	Elken A/S
Sweden	** ABB Lummus Global, Inc.	Asea AB
	Pharmacia Biotech, Inc. [now Amersham Biosciences]	Pharmacia Biotech AB
Switzerland	** ABB Lummus Global, Inc.	Brown Boveri, Ltd.
	ABB High Power Semiconductors	Asea Brown Boveri, Inc.
	ABB Vetco Gray, Inc.	Asea Brown Boveri, Inc.
	Immerge BioTherapeutics, Inc.	Novartis AG
	Osiris Therapeutics, Inc.	MSC Regenos, Ltd.
	Valtronic USA, Inc.	Valtronic, SA
United Kingdom	Amersham Pharmacia Biotech, Inc. [now Amersham Biosciences]	Amersham PLC
	Baan USA, Inc.	Invensys PLC
	BAE Systems, IESI, Inc.	BAE Systems PLC
	BP Amoco Corporation	BP Amoco PLC
	BP Chemical, Inc.	The British Petroleum Company PLC
	BP Oil	The British Petroleum Company PLC
	Fiberweb North America, Inc. [now BBA Nonwovens Simpsonville]	BBA Group PLC
	Maxygen, Inc.	Glaxo Smith Kline PLC
	Microscan Systems, Inc.	Fairey Group PLC
	Molecular Dynamics, Inc. [now Amersham Biosciences]	Amersham PLC
	National Starch and Chemical, Inc.	Imperial Chemical Industries PLC
	PIC USA, Inc.	PIC International Group
	Precitech, Inc.	Precision Instruments

Country	U.S. Subsidiary	Parent Company
	Robotron Corporation Smith Kline Beecham Corporation United States Biochemical Corporation [now Amersham Biosciences]	Holdings, Ltd. Standard Chartered PLC Glaxo Smith Kline PLC Amersham International PLC [now Nycomed Amersham PLC]

Table 2. Active and Completed ATP Projects Involving Foreign-Owned, U.S.-Incorporated (or Organized) Companies
(By Year of Award, 1990 Through September 2003)

The following 65 active and completed ATP projects out of a total of 709 projects funded through September 2003 involve the participation of foreign-owned, U.S.-incorporated (or organized) companies. This table presents only active and completed projects involving foreign-owned companies by the year in which the award was made and by project title. Note that no foreign-owned companies were funded prior to FY 1993. Also note that (*) means that the subsidiary or its parent company had a change in foreign ownership during the life of the project, and that (**) means that the subsidiary was owned jointly by two parent companies from different countries at the time of the finding. For more information on the projects, browse ATP's homepage on www.atp.nist.gov.

Project Title	Project No.	U.S. Subsidiary	Parent Company	Country
Projects Funded in FY 2002-03				
Continuous Silicon Wafer Manufacturing	00-00-5016	ASE Americas, Inc.	RWE AG	Germany
Driving Your Car with Conventional Language	00-00-5416	Robert Bosch Corporation	Robert Bosch Stiftung GmbH	Germany
		Volkswagen of America, Inc.	Volkswagen AG	Germany
New Polymer Dielectrics for High Energy Density Film Capacitors	00-00-5495	Dupont Teijen Films LLP	Teijen Ltd.	Japan
Digital Body Development System	00-00-5521	Autodie International	Fiat SPA	Italy
		ComauPico	Fiat SPA	Italy
		Cognitens	Cognitens Ltd.	Israel
Video-Enhanced Residential ADSL Broadband Technology	00-00-5676	Alcatel USA Sourcing LP	Alcatel, Inc.	France
		Thomson Inc.	Thomson SA	France

Project Title	Project No.	U.S. Subsidiary	Parent Company	Country
Projects Funded in FY 2001				
Biosecure Zero-Exchange Shrimp Technology	00-00-4547	PIC USA, Inc.	PIC International Group	United Kingdom
Neural Regeneration with Mesenchymal Stem Cells	00-00-4814	Osiris Therapeutics, Inc.	MSC Regenos, Ltd.	Switzerland
Technologies for Target Assessment	00-00-4824	Lion Bioscience, Inc.	Lion Bioscience, AG	Germany
Projects Funded in FY 2000				
High Performance Composite Molecular Sieving Membranes	00-00-3968	Medal LP	L' Air Liquide SA	France
Advanced HBT Power Amplifier Technology for Broadband Communications Systems	00-00-4019	Sumika Electronics Materials, Inc.	Sumitomo Chemical Company Ltd.	Japan
High Reliability, Safe Rechargeable Lithium Ion Battery and Battery Management System	00-00-4050	Valtronic USA, Inc.	Valtronic, SA	Switzerland
Genetic Engineering Tools for Plant Breeders	00-00-4084	Seminis Vegetable Seeds, Inc.	Savia SA	Mexico
An Innovative Knowledge System for Rapid Expansion of Net Shape Manufacturing Industry via Powder Injection Molding	00-00-4113	H.C. Starck	Bayer AG GmbH	Germany
Genetic Modification of Swine for Transplantation Using Nuclear Transfer	00-00-4145	Immerge BioTherapeutics, Inc.	Novartis AG	Switzerland

Project Title	Project No.	U.S. Subsidiary	Parent Company	Country
Cost Reduced Magnesium Die Castings Using Heated Runners	00-00-4334	Striko Dynard Furnace Corporation	RHI AG	Austria
		Idra Prince, Inc.	Idra Partecipazioni SPA	Italy
Projects Funded in FY 1999				
Bulk GaN and Homoepitaxial Device Manufacturing	99-01-2069	BAE Systems, IESI, Inc.	BAE Systems PLC	United Kingdom
Ceramic Matrix Composites for Advanced Engine Components	99-01-6058	Siemens Westinghouse Power Corporation	Siemens AG	Germany
Projects Funded in FY 1998				
Bone Regeneration Using Allogeneic Mesenchymal Stem Cells	98-01-0056	Osiris Therapeutics, Inc.	MSC Regenos, Ltd.	Switzerland
Hot Metal Gas Forming	98-01-0168	Daimler Chrysler Corporation	Daimler Chrysler AG	Germany
		Copperweld Corporation	IMETAL SA	France
Micro-Opto-Electro-Mechanical Systems Manufacturing	98-02-0001	Microscan Systems, Inc.	Fairey Group PLC	United Kingdom
An Integrated Simulation Environment for Photonics Manufacturing	98-02-0024	Northern Telecom, Inc.	BCE, Inc.	Canada
DataPipe	98-02-0061	Precitech, Inc.	Precision Instruments Holdings, Ltd.	United Kingdom
Advance Lithium Solid Polymer Battery Development	98-03-0057	Eagle-Picher Technologies, LLC	Granaria Holdings BV	Netherlands
Whole Genome Shuffling: Rapid Improvement of Industrial Micro-	98-05-0007	Maxygen, Inc.	Glaxo Smith Kline PLC	United Kingdom

Project Title	Project No.	U.S. Subsidiary	Parent Company	Country
organisms				
Biosynthesis of Chemical Intermediates	98-05-0013	Henkel Corporation	Henkel KgaA	Germany
		Cognis Corporation	Henkel KgaA	Germany
Wafer Scale Applied Reworkable Fluxing Underfill for Direct Chip Attach	98-06-0008	Loctite Corporation	Henkel KgaA	Germany
Early Prototype Nongallium Ion Beam for Lithography and Wafer Manufacturing	98-06-0018	FEI Company	Royal Philips Electronics NV	Netherlands
Novel High Performance Water Level Reworkable Underfill Materials for Flip Chip Packaging	98-06-0030	National Starch and Chemical, Inc.	Imperial Chemical Industries PLC	United Kingdom
Advanced Embedded Passives Technology	98-06-0054	Northern Telecom, Inc.	BCE, Inc.	Canada
		SAS Circuits, Inc.	Coretec, Inc.	Canada
Development of Solvent Compatible, Polymeric Membrane Systems for Liquid Separation	98-07-0006	Smith Kline Beecham Corporation	Glaxo Smith Kline PLC	United Kingdom
Projects Funded in FY 1997				
Advanced Transgenic Model Systems for Biomedical Research and Development	97-01-0038	* Genencor International, Inc.	Cultor Ltd.	Finland
			Danisco A/S [purchased Cultor during the project]	Denmark
Evolution of a Murine Model for AIDS: Applications to Discovery of Small Molecule and	97-01-0240	Maxygen, Inc.	Glaxo Smith Kline PLC	United Kingdom

Project Title	Project No.	U.S. Subsidiary	Parent Company	Country
Vaccine Therapeutics				
Flexible Robotic Assembly for Powertrain Applications (FRAPA)	97-02-0018	Progressive Tool and Industries Company, Inc.	Fiat SPA	Italy
Nanocomposites New Low-Cost, High-Strength Materials for Automotive Parts	97-02-0047	Decoma International of America, Inc.	Magna International, Inc.	Canada
EECOMS: Extended Enterprise Coalition for Integrated Collaborative Manufacturing Systems	97-05-0020	* Berclain USA Ltd. Baan USA, Inc. [purchased Berclain during the project]	Baan Company NV Invensys PLC	Netherlands United Kingdom
Agent Network for Task Scheduling and Execution System	97-05-0028	Deneb Robotics, Inc. [now Delmia Corp.]	Dassault Aviation Group	France
Projects Funded in FY 1995^a				
Development of Closed Cycle Air Refrigeration Technology for Refrigeration Markets	95-01-0150	Toromont Process Systems, Inc.	Toromont Industries Ltd.	Canada
Development of a High-Pressure Oxygen Generator Using a Solid Electrolyte Oxygen Separation (SEOS) Technology	95-01-0178	Ceramatec, Inc.	Elkem A/S	Norway
Agile Precision Sheet-Metal Stamping: The "Near Zero Stamping" Program	95-02-0008	Tecnomatix Technologies, Inc.	Tecnomatix Technologies, Inc.	Israel
		Daimler Chrysler Corporation	Daimler Chrysler AG	Germany
		Deneb Robotics, Inc.	Dassault Aviation Group	France

Project Title	Project No.	U.S. Subsidiary	Parent Company	Country
Intelligent Resistance Welding	95-02-0013	Alcan Aluminum Corporation	Alcan Aluminum Corporation	Canada
		Daimler Chrysler Corporation	Daimler Chrysler AG	Germany
		Robotron Corporation	Standard Chartered PLC	United Kingdom
Springback Predictability in Automotive Manufacturing	95-02-0035	The Budd Company, Technical Center [now ThyssenKrupp Budd]	ThyssenKrupp AG	Germany
		Daimler Chrysler Corporation	Daimler Chrysler AG	Germany
Plasma-Based Processing of Lightweight Materials for Motor-Vehicle Components and Manufacturing Applications	95-02-0036	ABB High Power Semiconductors	Asea Brown Boveri, Inc.	Switzerland
HDTV Broadcast Technology	95-04-0026	Comark Communications, Inc. [now Thomcast Communications]	Thomson SA	France
		Thomson Consumer Electronics Inc.	Thomson SA	France
Continuous Biocatalytic Systems for the Production of Chemicals from Renewable Resources	95-05-0007	* Genencor International, Inc.	Cultor Ltd.	Finland
			Danisco A/S [purchased Cultor during the project]	Denmark
Thin-Film Solid Acid Catalyst for Refinery Alkylation	95-05-0034	** ABB Lummus Global, Inc.	Asea AB	Sweden
			Brown Boveri Ltd.	Switzerland

Project Title	Project No.	U.S. Subsidiary	Parent Company	Country
Elastomeric Polypropylene and Elastic Nonwovens Venture	95-05-0039	Fiberweb North America, Inc. [now BBA Nonwovens Simpsonville]	BBA Group PLC	United Kingdom
		BP Amoco Corporation	BP Amoco PLC	United Kingdom
Arrayed Primer Extension (APEX): The Next Generation DNA Analysis System for Sequencing in DNA Diagnostics	95-08-0023	* Pharmacia Biotech, Inc.	Pharmacia Biotech AB	Sweden
		Amersham Pharmacia Biotech, Inc. [new name of subsidiary after parent was purchased; now Amersham Biosciences]	Amersham PLC [purchased Pharmacia Biotech AB during the project]	United Kingdom
Manufacturing Methodologies for Automated Thermoset Transfer/Injection Molding (TIM)	95-11-0017	The Budd Company, Design Center [now ThyssenKrupp Budd]	ThyssenKrupp AG	Germany
An Agent-Based Framework for Integrated Intelligent Planning - Execution	95-12-0024	Berclain USA Ltd. [now Baan USA]	Baan Company NV [became part of Invensys, PLC, U.K.]	Netherlands
National Industrial Infrastructure Protocols Solutions for Manufacturing-Adaptable Replicable Technology	95-12-0030	Schneider Automation, Inc.	Group Schneider	France
Projects Funded in FY 1994				
A Software Technology for Optimizing On-Time Performance in the Transportation Industry	94-01-0063	Union Switch & Signal, Inc.	IRI Istituto Ricostruzione	Italy

Project Title	Project No.	U.S. Subsidiary	Parent Company	Country
Dual Purpose Ceramic Membranes	94-01-0135	BP Chemical, Inc.	The British Petroleum Company PLC	United Kingdom
Collaborative Decision Support for Industrial Process Control	94-01-0169	BP Oil	The British Petroleum Company PLC	United Kingdom
High Information Content Display Technology	94-01-0304	Philips Consumer Electronics North America	Royal Philips Electronics NV	Netherlands
Accelerated Commercialization of Diamond-Coated Round Tools and Wear Parts	94-01-0357	Norton Diamond Film	Compagnie de Saint-Gobain	France
PMC Power Transmission Devices	94-02-0030	New Venture Gear, Inc.	Daimler Chrysler AG	Germany
Composite Production Risers	94-02-0032	Shell International Exploration and Production Technology Company	Royal Dutch Petroleum Company	Netherlands
Spoolable Composite Tubing	94-02-0038	Elf Atochem North America, Inc.	Societe Nationale Elf Aquitaine	France
		Shell Development Company	Royal Dutch Petroleum Company	Netherlands
Development of Manufacturing Methodologies for Vehicle Composite Frames	94-02-0040	The Budd Company, Design Center [now ThyssenKrupp Budd]	ThyssenKrupp AG	Germany
Manufacturing Composite Structures for the Offshore Oil Industry	94-02-0048	ABB Vetco Gray, Inc.	Asea Brown Boveri, Inc.	Switzerland
Miniature Integrated Nucleic Acid Diagnostic	94-05-0016	Molecular Dynamics, Inc. [now Amersham	Amersham PLC	United Kingdom

Project Title	Project No.	U.S. Subsidiary	Parent Company	Country
Development		Biosciences]		
Projects Funded in FY 1993				
A Novel Microminiature Light Source Technology	93-01-0045	Philips Laboratories [now Philips Research]	Royal Philips Electronics NV	Netherlands
Hyperthermophilic Microorganisms in Molecular Biology and Biotechnology	93-01-0113	United States Biochemical Corporation [now Amersham Biosciences]	Amersham PLC	United Kingdom
Strategic Machine Tool Technologies: Spindles	93-01-0244	Giddings & Lewis, Inc.	Thyssen AG	Germany

^aIn FY 1996, there was only one project funded with a foreign participant; it is not listed in the table because it was canceled before the project began.

6. Questions and Answers on Foreign Eligibility and Participation

This section presents common questions about foreign eligibility and participation, and provides answers in order to clarify ATP's policies on the eligibility of foreign-owned companies.

Q. Are green card holders who own a company incorporated in the United States eligible to receive an ATP award? Do they have to go through a foreign eligibility finding process?

A. No, green card holders (resident aliens) are ineligible to receive an award from ATP and consequently do not go through a foreign eligibility finding process. If a proposal by a green card holder is submitted for consideration, it will undergo the normal selection process. If the proposal is selected as a semifinalist, the applicant will be asked if ownership has transferred from the green card holder to a U.S. citizen(s). ATP funding cannot be received unless the ownership issue has been resolved. Awards will not be deferred in order for this issue to be resolved. According to Sec. 295.3(c) of the ATP Rule,

Companies owned by legal residents (green card holders) may apply to the Program, but before an award can be given, the owner(s) must either become a U.S. citizen or ownership must be transferred to a U.S. citizen(s).

Q. What are the eligibility requirements for foreign-owned companies seeking to participate as subcontractors in an ATP project? Is a foreign eligibility finding required?

A. No, a foreign eligibility finding is not required in this case, but the submitting organization will be required to justify the use of any foreign-owned or foreign-located subcontractors or subsidiaries and explain how their participation will benefit the U.S. economy and why U.S. sources were judged to be unavailable and inadequate to meet project goals. Information addressing the "R&D Work Performed Outside the United States by the Recipient or Subcontractor Questionnaire" which can be found in the Exhibits section of the *ATP Proposal Preparation Kit* (February 2004) should be submitted in the Gate 1 proposal, if applicable.

Because the mission of the program is to create economic growth in the United States, ATP award recipients are expected to use U.S. subcontractors to carry out

project tasks in the United States. Substantial use of foreign subcontractors is discouraged. It is important for proposers to identify for all participants and subcontractors which facility and where (in or outside the United States) the research will be carried out. For information regarding the use of foreign subcontractors and R&D activities at non-U.S. sites, see “R&D Activities at Non-U.S. Sites” on page 28 of the *ATP Proposal Preparation Kit* (February 2004).

Q. How do I determine who my ultimate parent company is?

A. If your parent company is owned by another company, then the chain of ownership has not reached the ultimate owner. If you are majority-owned by an investment firm, for instance, and other firms own the investment firm, then the ownership chain is followed upward until there are no remaining layers of ownership. Your ultimate parent company and its country of incorporation will be used to apply the country-specific eligibility requirements during the foreign eligibility finding process.

Q. What if my company has more than one foreign parent?

A. To carry out the foreign eligibility finding, we look to the parent company with majority ownership or control, and conduct a foreign eligibility finding for that parent company.

Q. What if I am jointly foreign-owned and U.S.-owned?

A. We look at who is the majority owner of your company, and if it is the foreign-owned company, we will carry out a foreign eligibility finding for that parent company. If it is the case that ownership is equally shared, we will conduct a foreign eligibility finding for your foreign parent company.

Q. I am interested in applying to ATP, but I am a foreign-owned company without a U.S. subsidiary. Can I still apply and receive an award?

A. No. According to the ATP Statute, only U.S.-owned companies and foreign-owned companies that are incorporated or organized in the United States with a parent company incorporated in another country are eligible to receive financial assistance from ATP. Foreign-owned companies located outside the United States are ineligible for an award.

Q. I am a foreign-owned company with a U.S. subsidiary interested in applying to ATP, but I am not sure if I will pass the foreign eligibility finding. Could you tell me in advance if my parent country would pass the country-specific eligibility requirements before I apply?

A. No. ATP cannot give an opinion on whether the parent country of a foreign-owned company would pass the country-specific eligibility requirements prior to the time of application. A country's national policies may have been determined to meet the eligibility requirements in the past, but national policies change and that country's policies may not meet the foreign eligibility criteria at the time of a new finding—or, vice versa.

Q. I am curious about when the process begins for a foreign eligibility finding. I was just notified by ATP that I am a semifinalist, but I have a foreign parent. Will ATP tell me at the oral review if I have passed the foreign eligibility finding?

A. No. A determination of foreign eligibility will not be made until after the oral review. You will be asked to submit answers to the "Foreign-Owned Company Questionnaire" (see the Exhibits section of the *ATP Proposal Preparation Kit*, February 2004) in your Gate 2 proposal. During your oral review, the selection board may ask you questions to clarify how well you meet the ATP criteria, including questions related to the foreign eligibility finding—questions such as where you intend to carry out the research. Information submitted in your proposal, your response to the "Foreign-Owned Company Questionnaire," and information gathered during the oral review are used in the foreign eligibility finding process. Only foreign-owned participants of projects that reach the finalist stage will undergo the foreign eligibility finding.

Q. What information do you use to carry out a foreign eligibility finding?

A. ATP relies on information collected by federal agencies (e.g., the U.S. Department of Commerce, the U.S. Trade Representative, the U.S. Patent and Trademark Office, and the U.S. Department of State), and received from foreign embassies, U.S. embassies abroad, foreign programs, and other sources help us make an eligibility determination.

Q. I am a U.S.-owned company currently participating in an ATP project. We are in the process of being acquired by a foreign-owned company. We would like to continue our participation in the project. What do you do in a case like ours?

A. First, you must notify your NIST Grants Officer within 30 days of any change in ownership (e.g., a shift in majority control or ownership from individuals who are citizens of the United States) as stipulated in the terms and conditions of your cooperative agreement with NIST. When a change in ownership from majority U.S.-owned to foreign-owned is official, a foreign eligibility finding will be initiated to determine whether your company's continued participation in the project is in the economic interest of the United States, taking into account the change in ownership, and whether your new foreign parent's country of incorporation meets the country-specific eligibility requirements mandated by Congress. You will be asked to address similar questions to the ones in the "Foreign-Owned Company Questionnaire," (see the Exhibits section in the *ATP Proposal Preparation Kit*, February 2004).

The finding will be carried out as expeditiously as possible. During the time that the finding is being carried out the project can continue with your participation. If the foreign eligibility finding is determined to be positive on all four foreign eligibility requirements, you are officially allowed to continue your participation in the project. If the finding is negative, you will have to withdraw from the project.

Q. Once a foreign-owned company is determined eligible to participate in ATP, is a determination of continued eligibility carried out every year?

A. Every year, ATP reviews the progress of all awarded projects against the project selection criteria and against the project's original goals, and determines whether continued assistance is appropriate. Even though ATP does not carry out a foreign eligibility finding each year for currently participating foreign-owned companies, whether the company's participation continues to be in the economic interest of the United States is considered under the normal annual project review, while the other three country-specific eligibility requirements related to the national policies of the parent country are not.

7. ATP Contact Information

If you have questions or comments regarding this report, or if you wish to receive a paper copy, please submit your request to ATP by email to atp-eao@nist.gov, or to the following address:

Economic Assessment Office
Advanced Technology Program
National Institute of Standards and Technology
100 Bureau Drive, Mail Stop 4710
Gaithersburg, Maryland 20899-4710

If you wish to speak with someone at ATP, please contact either of the following individuals:

Connie Chang, Supervisory Economist
Economic Assessment Office
301-975-4318 (voice); 301-975-4776 (fax)
connie.chang@nist.gov

Kathleen McTigue, Economist
Economic Assessment Office
301-975-8530 (voice); 301-975-4776 (fax)
kathleen.mctigue@nist.gov

An electronic copy of the report is also available on ATP's website at www.atp.nist.gov/eao/ir-6099/contents.htm.

To request an *ATP Proposal Preparation Kit*, and/or request that your name be added to the ATP mailing list for future mailings and announcements of ATP workshops and other activities, call our toll-free "hotline" number, 1-800-ATP-FUND (1-800-287-3863), or send an email to atp@nist.gov. For answers to general questions concerning ATP, please feel free to browse our website at www.atp.nist.gov.

We welcome your comments and suggestions.

References

National Institute of Standards and Technology. *Advanced Technology Program Proposal Preparation Kit*. Gaithersburg, MD. U.S. Department of Commerce, Technology Administration, February 2004.

Advanced Technology Program Rule. Title 15, Code of Federal Regulations, Part 295 (15 C.F.R. Part 295).

Advanced Technology Program Statute. Originally authorized by Section 5131 (a) of the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100-418); codified in Title 15 of the United States Code, Section 278n (15 U.S.C. 278n); and amended by the American Technology Preeminence Act of 1991 (P.L. 102-245), codified in Title 15 of the United States Code, Section 3701 (15 U.S.C. 3701).

Appendix A. The ATP Statute

[Note: The ATP Statute originated in the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100-418, codified in 15 U.S.C. 278n) and was later amended by the American Technology Preeminence Act of 1991 (P.L. 102-245, codified in 15 U.S.C. 3701).]

Sec. 278n. ADVANCED TECHNOLOGY PROGRAM

(a) There is established in the Institute an Advanced Technology Program (hereafter in this Act referred to as the 'Program') for the purpose of assisting United States businesses in creating and applying the generic technology and research results necessary to—

“(1) commercialize significant new scientific discoveries and technologies rapidly; and

“(2) refine manufacturing technologies.

“The Secretary, acting through the Director, shall assure that the Program focuses on improving the competitive position of the United States and its businesses, gives preference to discoveries and to technologies that have great economic potential, and avoids providing undue advantage to specific companies. In operating the Program, the Secretary and Director shall, as appropriate, be guided by the findings and recommendations of the Biennial National Critical Technology Reports prepared pursuant to section 603 of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6683).

“(b) Under the Program established in subsection (a), and consistent with the mission and policies of the Institute, the Secretary, acting through the Director, and subject to subsections (c) and (d), may—

“(1) aid industry-led United States joint research and development ventures (hereafter in this section referred to as 'joint ventures') (which may also include universities and independent research organizations), including those involving collaborative technology demonstration projects which develop and test prototype equipment and processes, through—

“(A) provision of organizational and technical advice; and

“(B) participation in such joint ventures by means of grants, cooperative agreements, or contracts, if the Secretary, acting through the Director, determines participation to be appropriate, which may include (i) partial startup funding, (ii) provision of a minority share of the cost of such joint ventures for up to 5 years, and (iii) making available equipment, facilities, and personnel, provided that emphasis is placed on areas where the Institute has scientific or

technological expertise, on solving generic problems of specific industries, and on making those industries more competitive in world markets;

“(2) provide grants to and enter into contracts and cooperative agreements with United States businesses (especially small businesses), provided that emphasis is placed on applying the Institute’s research, research techniques, and expertise to those organizations’ research programs;

“(3) involve the Federal laboratories in the Program, where appropriate, using among other authorities the cooperative research and development agreements provided for under section 12 of the Stevenson-Wydler Technology Innovation Act of 1980; and

“(4) carry out, in a manner consistent with the provisions of this section, such other cooperative research activities with joint ventures as may be authorized by law or assigned to the Program by the Secretary.

“(c) The Secretary, acting through the Director, is authorized to take all actions necessary and appropriate to establish and operate the Program, including—

“(1) publishing in the Federal Register draft criteria and, no later than six months after the date of the enactment of this section, following a public comment period, final criteria, for the selection of recipients of assistance under subsection (b)(1) and (2);

“(2) monitoring how technologies developed in its research program are used, and reporting annually to the Congress on the extent of any overseas transfer of these technologies;

“(3) establishing procedures regarding financial reporting and auditing to ensure that contracts and awards are used for the purposes specified in this section are in accordance with sound accounting practices, and are not funding existing or planned research programs that would be conducted in the same time period in the absence of financial assistance under the Program;

“(4) assuring that the advice of the Committee established under section 10 is considered routinely in carrying out the responsibilities of the Institute; and

“(5) providing for appropriate dissemination of Program research results.

“(d) When entering into contracts or making awards under subsection (b), the following shall apply:

“(1) No contract or award may be made until the research project in question has been subject to a merit review, and has, in the opinion of the reviewers appointed by the Director and the Secretary, acting through the Director, been shown to have scientific and technical merit.

“(2) In the case of joint ventures, the Program shall not make an award unless the award will facilitate the formation of a joint venture or the initiation of a new research and development project by an existing joint venture.

“(3) No Federal contract or cooperative agreement under subsection (b)(2) shall exceed \$2,000,000 over 3 years, or be for more than 3 years unless a full and complete explanation of such proposed award, including reasons for exceeding these limits, is submitted in writing by the Secretary to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives. The proposed contract or cooperative agreement may be executed only after 30 calendar days on which both Houses of Congress are in session have elapsed since such submission. Federal funds made available under subsection (b)(2) shall be used only for direct costs and not for indirect costs, profits, or management fees of the contractor.

“(4) In determining whether to make an award to a particular joint venture, the Program shall consider whether the members of the joint venture have made provisions for the appropriate participation of small United States businesses in such joint venture.

“(5) Section 552 of title 5, United States Code, shall not apply to the following information obtained by the Federal Government on a confidential basis in connection with the activities of any business or any joint venture receiving funding under the Program—

“(A) information on the business operation of any member of the business or joint venture; and

“(B) trade secrets possessed by any business or any member of the joint venture.

“(6) Intellectual property owned and developed by any business or joint venture receiving funding or by any member of such a joint venture may not be disclosed by any officer or employee of the Federal Government except in accordance with a written agreement between the owner or developer and the Program.

“(7) If a business or joint venture fails before the completion of the period for which a contract or award has been made, after all allowable costs have been paid and appropriate audits conducted, the unspent balance of the Federal funds shall be returned by the recipient to the Program.

“(8) Upon dissolution of any joint venture or at the time otherwise agreed upon, the Federal Government shall be entitled to a share of the residual assets of the joint venture proportional to the Federal share of the costs of the joint venture as determined by independent audit.

“(9) A company shall be eligible to receive financial assistance under this section only if—

“(A) the Secretary finds that the company’s participation in the program would be in the economic interest of the United States, as evidenced by investments in the United States in research, development, and manufacturing (including, for example, the manufacture of major components or subassemblies in the United States); significant contributions to employment in the United States; and agreement with respect to any technology arising from assistance provided under this section to promote the manufacture within the United States of products resulting from that technology (taking into account the goals of promoting the competitiveness of United States industry), and to procure parts and materials from competitive suppliers; and

“(B) either—

“(i) the company is a United States-owned company; or

“(ii) the Secretary finds that the company is incorporated in the United States and has a parent company which is incorporated in a country which affords to United States-owned companies opportunities, comparable to those afforded to any other company, to participate in any joint venture similar to those authorized under this Act; affords to United States-owned companies local investment opportunities comparable to those afforded to any other company; and affords adequate and effective protection for the intellectual property rights of United States-owned companies.

“(10) Grants, contracts, and cooperative assignments under this section shall be designed to support projects which are high risk and which have the potential for eventual substantial widespread commercial application. In order to receive a grant, contract, or cooperative agreement under this section, a research and development entity shall demonstrate to the Secretary the requisite ability in research and technology development and management in the project area in which the grant, contract, or cooperative agreement is being sought.

“(11)(A) Title to any intellectual property arising from assistance provided under this section shall vest in a company or companies incorporated in the United States. The United States may reserve a nonexclusive, nontransferable, irrevocable paid-up license, to have practiced for or on behalf of the United States, in connection with any such intellectual property, but shall not, in the exercise of such license, publicly disclose proprietary information related to the license. Title to any such intellectual property shall not be transferred or passed, except to a company incorporated in the United States, until the expiration of the first patent obtained in connection with such intellectual property.

“(B) For purposes of this paragraph, the term ‘intellectual property’ means an invention patentable under title 35, United States Code, or any patent on such an invention.

“(C) Nothing in this paragraph shall be construed to prohibit the licensing to any company of intellectual property rights arising from assistance provided under this section.

“(e) The Secretary may, within 30 days after notice to Congress, suspend a company or joint venture from continued assistance under this section if the Secretary determines that the company, the country of incorporation of the company or a parent company, or the joint venture has failed to satisfy any of the criteria set forth in subsection (d)(9), and that it is in the national interest of the United States to do so.

“(f) When reviewing private sector requests for awards under the Program, and when monitoring the progress of assisted research projects, the Secretary and the Director shall, as appropriate, coordinate with the Secretary of Defense and other senior Federal officials to ensure cooperation and coordination in Federal technology programs and to avoid unnecessary duplication of effort. The Secretary and the Director are authorized to work with the Director of the Office of Science and Technology Policy, the Secretary of Defense, and other appropriate Federal officials to form interagency working groups or special project offices to coordinate Federal technology activities.

“(g) In order to analyze the need for the value of joint ventures and other research projects in specific technical fields, to evaluate any proposal made by a joint venture or company requesting the Secretary’s assistance, or to monitor the progress of any joint venture or any company research project which receives Federal funds under the Program, the Secretary, the Under Secretary of Commerce for Technology, and the Director may, notwithstanding any other provision of law, meet with such industry sources as they consider useful and appropriate.

“(h) Up to 10 percent of the funds appropriated for carrying out this section may be used for standards development and technical activities by the Institute in support of the purposes of this section.

“(i) In addition to such sums as may be authorized and appropriated to the Secretary and Director to operate the Program, the Secretary and Director also may accept funds from other Federal departments and agencies for the purpose of providing Federal funds to support awards under the Program. Any Program award which is supported with funds which originally came from other Federal departments and agencies shall be selected and carried out according to the provisions of this section.

“(j) As used in this section—

“(1) the term ‘joint venture’ means any group of activities, including attempting to make, making, or performing a contract, by two or more persons for the purpose of—

“(A) theoretical analysis, experimentation or systematic study of phenomena or observable facts;

“(B) the development or testing of basic engineering techniques;

“(C) the extension of investigative findings or theory of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, prototypes, equipment, materials, and processes;

“(D) the collection, exchange, and analysis of research information;

“(E) the production of any product, process, or service; or

“(F) any combination of the purposes specified in subparagraphs (A), (B), (C), (D), and (E), and may include the establishment and operation of facilities for the conducting of research, the conducting of such venture on a protected and proprietary basis, and the prosecuting of applications for patents and the granting of licenses for the results of such venture; and

“(2) the term ‘United States-owned company’ means a company that has majority ownership or control by individuals who are citizens of the United States.”

Appendix B. The ATP Rule: 15 C.F.R. Part 295

The Code of Federal Regulations (C.F.R.) is a document that contains the codification of the general and permanent rules published in the Federal Register by departments and agencies in the Executive branch of the Federal government. It is divided into 50 titles that represent broad areas subject to Federal regulation. Amendments to rules are published in the Federal Register. Individual issues of the Federal Register and the C.F.R. should be used together to determine the latest version of any given rule. Each volume of the C.F.R. is revised at least once annually, and issued on a quarterly basis. The ATP Rule cited below is the January 1, 2002, version of 15 C.F.R. Part 295.

[Code of Federal Regulations]

[Title 15, Volume 1]

[Revised as of January 1, 2002]

From the U.S. Government Printing Office via GPO Access

[CITE: 15 C.F.R. 295]

[Page 432-441]

TITLE 15—COMMERCE AND FOREIGN TRADE

SUBPART B—REGULATIONS RELATING TO COMMERCE AND FOREIGN TRADE

CHAPTER II—NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY, DEPARTMENT OF COMMERCE

SUBCHAPTER K—ADVANCED TECHNOLOGY PROGRAM PROCEDURES

PART 295—ADVANCED TECHNOLOGY PROGRAM

Subpart A—General

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Authority: 15 U.S.C. 278n.

Source: 55 FR 30145, July 24, 1990, unless otherwise noted.

Subpart A—General

Sec. 295.1 Purpose.

- (a) The purpose of the Advanced Technology Program (ATP) is to assist United States businesses to carry out research and development on high risk, high pay-off, emerging and enabling technologies. These technologies are:
- (1) High risk, because the technical challenges make success uncertain;
 - (2) High pay-off, because when applied they offer significant benefits to the U.S. economy; and

- (3) Emerging and enabling, because they offer wide breadth of potential application and form an important technical basis for future commercial applications.
- (b) The rules in this part prescribe policies and procedures for the award of cooperative agreements under the Advanced Technology Program in order to ensure the fair treatment of all proposals. While the Advanced Technology Program is authorized to enter into grants, cooperative agreements, and contracts to carry out its mission, the rules in this part address only the award of cooperative agreements. The Program employs cooperative agreements rather than grants because such agreements allow ATP to exercise appropriate management oversight of projects and also to link ATP-funded projects to ongoing R&D at the National Institute of Standards and Technology wherever such linkage would increase the likelihood of success of the project.
- (c) In carrying out the rules in this part, the Program endeavors to put more emphasis on joint ventures and consortia with a broad range of participants, including large companies, and less emphasis on support of individual large companies.

[62 FR 64684, Dec. 9, 1997]

Sec. 295.2 Definitions.

- (a) For the purposes of the ATP, the term *award* means Federal financial assistance made under a grant or cooperative agreement.
- (b) The term *company* means a for-profit organization, including sole proprietors, partnerships, limited liability companies (LLCs), or corporations.
- (c) The term *cooperative agreement* refers to a Federal assistance instrument used whenever the principal purpose of the relationship between the Federal Government and the recipient is the transfer of money, property, or services, or anything of value to the recipient to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; and substantial involvement is anticipated between the executive agency, acting for the Federal Government, and the recipient during performance of the contemplated activity.
- (d) The term *direct costs* means costs that can be identified readily with activities carried out in support of a particular final objective. A cost may not be allocated to an award as a direct cost if any other cost incurred for the same purpose in like circumstances has been assigned to an award as an indirect cost. Because of the diverse characteristics and accounting practices of different organizations, it is not possible to specify the types of costs which may be classified as direct costs in all situations. However, typical direct costs could include salaries of personnel working on the ATP project and associated reasonable fringe benefits such as medical insurance. Direct costs might also include supplies and materials, special equipment required specifically for the ATP project, and travel associated with the ATP project. ATP shall determine the allowability of direct costs in accordance with applicable Federal cost principles.

- (e) The term *foreign-owned company* means a company other than a United States-owned company as defined in Sec. 295.2(q).
- (f) The term *grant* means a Federal assistance instrument used whenever the principal purpose of the relationship between the Federal Government and the recipient is the transfer of money, property, services, or anything of value to the recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; and no substantial involvement is anticipated between the executive agency, acting for the Federal Government, and the recipient during performance of the contemplated activity.
- (g) The term *independent research organization (IRO)* means a nonprofit research and development corporation or association organized under the laws of any state for the purpose of carrying out research and development on behalf of other organizations.
- (h) The term *indirect costs* means those costs incurred for common or joint objectives that cannot be readily identified with activities carried out in support of a particular final objective. A cost may not be allocated to an award as an indirect cost if any other cost incurred for the same purpose in like circumstances has been assigned to an award as a direct cost. Because of diverse characteristics and accounting practices it is not possible to specify the types of costs which may be classified as indirect costs in all situations. However, typical examples of indirect costs include general administration expenses, such as the salaries and expenses of executive officers, personnel administration, maintenance, library expenses, and accounting. ATP shall determine the allowability of indirect costs in accordance with applicable Federal cost principles.
- (i) The term *industry-led joint research and development venture* or *joint venture* means a business arrangement that consists of two or more separately-owned, for-profit companies that perform research and development in the project; control the joint venture's membership, research directions, and funding priorities; and share total project costs with the Federal government. The joint venture may include additional companies, independent research organizations, universities, and/or governmental laboratories (other than NIST) which may or may not contribute funds (other than Federal funds) to the project and perform research and development. A for-profit company or an independent research organization may serve as an Administrator and perform administrative tasks on behalf of a joint venture, such as handling receipts and disbursements of funds and making antitrust filings. The following activities are not permissible for ATP funded joint ventures:
 - (1) Exchanging information among competitors relating to costs, sales, profitability, prices, marketing, or distribution of any product, process, or service that is not reasonably required to conduct the research and development that is the purpose of such venture;
 - (2) Entering into any agreement or engaging in any other conduct restricting, requiring, or otherwise involving the production or marketing by any person who is a party to such joint venture of any product, process, or service, other than the production or marketing of

- proprietary information developed through such venture, such as patents and trade secrets; and
- (3) Entering into any agreement or engaging in any other conduct:
- (i) To restrict or require the sale, licensing, or sharing of inventions or developments not developed through such venture, or
 - (ii) To restrict or require participation by such party in other research and development activities, that is not reasonably required to prevent misappropriation of proprietary information contributed by any person who is a party to such venture or of the results of such venture.
- (j) The term *intellectual property* means an invention patentable under title 35, United States Code, or any patent on such an invention.
- (k) The term *large business* for a particular ATP competition means any business, including any parent company plus related subsidiaries, having annual revenues in excess of the amount published by ATP in the relevant annual notice of availability of funds required by Sec. 295.7(a). In establishing this amount, ATP may consider the dollar value of the total revenues of the 500th company in Fortune Magazine's Fortune 500 listing.
- (l) The term *matching funds* or *cost sharing* means that portion of project costs not borne by the Federal government. Sources of revenue to satisfy the required cost share include cash and in-kind contributions. Cash contributions can be from recipient, state, county, city, or other non-federal sources. In-kind contributions can be made by recipients or non-federal third parties (except subcontractors working on an ATP project) and include but are not limited to equipment, research tools, software, and supplies. Except as specified at Sec. 295.25, the value of in-kind contributions shall be determined in accordance with OMB Circular A-110, Subpart C, Section 23. The value of in-kind contributions will be prorated according to the share of total use dedicated to the ATP program. ATP restricts the total value of in-kind contributions that can be used to satisfy the cost share by requiring that such contributions not exceed 30 percent of the non-federal share of the total project costs. ATP shall determine the allowability of matching share costs in accordance with applicable federal cost principles.
- (m) The term *person* shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.
- (n) The term *Program* means the Advanced Technology Program.
- (o) The term *Secretary* means the Secretary of Commerce or the Secretary's designee.
- (p) The term *small business* means a business that is independently owned and operated, is organized for profit, and is not dominant in the field of operation in which it is proposing, and meets the other requirements found in 13 CFR part 121.
- (q) The term *United States-owned company* means a for-profit organization, including sole proprietors, partnerships, or corporations, that has a majority ownership or control by individuals who are citizens of the United States.

Sec. 295.3 Eligibility of United States- and foreign-owned businesses.

- (a) A company shall be eligible to receive an award from the Program only if:
- (1) The Program finds that the company's participation in the Program would be in the economic interest of the United States, as evidenced by investments in the United States in research, development, and manufacturing (including, for example, the manufacture of major components or subassemblies in the United States); significant contributions to employment in the United States; and agreement with respect to any technology arising from assistance provided by the Program to promote the manufacture within the United States of products resulting from that technology (taking into account the goals of promoting the competitiveness of United States industry), and to procure parts and materials from competitive suppliers; and
 - (2) Either the company is a United States-owned company, or the Program finds that the company is incorporated in the United States and has a parent company which is incorporated in a country which affords to United States-owned companies opportunities, comparable to those afforded to any other company, to participate in any joint venture similar to those authorized under the Program; affords the United States-owned companies local investment opportunities comparable to those afforded to any other company; and affords adequate and effective protection for the intellectual property rights of United States-owned companies.
- (b) The Program may, within 30 days after notice to Congress, suspend a company or joint venture from continued assistance under the Program if the Program determines that the company, the country of incorporation of the company or a parent company, or the joint venture has failed to satisfy any of the criteria contained in paragraph (a) of this section, and that it is in the national interest of the United States to do so.
- (c) Companies owned by legal residents (green card holders) may apply to the Program, but before an award can be given, the owner(s) must either become a citizen or ownership must be transferred to a U.S. citizen(s).

[59 FR 667, Jan. 6, 1994, as amended at 62 FR 64685, Dec. 9, 1997]

Sec. 295.4 The selection process.

- (a) The selection process for awards is a multi-step process based on the criteria listed in Sec. 295.6. Source evaluation boards (SEB) are established to ensure that all proposals receive careful consideration. In the first step, called "preliminary screening," proposals may be eliminated by the SEB that do not meet the requirements of this Part of the annual Federal Register Program announcement. Typical but not exclusive of the reasons for eliminating a proposal at this stage are that the proposal: is deemed to have serious deficiencies in either the technical or business plan; involves product development rather than high-risk R&D; is not industry-led; is significantly overpriced or underpriced given the

- scope of the work; does not meet the requirements set out in the notice of availability of funds issued pursuant to Sec. 295.7; or does not meet the cost-sharing requirement. NIST will also examine proposals that have been submitted to a previous competition to determine whether substantive revisions have been made to the earlier proposal, and, if not, may reject the proposal.
- (b) In the second step, referred to as the “technical and business review,” proposals are evaluated under the criteria found in Sec. 295.6. Proposals judged by the SEB after considering the technical and business evaluations to have the highest merit based on the selection criteria receive further consideration and are referred to as “semifinalists.”
 - (c) In the third step, referred to as “selection of finalists,” the SEB prepares a final ranking of semifinalist proposals by a majority vote, based on the evaluation criteria in Sec. 295.6. During this step, the semifinalist proposers will be invited to an oral review of their proposals with NIST, and in some cases site visits may be required. Subject to the provisions of Sec. 295.6, a list of ranked finalists is submitted to the Selecting Official.
 - (d) In the final step, referred to as “selection of recipients,” the Selecting Official selects funding recipients from among the finalists, based upon: the SEB rank order of the proposals on the basis of all selection criteria (Sec. 295.6); assuring an appropriate distribution of funds among technologies and their applications; the availability of funds; and adherence to the Program selection criteria. The Program reserves the right to deny awards in any case where information is uncovered which raises a reasonable doubt as to the responsibility of the proposer. The decision of the Selecting Official is final.
 - (e) NIST reserves the right to negotiate the cost and scope of the proposed work with the proposers that have been selected to receive awards. For example, NIST may request that the proposer delete from the scope of work a particular task that is deemed by NIST to be product development or otherwise inappropriate for ATP support.

[63 FR 64413, Nov. 20, 1998]

Sec. 295.5 Use of pre-proposals in the selection process.

To reduce proposal preparation costs incurred by proposers and to make the selection process more efficient, NIST may use mandatory or optional preliminary qualification processes based on pre-proposals. In such cases, announcements requesting pre-proposals will be published as indicated in Sec. 295.7, and will seek abbreviated proposals (pre-proposals) that address both of the selection criteria, but in considerably less detail than full proposals. The Program will review the pre-proposals in accordance with the selection criteria and provide written feedback to the proposers to determine whether the proposed projects appear sufficiently promising to warrant further development into full proposals. Proposals are neither “accepted” or “rejected” at the pre-proposal stage. When the full proposals are received in response to the notice of availability of funds described in Sec. 295.7, the review and selection process will occur as described in Sec. 295.4.

[63 FR 64414, Nov. 20, 1998]

Sec. 295.6 Criteria for selection.

The evaluation criteria to be used in selecting any proposal for funding under this program, and their respective weights, are listed in this section. No proposal will be funded unless the Program determines that it has scientific and technological merit and that the proposed technology has strong potential for broad-based economic benefits to the nation. Additionally, no proposal will be funded that does not require Federal support, that is product development rather than high risk R&D, that does not display an appropriate level of commitment from the proposer, or does not have an adequate technical and commercialization plan.

- (a) Scientific and technological merit (50%). The proposed technology must be highly innovative. The research must be challenging, with high technical risk. It must be aimed at overcoming an important problem(s) or exploiting a promising opportunity. The technical leverage of the technology must be adequately explained. The research must have a strong potential for advancing the state of the art and contributing significantly to the U.S. scientific and technical knowledge base. The technical plan must be clear and concise, and must clearly identify the core innovation, the technical approach, major technical hurdles, the attendant risks, and clearly establish feasibility through adequately detailed plans linked to major technical barriers. The plan must address the questions of “what, how, where, when, why, and by whom” in substantial detail. The Program will assess the proposing team’s relevant experience for pursuing the technical plan. The team carrying out the work must demonstrate a high level of scientific/technical expertise to conduct the R&D and have access to the necessary research facilities.
- (b) Potential for broad-based economic benefits (50%). The proposed technology must have a strong potential to generate substantial benefits to the nation that extend significantly beyond the direct returns to the proposing organization(s). The proposal must explain why ATP support is needed and what difference ATP funding is expected to make in terms of what will be accomplished with the ATP funding versus without it. The pathways to economic benefit must be described, including the proposer’s plan for getting the technology into commercial use, as well as additional routes that might be taken to achieve broader diffusion of the technology. The proposal should identify the expected returns that the proposer expects to gain, as well as returns that are expected to accrue to others, i.e., spillover effects. The Program will assess the proposer’s relevant experience and level of commitment to the project and project’s organizational structure and management plan, including the extent to which participation by small businesses is encouraged and is a key component in a joint venture proposal, and for large company single proposers, the extent to which subcontractor/subrecipient teaming arrangements are featured and are a key component of the proposal.

[63 FR 64414, Nov. 20, 1998]

Sec. 295.7 Notice of availability of funds.

The Program shall publish at least annually a Federal Register notice inviting interested parties to submit proposals, and may more frequently publish invitations for proposals in the Commerce Business Daily, based upon the annual notice. Proposals must be submitted in accordance with the guidelines in the *ATP Proposal Preparation Kit* as identified in the published notice. Proposals will only be considered for funding when submitted in response to an invitation published in the Federal Register, or a related announcement in the Commerce Business Daily.

[63 FR 64414, Nov. 20, 1998]

Sec. 295.8 Intellectual property rights; publication of research results.

- (a) (1) Patent rights. Title to inventions arising from assistance provided by the Program must vest in a company or companies incorporated in the United States. Joint ventures shall provide to NIST a copy of their written agreement which defines the disposition of ownership rights among the members of the joint venture, and their contractors and subcontractors as appropriate, that complies with the first sentence of this paragraph. The United States will reserve a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any such intellectual property, but shall not, in the exercise of such license, publicly disclose proprietary information related to the license. Title to any such intellectual property shall not be transferred or passed, except to a company incorporated in the United States, until the expiration of the first patent obtained in connection with such intellectual property. Nothing in this paragraph shall be construed to prohibit the licensing to any company of intellectual property rights arising from assistance provided under this section.
- (2) Patent procedures. Each award by the Program shall include provisions assuring the retention of a governmental use license in each disclosed invention, and the government's retention of march-in rights. In addition, each award by the Program will contain procedures regarding reporting of subject inventions by the funding Recipient to the Program, including the subject inventions of members of the joint venture (if applicable) in which the funding Recipient is a participant, contractors and subcontractors of the funding Recipient. The funding Recipient shall disclose such subject inventions to the Program within two months after the inventor discloses it in writing to the Recipient's designated representative responsible for patent matters. The disclosure shall consist of a detailed, written report which provides the Program with the following: the title of the present invention; the names of all inventors; the name and address of the assignee (if any); an acknowledgment that the United States has rights in the subject invention; the filing date of the present invention, or, in the alternative, a statement identifying that the Recipient determined that filing was not feasible; an abstract of the disclosure; a description or summary of the present invention; the background of the present invention or the prior art; a description of the preferred embodiments; and what matter is claimed. Upon issuance of the patent, the funding Recipient or Recipients must notify the Program accordingly, providing it with the Serial Number of the patent as issued, the date of issuance,

a copy of the disclosure as issued, and if appropriate, the name, address, and telephone number(s) of an assignee.

- (b) Copyrights: Except as otherwise specifically provided for in an Award, funding recipients under the Program may establish claim to copyright subsisting in any data first produced in the performance of the award. When claim is made to copyright, the funding recipient shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship to the data when and if the data are delivered to the government, are published, or are deposited for registration as a published work in the U.S. Copyright Office. The funding recipient shall grant to the Government, and others acting on its behalf, a paid up, nonexclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, perform publicly and display publicly, and for data other than computer software to distribute to the public by or on behalf of the Government.
- (c) Publication of research results: The decision on whether or not to publish research results will be made by the funding recipient(s). Unpublished intellectual property owned and developed by any business or joint research and development venture receiving funding or by any member of such a joint venture may not be disclosed by any officer or employee of the Federal Government except in accordance with a written agreement between the owner or developer and the Program. The licenses granted to the Government under Sec. 295.8(b) shall not be considered a waiver of this requirement.

[55 FR 30145, July 24, 1990. Redesignated and amended at 59 FR 667, 669, Jan. 6, 1994; 63 FR 64414, Nov. 20, 1998]

Sec. 295.9 Protection of confidential information.

As required by section 278n(d)(5) of title 15 of the United States Code, the following information obtained by the Secretary on a confidential basis in connection with the activities of any business or joint research and development venture receiving funding under the program shall be exempt from disclosure under the Freedom of Information Act—

- (1) Information on the business operation of any member of the business or joint venture;
- (2) Trade secrets possessed by any business or any member of the joint venture.

[55 FR 30145, July 24, 1990. Redesignated at 59 FR 667, Jan. 6, 1994]

Sec. 295.10 Special reporting and auditing requirements.

Each award by the Program shall contain procedures regarding technical, business, and financial reporting and auditing requirements to ensure that awards are being used in accordance with the Program's objectives and applicable Federal cost principles. The purpose of the technical reporting is to monitor "best effort" progress toward overall project goals. The purpose of the business reporting system is to monitor project performance against the Program's mission as required by the Government Performance

and Results Act (GPRA) mandate for program evaluation. The audit standards to be applied to ATP awards are the “Government Auditing Standards” (GAS) issued by the Comptroller General of the United States (also known as yellow book standards) and the ATP program-specified audit guidelines. The ATP program-specific audit guidelines include guidance on the number of audits required under an award. In the interest of efficiency, the recipients are encouraged to retain their own independent CPA firm to perform these audits. The Department of Commerce’s Office of Inspector General (OIG) reserves the right to conduct audits as deemed necessary and appropriate.

[62 FR 64686, Dec. 9, 1997. Redesignated at 63 FR 64415, Nov. 20, 1998]

Sec. 295.11 Technical and educational services for ATP recipients.

- (a) Under the Federal Technology Transfer Act of 1986, the National Institute of Standards and Technology of the Technology Administration has the authority to enter into cooperative research and development agreements with non-Federal parties to provide personnel, services, facilities, equipment, or other resources except funds toward the conduct of specified research or development efforts which are consistent with the missions of the laboratory. In turn, the National Institute of Standards and Technology has the authority to accept funds, personnel, services, facilities, equipment and other resources from the non-Federal party or parties for the joint research effort. Cooperative research and development agreements do not include procurement contracts or cooperative agreements as those terms are used in sections 6303, 6304, and 6305 of title 31, United States Code.
- (b) In no event will the National Institute of Standards and Technology enter into a cooperative research and development agreement with a recipient of awards under the Program which provides for the payment of Program funds from the award recipient to the National Institute of Standards and Technology.
- (c) From time to time, ATP may conduct public workshops and undertake other educational activities to foster the collaboration of funding Recipients with other funding resources for purposes of further development and commercialization of ATP-related technologies. In no event will ATP provide recommendations, endorsements, or approvals of any ATP funding Recipients to any outside party.

[55 FR 30145, July 24, 1990. Redesignated at 59 FR 667, Jan. 6, 1994. Redesignated and amended at 63 FR 64415, Nov. 20, 1998]

Subpart B—Assistance to United States Industry-Led Joint Research and Development Ventures

Sec. 295.20 Types of assistance available.

This subpart describes the types of assistance that may be provided under the authority of 15 U.S.C. 278n(b)(1). Such assistance includes but is not limited to:

- (a) Partial start-up funding for joint research and development ventures.

- (b) A minority share of the cost of joint research and development ventures for up to five years.
- (c) Equipment, facilities and personnel for joint research and development ventures.

Sec. 295.21 Qualifications of proposers.

Subject to the limitations set out in Sec. 295.3, assistance under this subpart is available only to industry-led joint research and development ventures. These ventures may include universities, independent research organizations, and governmental entities. Proposals for funding under this Subpart may be submitted on behalf of a joint venture by a for-profit company or an independent research organization that is a member of the joint venture. Proposals should include letters of commitment or excerpts of such letters from all proposed members of the joint venture, verifying the availability of cost-sharing funds, and authorizing the party submitting the proposal to act on behalf of the venture with the Program on all matters pertaining to the proposal. No costs shall be incurred under an ATP project by the joint venture members until such time as a joint venture agreement has been executed by all of the joint venture members and approved by NIST. NIST will withhold approval until it determines that a sufficient number of members have signed the joint venture agreement. Costs will only be allowed after the execution of the joint venture agreement and approval by NIST.

[63 FR 64415, Nov. 20, 1998]

Sec. 295.22 Limitations on assistance.

- (a) An award will be made under this subpart only if the award will facilitate the formation of a joint venture or the initiation of a new research and development project by an existing joint venture.
- (b) The total value of any in-kind contributions used to satisfy the cost sharing requirement may not exceed 30 percent of the non-federal share of the total project costs.

[62 FR 64687, Dec. 9, 1997]

Sec. 295.23 Dissolution of joint research and development ventures.

Upon dissolution of any joint research and development venture receiving funds under these procedures or at a time otherwise agreed upon, the Federal Government shall be entitled to a share of the residual assets of the joint venture proportional to the Federal share of the costs of the joint venture as determined by independent audit.

Sec. 295.24 Registration.

Joint ventures selected for funding under the Program must notify the Department of Justice and the Federal Trade Commission under the National Cooperative Research Act of 1984. No funds will be released prior to receipt by the Program of copies of such notification.

[63 FR 64415, Nov. 20, 1998]

Sec. 295.25 Special rule for the valuation of transfers between separately-owned joint venture members.

- (a) Applicability. This section applies to transfers of goods, including computer software, and services provided by the transferor related to the maintenance of those goods, when those goods or services are transferred from one joint venture member to other separately-owned joint venture members.
- (b) Rule. The greater amount of the actual cost of the transferred goods and services as determined in accordance with applicable Federal cost principles, or 75 percent of the best customer price of the transferred goods and services, shall be deemed to be allowable costs; provided, however, that in no event shall the aggregate of these allowable costs exceed 30 percent of the non-Federal share of the total cost of the joint research and development program.
- (c) Definition. The term “best customer price” shall mean the GSA schedule price, or if such price is unavailable, the lowest price at which a sale was made during the last twelve months prior to the transfer of the particular good or service.

[62 FR 64687, Dec. 9, 1997]

Subpart C—Assistance to Single-Proposer U.S. Businesses

Sec. 295.30 Types of assistance available.

This subpart describes the types of assistance that may be provided under the authority of 15 U.S.C. 278n(b)(2). Such assistance includes but is not limited to entering into cooperative agreements with United States businesses, especially small businesses.

[59 FR 670, Jan. 6, 1994]

Sec. 295.31 Qualification of proposers.

Awards under this subpart will be available to all businesses, subject to the limitations set out in Secs. 295.3 and 295.32.

[62 FR 64687, Dec. 9, 1997]

Sec. 295.32 Limitations on assistance.

- (a) The Program will not directly provide funding under this subpart to any governmental entity, academic institution or independent research organization.
- (b) For proposals submitted to ATP after December 31, 1997, awards to large businesses made under this subpart shall not exceed 40 percent of the total project costs of those awards in any year of the award.
- (c) Awards under this subpart may not exceed \$2,000,000, or be for more than three years, unless the Secretary provides a written explanation to the authorizing committees of both Houses of Congress and then, only after thirty days during

which both Houses of Congress are in session. No funding for indirect costs, profits, or management fees shall be available for awards made under this subpart.

- (d) The total value of any in-kind contributions used to satisfy a cost sharing requirement may not exceed 30 percent of the non-federal share of the total project costs.

[62 FR 64687, Dec. 9, 1997]

About the Advanced Technology Program

The Advanced Technology Program (ATP) is a partnership between government and private industry to conduct high-risk research to develop enabling technologies that promise significant commercial payoffs and widespread benefits for the economy. ATP provides a mechanism for industry to extend its technological reach and push the envelope beyond what it otherwise would attempt.

Promising future technologies are the domain of ATP:

Enabling technologies that are essential to the development of future new and substantially improved projects, processes, and services across diverse application areas;

Technologies for which there are challenging technical issues standing in the way of success;

Technologies whose development often involves complex "systems" problems requiring a collaborative effort by multiple organizations; and/or

Technologies that will go undeveloped and/or proceed too slowly to be competitive in global markets without ATP.

ATP funds technical research, but it does not fund product development—that is the domain of the company partners. ATP is industry driven, and that keeps it grounded in real-world needs. For-profit companies conceive, propose, co-fund, and execute all of the projects cost shared by ATP; these projects often include universities, and other non-profit organizations.

Smaller firms working on single-company projects pay a minimum of all the indirect costs associated with the project. Large, "Fortune 500" companies participating in single-company projects must pay at least 60% of total project costs. Participants of joint venture projects pay at least half of total project costs. Single-company projects can last up to three years; joint venture projects can last as long as five years. Companies of all sizes participate in ATP-funded projects. To date, nearly two out of three ATP awards have gone to individual small businesses or to joint ventures led by a small business.

Each project has specific goals, funding allocations, and completion dates established at the outset. Projects are monitored and can be terminated for cause before completion. All projects are selected in rigorous competitions that use peer review to identify those that score highest against technical and economic criteria.

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